

IN THE HIGH COURT OF LESOTHO

CIV/APN/384/2011

In the matter between:

MASERU REGION TRANSPORT OPERATORS

APPLICANT

AND

TRAFFIC COMMISSIONER

1ST RESPONDENT

ROAD TRANSPORT BOARD

2ND RESPONDENT

MINISTRY OF PUBLIC WORKS AND TRANSPORT

3RD RESPONDENT

ATTORNEY GENERAL

4TH RESPONDENT

JUDGMENT

Delivered by the Honourable Mr Justice T. Nomngongo

On the 6th August 2011

On the 29th July 2011 the applicant brought an application on an urgent basis. In the certificate of urgency Advocate Molapo says the reasons for urgency are that:

- “(a) The respondents intend to implement the increment of new passenger transport fares on the 1st August 2011 contrary to section 7 of the Road Transport Act of 1981 in that they have denied applicant’s members a legitimate right to a public hearing prior implementation of the new fares (sic).
- (b) Applicant and its members comprising thirty-two (32) associations and routes stand to suffer prejudice due to respondent’s continuing illegal acts.
- (c) Applicant’s association members have no alternative in the circumstances for the respondents are refusing to engage in public hearing as required by law.

The applicant then sought prayers in the following terms:

(a) That the intended implementation of new passenger fares by the respondents on the 1st of August 2011 be stayed pending finalization of this application.

(b) That the respondents be directed specifically PW 2nd respondent to comply with the provisions of section 7 of the Road Transport Act by calling public hearing to have regard to the representation of the applicant and its members before publicizing the new transport fares.

(c) The copy of the interim order herein be published in a newspaper widely circulating in Lesotho.

(d) That the respondents be ordered to pay costs of this application on the attorney and client scale.

(e) That be granted further and / or alternative relief.

3. That prayers 1 2(a) and (c) operate with immediate effect as interim relief.

The founding affidavit is deposed to by the chairman of the applicant one Mokete Jonas. He says he deposes to facts which he concedes materials for the main issue herein which is the refusal by the 2nd respondent to afford the applicant and its members a hearing prior to the implementation of new passenger fares. He says applicant learned of the proposed increases on the 22nd July and immediately made arrangements to meet with the 2nd respondent on the 27th July 2011. The results of that meeting appeared not to satisfy the applicant and through their legal representative

wrote to the Minister responsible lodging their complaints against the Road Transport Board i.e. the 2nd respondent that *inter alia* and in particular he had not complied with section 7 of the Road Transport Act by not holding public hearings where taxi and bus owners “at large and country wide” could make representations regarding new fares.

In their answer the respondents simply deny all allegations made against them and that in particular they did not give the applicant an opportunity to be heard before 2nd respondent could impose new fares for the conveyance of passengers in a public motor vehicle.

Central to the applicant’s case is that the 2nd respondent did not comply with section 7 of the Act. Section 7 has five sub-sections. Section 7 (1)

has its own sub-sections. The applicant does not make any attempt to say which of those sections and sub-sections he relies on. One can only assume that he relies on section 7 (1) (c) because the applicant complains that it was not given a “public hearing” and those words appear there albeit not in that syntax.

I quote from the section

“7 (1) It shall be the function and duty of the Board –

(a)

(b)

(c) to hold public sitting for the purpose of hearing and determining applications for permits or amendments of any terms as condition of the permits, in such places and at such times as appear

necessary, having regard to this Act and the interests of the applicant and any objectors”.

It will immediately be apparent that the applicant seems to equate a public sitting with a public hearing. A public sitting in my views simply denotes a sitting which is open to members of the public. Whether or not they may be heard would depend on what the statute says. In this instance in my view it is the applicants for permits and objectors who may be heard because the purpose of the hearing would be to determine applications for permits or amendments of any terms or conditions attaching thereto. Public hearings relate, *inter alia* to where views of the public are invited.

This is the thinking – this confusion that led the applicant to conclude that the Board had a duty before imposing fares to have hearings country wide.

That is not so. All that is required of the board is that its sitting should be a public matter just like an open Court for instances and only for the purpose of the hearing and determining applications for permits or amendments of any terms and conditions of the permits. That section therefore is limited to the determination of applications. There are no applications pending before the Board which would require him to conduct public sittings.

It is immediately within this regard that section 7 defines the duties and functions of the Board. It is not under one of the functions of the Board that section to determine fares. I do not know why it is assumed that such is their function. Certainly by implication of section 18(2), (c) which was

referred to me in argument that function seems to fall upon permit holders

subject to the approval of the Board. The section reads:

(18). (1) It shall be a condition of every permit.

(a)

(b)

(c)

(2) The Board may attach to a permit any condition needed to ensure

proper operations under the permit and in addition any of the

following conditions

(a)

(b)

- (c) That fares and charges to be used in connection with the carriage of passengers or goods are to be approved by the Board.

It follows that someone else other than the Board would have calculated the fares and then submitted them to the Board for approval, if, and I emphasize this, that was a condition the Board had attached to a permit or permits. That is to say a permit would have attached to it a condition among others such as “fares payable for the conveyance of passengers under this permit shall be subject to the approval of the Board”. Then in that case if the applicants, themselves intended to make amendments to any condition relating to fares they could have to apply to the Board and

the Board would be enjoined by section 7 (c) to hold public sitting to hear and determine such application.

I do not understand it to be the applicant's case that the permits of their members have the condition I have described above; it is not their case that consequent upon that condition they have made application to the Board to amend that condition. They assume simply, with the concurrence of the respondents that the latter have power to regulate fares. I have not been shown, nor am I aware where that power comes from. It certainly does not come from section 7 which as I have said defines the duties and functions of the Board. The regulation of fares is not one of them, unless it is for the purpose of the approving them when such is a condition attaching to permits. The applicant is therefore barking up the wrong tree.

I have no choice but to dismiss the application and discharge the rule. But in doing so it would be irresponsible of the Court to leave a vacuum that would leave commuters and operators of public motor vehicles confused, it would likewise be irresponsible to let what has clearly emerged as illegal for being ultra vires the powers of the Road Transport Board the practice of the Board to regulate fares. It seems to me that the Road Transport Act has left the industry to self-regulate subject to the provisions of section 18 (2) (c) (supra), at least in the matter of fares as they stand, i.e. the old fares remain in force.

2. That the parties and their legal representatives' meet discuss the way forward in the light of the comments in this judgment.

3. That the 1st respondent gives this judgment the widest publicity among all interested parties.
4. That the parties' legal representatives address the Court within fourteen days on a further way forward.

T.Nomngcongo

Judge

6th August 2011

For Applicant : Mr Molati

For Respondent : Mr Makhetha K.C.

