

IN THE HIGH COURT OF LESOTHO

**HELD
CIV/APN/437/2021**

AT

MASERU

In the matter between:

MAKHANGOA TAXI ASSOCIATION

1ST

APPLICANT

TUMISANG NTSONYANA

2ND

APPLICANT

LEETO BEFOLE

3RD

APPLICANT

MABONOLO KIBANE

4TH

APPLICANT

QAPHAI KHANARE

5TH

APPLICANT

TOBATSI LESEFA

6TH

APPLICANT

MOEPHOLI THIBELI

7TH

APPLICANT

TSEKO RAKUOANE

8TH

APPLICANT

MOLIEHI MOKAEANE

9TH

APPLICANT

RAMAPULANE MACHAHA

10TH

APPLICANT

MOHLALEFI SHAI

11TH

APPLICANT

AND

TRANSPORT CONTROLLER

1ST

RESPONDENT

TRANSPORT INSPECTOR

2ND

RESPONDENT

TRAFFIC COMMISSIONER RESPONDENT	3RD
ROAD TRANSPORT BOARD RESPONDENT	4TH
MINISTRY OF TRANSPORT RESPONDENT	5TH
O/C LEJONE POLICE STATION RESPONDENT	6TH
O/C BOKONG POLICE STATION RESPONDENT	7TH
O/C PITSENG POLICE STATION RESPONDENT	8TH
DISTRICT POLICE COMMISSIONER, LERIBE RESPONDENT	9TH
DISTRICT POLICE COMMISSIONER, THABA-TSEKA RESPONDENT	10TH
REGIONAL POLICE COMMISSIONER FOR NORTH RESPONDENT	11TH
COMMISSIONER OF POLICE RESPONDENT	12TH
ATTORNEY GENERAL RESPONDENT	13TH
BOKONG TAXI ASSOCIATION RESPONDENT	14TH

Neutral Citation: Makhangoa Taxi Association & 10 Ors v Transport Controller & 14 Ors [2022] LSHC 100 civ (5 May 2022)

JUDGMENT

Coram : Hon. Mr. Justice E.F.M.Makara
 Heard : 5 May 2022
 Delivered : 5 May 2022

MAKARA J.

Introduction

[1] The present application is the incidental trajectory of the consent order which was made in consequence of the agreement between the parties to expediently resolve the foundational

dispute in the matter. At that stage, the present Respondents were the Applicants.

[2] The consignment consent order was couched in these terms:

1. The **9th November 2021** decision of the 1st , 2nd, 3rd, 6th to 11th Respondents (inclusive) and 4th Respondent made at **Bokong Thaba Tseka** joint meeting to seize and impound Applicants' public motor vehicles' C-permits, C-permit tokens and short term permits and public motor vehicles and arrest the Applicants and/or their motor vehicles driver, respectively, is **reviewed, set aside and corrected**, as irregular, *ultra vires*, unlawful, and null and void.
2. The **9th November 2021** decision of the 1st 2nd 3rd 6th to 11th Respondents (inclusive) and 14th Respondent made at **Bokong Thaba Tseka** joint meeting to seize and impound Applicants' public motor vehicles' C-Permit tokens and Short Term Permits, seize and impound the Applicants' vehicle and to arrest the Applicants and/or their mother vehicle drivers, respectively, is hereby **declared** as irregular, *ultra vires*, unlawful, and null and void.
3. The seizure and impoundment of the Applicants public motor transport vehicles' C-Permits, C-Permit tokens and Short Term Permits by 2nd 3rd 6th to 11th Respondents and/or officers subordinate to them, is hereby **reviewed, set aside and corrected**, as irregular, *ultra vires*, unlawful and null and void.
4. The Seizure and impoundment of the Applicants public motor transport vehicles by 1st 2nd 3rd 6th to 11th Respondents and/or officers subordinate to them, is hereby **reviewed, set aside and corrected**, as irregular, *ultra vires*, unlawful and null and void.
5. 1st to 12th Respondents are ordered and directed to restore the Applicants' seized and impounded property to the Applicants.
6. It is hereby **declared** that Respondents or any one of them acting separately, jointly with on or more of the other or as collective, have no authority and power under the *Road Transport Act 1981* as amended and the *Road Traffic Act 1981*, to seize and impound any public motor vehicle which at the time of seizure and impoundment has been issued the necessary C-Permit or Short Term Permit under the law, otherwise than by specifically authorized officers under section 28 (2) of *the Road Transport Act 1981* and for reasons stated thereunder.

7. It is hereby **declared** that Respondents or any one of them, acting separately, jointly with one or more of the other or as a collective, have no authority and power under the *Road Transport Act 1981* as amended and the *Road Traffic Act 1981*, to seize and impound any C-Permit and Short Term Permit issued to the authorized public motor transport vehicle under the law, otherwise that by specifically authorized officers under section 110 (1) of the *Road Traffic Act 1981* and for reasons stated thereunder.
8. The Respondents are hereby **Interdicted and Restrained** from seizing and impounding the Applicants' public motor vehicles and their C-Permits, C-Permit tokens and Short Term Permits otherwise than by due process of the law.
9. Under the **Further and/or alternative** relief, the following orders are made:
 - 9.1 The two Associations should work together at the same Platform and observe the *Road Transport Regulations* and preserve the order.
 - 9.2 The Associations should follow the First Come First Served Rule.
 - 9.3 The Counsel for both Associations shall convene a meeting on suitable date and place to solve the impasse between the two Associations.

[3] It is common cause that despite the consent order made by this court, the then Applicants have hitherto not complied with the court order. It is of cardinal significance to be highlighted that the Applicants in seeking to justify their noncompliance with the order, have explained that they did not do so on account of the fact that they did not receive the court order itself. In the circumstances, the court found it judicially prudent to resolve the impasse by ordering the Registrar in her capacity as the sheriff of this court to effect the service of the consent order upon the Applicants. This was scheduled for the 11th April 2022. To facilitate for the ascertainment of the service upon the Applicants, the

court directed that they should present themselves before the Registrar on the specified date.

[4] The order for the Registrar to serve the Applicants with the order was made to expedite and ascertain that the service would be effected. This was inspired by the underlying understanding that the Applicants had in good faith concluded an agreement for a consent order towards an amicable settlement of the subject matter that has authored the case.

[5] It is common cause that notwithstanding the order of this court that the Applicants should present themselves before the Registrar on the 11th April 2022 for them to be served with the court order, they did not comply accordingly. Resultantly the Deputy Sheriff served the order upon the Applicants on the 12th April 2022. This is clearly attested to in his Affidavit of Return. It specifically states that the 1st - 12th Applicants were served on the 12th April 2022. The disturbing dimension in the affidavit is that the Deputy Sheriff has explained that the Applicants told him that they will never comply with the court order. The non-compliance with the order lends credence to this aspect of the affidavit.

[6] The cumulative acts by the Applicants tarnishes the bona fides in their defensive accounts. This commences from the original facts that on the day the consent order was made, the Applicants were represented by their counsel. The latter was

duty bound to appraise them about the outcome of the proceedings.

[7] The bona fides of the Applicants are further undermined by the explanation given on their behalf by their counsel that they had come to count on the said 11th April 2022, to receive the service of the order from the Registrar. Their very counsel should have directed them to the relevant office. In any event, they also had the obligation to search for it. It is inconceivable that a taxi owner or operator would not know that they had to enquire about the whereabouts of the office concerned.

[8] To crown it all, even if they were overwhelmed by the complexity and the imposing premises of the Court, their counsel who has explained that he met them therein after the working hours, should have advised them to request themselves before the Registrar on the next day or so soon thereafter.

[9] To worsen the remains, the Applicants have rendered their defence unacceptable by the fact that after failing to see before the Registrar, they never bothered to furnish the Court with any account to justify their noncompliance.

[10] In the premises, it is found that the Respondents have on the balance of probabilities proven that the Applicants have committed an act of contempt. It is consequently ordered that

the Respondents should appear before it on Tuesday the 17th May to show cause why they should not be incarcerated for their contempt of Court.

**E.F.M. MAKARA
JUDGE**

For Applicants : Adv. K.D. Mashaile inst. by K.D.Mabudu & Co.

For Respondent : Adv. T. Maqakachane inst. by Lephatsa Attorneys & consultants