

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/A/0009/2022

CIV/APN/MSU/0083/2022

In the matter between

MASERU MALL TAXI ASSOCIATION

1ST APPELLANT

RATEBELI MOHLOUOA

2ND APPELLANT

MOEKETSI SANTE

3RD APPELLANT

AND

BROWN LION

1st RESPONDENT

PAKO MOLUPE

2ND RESPONDENT

Neutral Citation: Maseru Mall Taxi Association and 2 others v Brown Lion and the other [2022] LSHC 234 Civ (31 OCTOBER 2022)

CORAM : **HLAELE J.**

HEARD : 14 SEPTEMBER 2022

DELIVERED : 31 OCTOBER 2022

SUMMARY: *Appeal from Subordinate (Magistrate) court. Requirements of an interdict. Interpretation of Section 20(1) of the Road Traffic Regulations 2004. What constitutes a taxi rank?*

ANNOTATIONS:

CITED CASES:

1. Setlogelo v. Setlogelo 1914 AD 221.
2. Attorney General of Lesotho and Another V Swiss Bourgh Diamonds. Mines (Pty) Ltd and Others C OF A (CIV) NO. 38 OF 1994.
3. Selemela Construction (Pty) Ltd v Road fund and 2 Others. CCA/0084/2021 [2021] LSHC 136 COM (26th November,2021).
4. Roma Taxi Association v Officer Commanding Roma Police (C of A (CIV) 20 of 2015) [2016] LSCA 6 (29 April 2016).

STATUES

1. Road Transport Regulations 2004.
2. Road Transport Act 1981.
3. South Africa Public Buses and Taxis By-law, 2009 Published in Western Cape Provincial Gazette no. 6675 on 9 November 2009.

BOOKS

1. The concise Oxford dictionary ninth edition

JUDGMENT

HLAELE J.

[1] INTRODUCTION

1.1 Being dissatisfied with the judgement of the court aqou, the Appellants herein have filed this appeal to set aside the decision of the magistrate. The Grounds of appeal appear in paragraph 3 herein. For convenience and consistency, the appellants will be referred to as such, whereas the Applicants in the court aqou will at all times be referred to as Respondents herein.

[2] FACTUAL MATRIX

2.1 The facts of this case are that the Respondents herein had entered into an agreement with the management of Maseru Mall. It was in terms of this agreement that they alleged that they had a

right to manage the taxi rank at Maseru Mall. The agreement is filled of record and appears at page 25 of the record. It is marked “BL1” The agreement forms the basis of the relations between the Respondents herein and the Maseru Mall management.

2.2 The Appellants, (Respondents in the court aqou), were of the view that they had a better right to run the taxi rank by virtue of the fact that they were a taxi association, as opposed to the Respondents herein, who are individuals. As a result, they interfered with the operations and management of the rank by the two individuals. Their interference manifested itself in various acts such as operating their taxis at the rank despite a direct instruction by the Respondents herein not to, refusing to be controlled by the Respondents herein and other activities that generally interfered with what the Respondents herein considered unbecoming conduct in the business of managing the taxi rank.¹

2.3 As has been said, it is common cause that the respondents herein and the management of the mall entered into an agreement in terms of which the respondents were given full responsibility to manage and run the taxi rank at the mall. It is this agreement that forms the bone of contention. A cursory look into the agreement reveals that the it is intended to prevent amongst others, passenger pouching, cleanness at the rank, dangerous weapons, respect for the management of the rank and penalties for the breach of the conditions spelled out. The agreement was specific that the rank was under the direct control and management of the Respondents herein and no one else had the authority to manage the taxi rank or even operate without their permission.

[3] THE APPEAL

3.1 The first ground of appeal reads; -

1. The court erred and misdirected itself in ordering the interdict of the appellants when the applicants in the court a qou failed to satisfy the requirements of an interdict.

¹ Paragraph 5.3 of the founding affidavit at page24 of the record.

2. The court erred and misdirected itself in dismissing the point in limine that the applicants in the court a quo had locus standi in the case.

The Appellants concluded their grounds of appeal by reserving their right to file further grounds of appeal in line with the procedural requirements of the law. Indeed, on the 14th, June 2022 the Appellants filed further grounds of appeal that read, I will tabulate them as 3 and 4 to maintain sequence.

3. The learned magistrate erred in that in his decision he completely disregarded the law regulating taxi ranks, and especially the management of the taxi ranks.
4. The Court erred and misdirected itself in deciding to interdict the Appellants without their alleged and illegal operation was first determined by the traffic commissioner, as an officer responsible for adjudication over the reports and violations, violent and disorderly behavior at taxi ranks being joined.

3.2 The 1st ground of appeal calls into question whether the Respondents herein had, in the court below, complied with the requirements of the granting of an interdict.

These requirements are outlined in the age long case of **Setlogelo v Setlogelo**². There have been subsequent cases that talk to the same matter, in this jurisdiction notably **Attorney General of Lesotho and Another v Swissbourgh Diamonds Mines (Pty) Ltd and Others**,³ **Selemela Construction (Pty) Ltd v Road fund and 2 Others**.⁴ These are tabulated as

- (a) prima facie right, though open to some doubt;
- (b) a well-grounded apprehension of irreparable harm if interim interdict is not granted and ultimate relief is eventually granted;
- (c) the balance of convenience favours the granting of the interim interdict;

and

² *Setlogelo v. Setlogelo* 1914 AD 221

³ *Attorney General of Lesotho and Another V Swissbourgh Diamonds Mines (Pty) Ltd And Others* C OF A (CIV) NO. 38 OF 1994

⁴ *Selemela Construction (Pty) Ltd v Road fund and 2 Others* CCA/0084/2021 [2021] LSHC 136 COM (26th November,2021)

(d) the absence of any other satisfactory remedy.

At page 14 – 15 of the record, the magistrate sets out how and why the Applicants have satisfied the requirements set out above. The analysis and conclusions of the learned magistrate cannot be faulted because they were based on the facts of the case as presented before him in the affidavits filed of record and by marrying of the facts of the case to the law. It is for this reason that the 1st ground of appeal is dismissed.

3.3 The second ground of appeal interrogates the right of the Respondents herein to sue or be sued. To put in context this ground of appeal, the Appellants have submitted during oral submissions that the basis of the Respondents lack of *locus standi* is by virtue of the fact that the legislation that governs the operations of taxi ranks prohibits taxi ranks from being manned by individuals and rather grants such rights to taxi associations.

3.4 To this end they have cited the Road Transport Regulations more specifically section 20(1) thereof which reads; -

A holder of C permit and D permit and F permit shall collectively be responsible for the maintenance of order and harmony at taxi ranks and for this purpose employ and assign people to each rank to ensure observance of such order and the orderly transection of business at such ranks include

(a) the loading of passengers into vehicles on first come first serve basis

(b) the departure of motor vehicles in turn; and

(c) reporting violations thereof, violent, and disorderly behaviour to the Traffic Commissioner.

3.4.1 Advancing their argument on this issue during oral argument and in their heads of argument, the Appellants argument is that the agreement entered into by the Respondents herein and the management of Maseru Mall is null and void. This line of argument continues to foster that, once this agreement is found to be null and void by this court, then the learned magistrate erred in finding that the contract is valid. The argument continues to be that, flowing therefrom, the Respondents had no locus

standi to bring the application in the court aqou because the basis of their standing is the agreement.

3.4.2 . In the court below, it appears from the record⁵ that in their answering affidavit they had merely alleged lack of locus standi without explaining how the Respondents herein lacked locus standi to mount the application as they did. Be that as it may, at page 11 of the record, in his judgement, the learned magistrate sheds light to what the Appellants meant. He states that they rely on the invalidity or otherwise of the agreement between the respondents herein and the Appellants. It thus behooves this court to interrogate the validity of the agreement.

3.4 It is my view that the question of the validity of the agreement between the Respondents herein and the Maseru Mall management stands and falls on whether the area which forms the subject matter of the agreement (Taxi Rank) is a private property or a public area demarcated as a taxi rank in terms of Regulation 20 (1) above.

[4] THE LAW

4.1 What constitutes a “taxi rank” is not defined either in the Regulations or in the principal Act being the Road Transport Act of 1981. Neither is it defined in any law regulating or governing the use of motor vehicles or ferrying of persons and goods by public transport, for instance the Road Traffic Act.

4.2 the dictionary meaning of Taxi rank is ‘a place where taxis wait to be hired’.⁶ This definition is useful in as far as explains an area demarcated for the purpose of hiring of a taxi.

4.2 In other jurisdictions such as the Republic of South Arica, by-laws in different provinces define what a taxi rank is. For instance, in terms of **South Africa Public Buses and Taxis By-law, 2009 Published in Western Cape Provincial Gazette no. 6675 on 9 November 2009** "**taxi rank**" means a place designated by a road traffic sign or an area approved by the Council and demarcated as a taxi rank; and "taxi"

⁵ Page 32 of the record paragraph 3(a) of the answering affidavit.

⁶ The concise Oxford dictionary ninth edition

means a public motor vehicle (other than a public bus) used for the conveyance of passengers, or of passengers and such passengers' goods, for reward. Further oversees in the UK the Nottinghamshire County Council (North Street, Swingate, and West Street, Kimberley) (Prohibition of Waiting) Traffic Regulation Order 2021 (5287) defines as follows; **taxi rank** means a building or land where three or more taxis load or unload passengers. These definitions place the identification and the management of a taxi rank under the management of a defined body. So much so that it becomes clear who has the right to determine where a taxi rank can be located and who mans the area.

4.2 The silence of Legislation in this regard makes it difficult to determine whether there can be a taxi rank in other persons private property. It is noted that it was at all times common cause that the area which forms the subject matter of the dispute is not a public area.

4.3 Shedding light on the issue of what constitutes a taxi rank I rely on the decision of our courts in the case of **Roma Taxi Association v Officer Commanding Roma Police**.⁷ this is a case where the provisions of regulation 20(1) were being interrogated. the enquiry having being prompted by violence and passenger pouching by taxi operators.

The court came to the decision that the determination of taxi rank was the administrative duty of the Road Transport Board. In this regard, it had the power to issue permits and conditions attached to the granting of such permits. Meaning that, for a taxi rank to exist, (that is a place where passengers wait to hire a taxi) the Road Transport Board has the legal authority to make that determination. The converse is true. That is, if the Board has not made such a determination, then such an area cannot be demarcated or called a taxi rank under the sphere of Regulation 20(1).

⁷ *Roma Taxi Association v Officer Commanding Roma Police*⁷ (C of A (CIV) 20 of 2015) [2016] LSCA 6 (29 April 2016)

[5] THE LAW AND THE FACTS

5.1 There was no evidence exhibited or brought before the learned magistrate that this area which forms the subject matter of the dispute is a taxi rank for the determination by the Board. The C permits or whatever permits issued to the Appellants were not exhibited to show whether the conditions thereat stipulated conditions relating to this specific area as it was the case in the Roma Taxi Association above. The applicability or otherwise of Section 20(1) was not tested by evidence. What was presented to the learned magistrate was a contract between the owner of private property who is Maseru mall and 2 individuals it contracted with to regulate the use of public transport in the area they had reserved within their property as a taxi rank. Their challenge on to the validity of the agreement is solely based on the provisions of Section 20(1) in that the area is a taxi rank as such it has to be regulated in terms of the Road Transport Regulations.

5.2 That cannot be so in the light of the fact that the case of **Roma Taxi Association** clearly indicated that the taxi associations will have legal authority only in areas where the Board has issued such. In the present area the Board had not. Neither was there was evidence that it had.

[6] CONCLUSION

6.1 I therefore confirm the decision by the learned magistrate that the agreement between the Respondents herein and the Management of Maseru mall is valid in that the area which formed the subject matter is not regulated by the Road Transport Board. It is private property.

The other grounds of appeal stand and fall on whether the area which the taxis of the parties herein rank is regulated by the Road Transport Regulations. Having found that this is private property, the other grounds automatically fall off since they hinged on the application of this regulation.

I therefore confirm the decision of the learned magistrate.

[7] ORDER

The following order is made;

The appeal is dismissed with costs.

M. G. HLAELE
JUDGE

Applicant: **Adv N. Naha**

Respondent: **Adv M. Masupha**