

**CIV/APN/7/2011**

**CIV/APN/69/2010**

**IN THE HIGH COURT OF LESOTHO**

In the Matter Between:-

**BOCHABELA TRANSPORT OPERATION**

**APPLICANT**

**V**

**HLOTSE TAXI ASSOCIATION  
ROAD TRANSPORT BOARD  
MINISTER OF PUBLIC WORKS  
ATTORNEY GENERAL**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
3<sup>rd</sup> RESPONDENT  
4<sup>th</sup> RESPONDENT**

**JUDGMENT**

**Coram : Hon. Molete AJ.  
Date of hearing : 26<sup>th</sup> September, 2011  
Date of judgment : 4<sup>th</sup> May, 2012**

**Summary**

*Rescission of judgment – Application brought ex parte and on urgent basis – Requirement is the Applicant must show cause why he cannot afforded substantial relief in due course – Applicant found to have created urgency by unexplained delay – Applicant held not to be an interested party in the proceedings – test to be applied – Application dismissed with costs.*

## ANNOTATIONS

### CITED CASES

**Khaketla v Malehleha & Others LAC (1990-1994) 275**

**Mahlakeng & Others v Southern Sky Others LAC (2000-2004) 734**

**Mangala v Mangala 1967 (2) SA 415**

**Henri Vilgoen (Pty) Ltd v Awarbach Bros 1953 (2) JA 151**

**Brauer v Cape Liquour Licesing Board 1953 (3) SA 752**

**Minister of Local Government and Land Tenure v Sizwe Development 1981 (1) SA 677**

### STATUTES

**High Court Rules 8(22) (c)**

### BOOKS

- [1] This is an application in which Applicant sought an order on an urgent basis and *ex parte* for rescission of an order granted in the matter of CIV/APN/69/2010. This application itself was brought under Number CIV/APN/7/2011.
- [2] The order was granted in a matter in which the Applicant was not a party and they therefore sought an order for leave to file opposing papers in the proceedings under CIV/APN/69/2010.
- [3] A brief background to the dispute which gave rise to this application is necessary. It will clarify some of the conclusions arrived at in this judgment and the rationale behind the decision.

- [4] In CIV/APN/69/2010, the Applicant was Hlotse Taxi Association. It sought an order against the Road Transport Board, the Minister of Transport and the Attorney General to implement a decision or resolution reached during a meeting that was held on 1<sup>st</sup> June 2009. The resolution was apparently to the effect that the taxis from Butha-Buthe and Pitseng to Maputsoe be restricted not to enter the Hlotse Bus-stop but be restricted to main North I Road.
- [5] The Applicant, Hlotse Taxi Association, had initially applied to Court during April 2010 and an order was granted by His Lordship Mr Justice S. Peete in their favour, directing the Respondents to implement the resolution referred to. The Resolution was to ensure that the permits of taxis be strictly enforced in that taxis with a point of origin in Maputsoe and destination Pitseng, Bokong or Butha-Buthe, should not be allowed to stop and load at Hlotse Bus-stop as this was not authorized by their permits.
- [6] Apparently the Respondents did not comply with the said court order, which prompted the applicant to institute contempt of court proceedings against them. The Commissioner of Traffic and certain members of the Road Transport Board were cited as Respondents together with the Attorney General.
- [7] The parties, through their counsel Advocates Setlojoane and Sekati reached a settlement which was made an order of court. The settlement was in all important respects similar to the order already granted. In other

words, they now agreed to implement the decision and to comply with the order of court.

**[8]** It is against this order that the present Applicant then sought a *rule nisi* as follows;

- (a) Dispensation on account of urgency.
- (b) Stay of execution of the order granted.
- (c) Rescission of the order.
- (d) Leave to file opposing affidavits in the case CIV/APN/69/2010 and other ancillary relief; including costs in the event of opposition.

The order was sought *ex parte* and on an urgent basis.

**[9]** The *rule nisi* was granted by Madam Justice Guni on the 10<sup>th</sup> January 2011 and made returnable on 24<sup>th</sup> January 2011. The matter was then placed before Peete J for hearing the rescission application, and he subsequently referred it to the Commercial Court. The delays in this matter were unfortunate, but necessary as the court inquired into certain aspects of the matter, and suggested parties try to resolve the matter in pre-trial conference.

**[10]** A resolution was not reached and the arguments proceeded. The court was faced with a matter in which a party who was not a respondent in the case was seeking rescission of a default judgment. A default judgment that was subsequently made an order of court by the consent of the parties to the suit.

Applicant herein as already indicated sought such an order on an urgent basis and *ex parte*.

[11] Applicants reasons for adopting such a procedure are according to the certificate of urgency filed, that;

(a) The organization stands to suffer serious prejudice as a result of the order granted in their absence, and

(b) Applicants have no alternative remedy in the circumstances in view of the prejudice members stood to suffer regard being had to the imminent implementation of the order.

[12] The correct statement of the law regarding circumstances in which an application may be moved on an urgent basis and *ex parte* has been stated in many cases before this Court and the Court of Appeal. It is not enough to allege prejudice. An Applicant must go on to state the reasons why he could not be afforded substantial relief in an hearing in due course if the rules were to be followed. **High Court Rules**<sup>1</sup>.

[13] The rule is only departed from in exceptional cases; particularly where the likelihood is that notice to the opposing party would enable Respondent to defeat or render the relief sought nugatory or precipitate the very harm that applicant is seeking to avert.

---

<sup>1</sup> Rule 8 (22) (c)

**Khaketla v Malehleha & others<sup>2</sup> .**

**Mahlakeng & others v Southern Sky Others<sup>3</sup>.**

**Mangala v Mangala<sup>4</sup>.**

[14] I am satisfied that this matter was not urgent in the first place, and no proper case was made for bringing it in the manner it was brought.

[15] I have also considered that the Applicants herein have always been aware of the order granted; that was to be implemented because the Implementation of the order was at all times material against the Applicant organisation.

[16] According to the Answering Affidavit of the Respondent herein they would have known about the court order sometime around July 2010. In the Affidavit Respondent's deponent states as follows;

“Sometime around July 2010, Adv. Letsie Maama, a legal advisor of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents wrote a letter to inform members of the Applicant and other taxi operators that they would come to Hlotse to implement annexure “KU1” on a specified rate. Members of the 2<sup>nd</sup> Respondent including Adv. Maama went to Hlotse to implement the said court order. I wish to take this Court into my confidence and say that the members of applicant rebelled against annexure “KU1”

---

<sup>2</sup> LAC 1990-1994 275 at 280

<sup>3</sup> LAC 2000-2004 734 at 754

<sup>4</sup> 1967 (2) SA 415

and even promised and/or pointed guns at members of the 2<sup>nd</sup> Respondent and hence why annexure “KU1” was never implemented I have been advised.”

The Affidavit of the said Maama Letsie is attached to support the deponent’s averments.

**[17]** The response of Applicant to this serious allegation reads as follows;-

“It is specifically denied that applicant members rebelled against “KU1” or pointed guns at members of 2<sup>nd</sup> respondent as alleged or at all”.

It failed to address the allegations in the answering affidavit in full. Particularly regarding the letter allegedly written to them by Maama; when they became aware of the court order “KU1” as well as why in the circumstances the court order was never implemented.

**[18]** The inescapable conclusion that I have to reach in the circumstances is that the Applicants already knew about the order of Court in July 2010, but only brought their application in January 2011 after their attempt to threaten the members of 2<sup>nd</sup> Respondent had failed. The urgency in the matter was thus unwarranted, and self-imposed. On this ground as well the matter has to fail the urgency test.

- [19] In the Answering Affidavit to this Application Respondents also deny that Applicant is an interested party as alleged. The response of the Respondent to the answering affidavit is that Applicants' C-permits allow them only to transport passengers from Maputsoe to Butha-Buthe, Maputsoe to Pitseng and Maputsoe to Bokong. Their permits, it is alleged do not authorize them to enter Hlotse bus-stop except for the purposes of off-loading passengers.
- [20] Respondent says that Applicants' members C-permits do not have Hlotse as a point of original departure, nor as a destination; that is why they are only allowed access to Hlotse bus-stop only to off-load their passengers. On the other hand Respondents' members C-permits allow them to transport passengers from Maputsoe to Hlotse and back.
- [21] It is accordingly submitted on behalf of 1<sup>st</sup> Respondent that the prayers in CIV/APN/69/2010 do not affect the members of Applicant and that therefore Applicant is not an interested party because their operation is unlawful. It was argued by Mr Setjojoane for 1<sup>st</sup> Respondent that there was no need to join Applicant and that to grant the order of joinder, rescission or leave to file opposing papers in CIV/APN/69/2010 would serve only to allow continuation of the illegality. I have to agree with that submission.
- [22] The test is whether or not a party has 'direct and substantial interest' in the subject matter of the action, that is, a legal interest in the subject matter of the litigation which may be affected prejudicially by the judgment of the Court.



**Henri Vilgoen (Pty) Ltd v Awarbach Bros<sup>5</sup>**

**Brauer v Cape Liquour Licesing Board<sup>6</sup>**

**Minister of Local Government and Land Tenure v Sizwe Development<sup>7</sup>**

[23] In my view Applicant could only apply on notice to all other interested parties in separate proceedings for an order relating to the route and seek to invalidate if possible the provision in their C-permits that restricts them to the route that they have been allocated.

[24] It is therefore the conclusion that I have reached on the basis of the above that the Application ought to be dismissed.

It is accordingly dismissed with costs.

**LA MOLETE**  
**ACTING JUDGE**

**For Applicant : Mr S.S. Tsabeha**

**For Respondent : Mr R.D. Setlojane**

---

<sup>5</sup> 1953 (2) SA 151 at 167-70

<sup>6</sup> 1953 (3) SA 752 at 760

<sup>7</sup> 1981 (1) SA 677 at 679