

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable
Case no: 664/2024

In the matter between:

GREATER BLOEMFONTEIN TAXI ASSOCIATION **FIRST APPELLANT**

MOFEREFERE SHADRACK MAPHISA **SECOND APPELLANT**

and

RETSHEDISITSOE ISAAC MAFISA **RESPONDENT**

Neutral citation: *Greater Bloemfontein Taxi Association and Another v Retshedisitsoe Issac Mafisa* (664/2024) [2025] ZASCA 135 (18 September 2025)

Coram: MEYER, MATOJANE and WEINER JJA

Heard: 04 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Supreme Court of Appeal website, released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 18 September 2025.

Summary: Section 77 of the Land Transport Act 5 of 2009 –

whether the court a quo erred in finding that the respondent had proven a clear right despite the legality of the permit being challenged –whether the court a quo should have found that the permit was transferred in contravention of s 77 of the Land Transport Act and was thus unlawful – whether the parties concluded an agreement pending final determination of the matter

ORDER

On appeal from: Free State Division of the High Court, Bloemfontein (Mhlambi J, sitting as court of first instance):

The appeal is upheld in part and the order of the High Court is set aside and replaced with the following:

‘1 The respondent is interdicted from preventing the applicant's vehicle from loading at the taxi rank in line with the permit with number LFSLB44201-5, held by the applicant for the vehicle in question.

2 The respondent is interdicted from instructing or affecting or causing any driver of the applicant to vacate the taxi rank where he is supposed to load.

3 The orders in paragraphs 1 and 2 above shall be subject to the respondent temporarily loading under the permit of Ms Mei pending a decision by the GBTA and /or a court on the legality of the permit.

4 The respondent undertakes to only load passengers in accordance with the rules of the Majakathata Association.

5 Any action, review or application brought by the appellants is to be instituted within 60 days of the date hereof, failing which the order granted in prayer 3 shall lapse.

6 Each party is to pay their own costs.’

JUDGMENT

Weiner JA (Meyer and Matojane JJA concurring):

[1] The respondent applied for an order on an urgent basis interdicting the appellants from preventing him or his drivers from loading at the taxi rank known as Majakathata Taxi Rank (the rank). He further sought an order interdicting any person acting on behalf of or on the instruction of the appellants from preventing him from loading passengers from the rank. The matter was brought ex *parte,* and a rule *nisi* was issued calling upon the appellant to show cause why the rule *nisi* should not be made final. The first appellant is the Greater Bloemfontein Taxi Association and the second appellant is the Chairperson of the rank.

[2] The respondent's case was that he had bought a permit from a certain Ms Nontsokolo Mei (Ms Mei), which allowed him to load at the rank. He thus contended that he had a clear right to the relief he sought. He submitted that the second appellant had prevented him from loading at the rank and that it had therefore violated his rights in terms of the permit.

[3] The appellants, on the other hand, argued that the permit relied upon by the respondent was unlawfully obtained contrary to the provisions of s 77 of the Land Transport Act 5 of 2009 (the Act). The respondent contended that s77 of the Act had to be read with s 58. Section 77 states:

No cession, alienation or hiring out of operating licence or permit

(1) The authority conferred by an operating licence or permit may not-

(a) be ceded or otherwise alienated by the holder, except in terms of a transfer under section 58, and no person may be a party to such a cession or alienation; or

(b) be hired out by the holder or be hired by any other person.

(2) A transaction concluded in contravention of subsection (1) is invalid and has no legal force.

[4] Section 58 of the Act provides as follows:

‘58 Renewal, amendment or transfer of operating licence or permit

(1) The holder of an operating licence issued by a regulatory entity, may apply to whichever of those entities that issued the licence for renewal, amendment or transfer of the operating licence.
(2) Where an operating licence or permit was issued by a provincial operating licensing board or other competent entity before the date of commencement of this Act, the holder may apply for renewal, amendment or transfer thereof to the relevant entity contemplated in section 54, but, in the case of a permit, an operating licence must be issued if the application is granted.
(3) Where amendment of the operating licence or permit only involves substituting a different vehicle with the same capacity or less, section 73 applies.
(4) A person applying to take transfer of an operating licence or permit must have the written consent of the current holder of the operating licence or permit, or of that holder's executor.'

[5] The respondent accordingly contended that the submission that the operating licence may not be sold is incorrect and misleading. It can not be ceded or alienated except in terms of transfer under s 58. Reference was made to the case of *Nomna v. Williams and Others*[1], where the court stated 'in my view the authority granted by a licence may not be alienated in the wider sense of the word, by the holder thereof. It may, however, be transferred in terms of Section 58.'

[6] The appellants alleged that they were justified in preventing the respondent from loading as he had violated the standing orders of the rank, and the rules of the Majakathata Association (the association) of which Ms Mei was a member, and by which he was bound. He had done so by jumping the queue and seeking to load passengers first before other members.

[7] The appellants explained that the standard procedure for loading is determined by membership number and that the respondent could only load under Ms Mei's membership number. The appellants also alleged that as members of a voluntary association, they were bound by the rules of the association, and that

[1] *Nomna v Williams and Others* [2020] ZAFSHC 183; 2020 JDR 2312 (FB) para 15.

by buying the permit, the respondent subjected himself to the protocols and regulations governing Ms Mei's membership number 18. The respondent denied that he had in any way been unruly and or prevented other members or persons from loading at the rank.

[8] The appellants submitted that their version was more probable, as they attached a picture of the respondent blocking the queue when it was not his turn to load, under number 18. Although his permit was issued without conditions, the appellants contended that their association only has 22 members and therefore his membership must be encompassed by Ms Mei's membership as he is not a separate member of the association.

[9] The respondent denied this and submitted that he was the owner of the permit and was not required to operate under Ms Mei's permit. He alleged that he had bought an operating license from Ms. Mei and that she and the respondent had approached the appellant and the association to facilitate the transfer of the operating license.

[10] The respondent submitted further that both Ms Mei and the first appellant, had refused to facilitate the transfer. After a court order was obtained, Ms Mei complied but she was obliged to approach the court by way of an application to compel the first appellant to sign the relevant documents. An order was obtained in this regard, and they were ordered to sign the relevant documents which they duly did. On 19 October 2022, the Free State Licensing Board (the Board) issued the permit.

[11] As the permit appears to have been validly issued without conditions, a decision which has not been set aside, the respondent appears to have a clear right to the relief that he sought. He contended that the permit that he had was valid

and that the appellants had never challenged this by taking the decision granting the permit on review. Thus, in accordance with the principle in *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others,*[2] this decision of the MEC was valid until set aside.

[12] On 20 October 2022, the respondent went to the rank to load passengers and he was prevented by the second appellant from loading. He then approached the first appellant, as the organisation to which he and the second appellant belonged, to intervene, but was sent back to the rank and told that he had a valid licence, and therefore he should load. The second appellant continued to prevent him from doing so.

[13] As a result, the respondent launched his ex *parte* application on an urgent basis against both the first and the second appellant for an interdict, preventing them from interfering with him loading at the designated platform in accordance with his permit. The order was granted with a return date. On the return date, the appellants opposed the confirmation of the rule *nisi*. Various grounds of opposition were alleged. They were a lack of urgency, the non-joinder of the MEC of Police, Roads and Transport and the Board and Ms Mei. The court found that none of them were required to be joined. It also found that the matter was urgent. This was because the operating license was received on the 19th of October 2022 and the respondent was prevented from loading at the rank on 20 October 2022.

[14] The respondent also contended that the issue of the validity of his license is a moot point at this stage of the proceedings, as the operating license has been

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[2] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [2004] ZASCA 48; [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA).

transferred to him, and the decision of the Board has never been brought under review. The respondent argued that he had a clear right, as he was the rightful owner of a permit that had been issued and had never been set aside.

[15] The appellants submitted that the permit is invalid but have not challenged the decision of the Board in granting the permit. The respondent submitted that he has a valid permit that confers on him a right to load and transport passengers from a specific rank and that the right is being interfered with by the first appellant, as a body to which the second appellant is affiliated.

[16] The first appellant has failed to intervene in this impasse. If one has regard to the permit, there does not appear to be any limitation to the respondent's rights and accordingly, he contended that the order granted by the High Court allowed him to load passengers at the rank and transport them to the places set out in his permit. At this point, the appellants do not necessarily dispute that, but they submit that the order was too wide in that it failed to take into consideration the rights of the appellants and the fact that as an association it had the right to enforce its constitutional regulations, which comprised inter alia the fact that taxis were obliged to queue and could only load in numerical order. The respondent, they alleged, could only load under the permit of Ms Mei as number 18, and he had refused to do so and had jumped the queue in his attempt to be accommodated.

[17] There are vast disputes of fact in this matter. Firstly, whether or not the license and permit were correctly granted in the terms in which they were. Although there seems to be a dispute, the permit granted is valid on the face of it and has never been set aside. The second dispute is whether or not the respondent was breaching the conditions of the association and whether or not he could load independently of the rights given to Ms Mei. It is not possible to resolve the

disputes relating to the permit and /or the respondent's conduct in these proceedings.

[18] At this point it is necessary to refer to an agreement which the appellants rely upon. The appellants referred to a minute reflecting the conclusion of a meeting on 26 October 2022 after the urgent application was granted. It reads as follows: 'As the Majakathata Group Association, we met today on 26 October 2022. We have reached a conclusion that Mr. Mafisa will pick up passengers temporarily under Miss Nontsokolo Mei. This would happen until the case between them ends at the GBTA and the court. This is the final conclusion of Mokhupi. This was taken while Mr. Mafisa and Ms. Mei were present. We have reached this conclusion so that there should not be any fight within the Majakathata. It is noted that both Ms. Mei and the respondent were present at the meeting.'[3] The respondent disputed that he agreed to this decision. He stated that he was present at the meeting but did not agree with any conclusion reached. However, there was no objection noted by the respondent.

[19] The respondent conceded that he has no intention of violating any of the rules and regulations of the association and that he is prepared to abide by them. He accepts that he can only load in a particular place in the queue and cannot jump the queue, although he disputes, that he is obliged to load under the auspices of Ms. Mei. This dispute is not one which can be decided on these papers and the final order should not have been granted. However, if one accepts that an agreement was concluded, the basis of the final order is not borne out. The version that an agreement was reached is the more probable version and should be accepted under the *Plascon Evans*[4] rule.

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[3] The original text was in Sesotho and was translated. The relevant parts thereof recorded reads as follows: 'Rele lekhotla la Majakathata re kopane kajeno 26 Oct 2022 re fihlelletse qeto ya hore Mr R Mafisa otla laesha tlasa Mei for temporary. Sena setla etsahala ho fihlela nyewe pakeng tsa bona e fela mo GBTA le Court. Hona ke qeto ya Mokgupi kaofela. Qeto ena e nkuwe Mr mafisa aleteng le Miss Mei aleteng. Re nkile qeto ena hore ho sekaba le njwa kahara Majakathata '

[4] *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620.

[20] Accordingly, this appeal must be upheld in part. There was no reason for a costs order to be granted on the attorney and client scale. The order that was granted permitted the respondent to load at the rank and not to be prevented from doing so by any of the appellants. However, as it appears from the conclusion reached at the meeting, he would do this temporarily under Ms. Mei until the case between them had ended at the GBTA and the court.

[21] Accordingly, the appeal is upheld in part and the order of the High Court is set aside and replaced with the following:

'1 The respondent is interdicted from preventing the applicant's vehicle from loading at the taxi rank in line with the permit with number LFSLB44201-5, held by the applicant for the vehicle in question.

2 The respondent is interdicted from instructing or affecting or causing any driver of the applicant to vacate the taxi rank where he is supposed to load.

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4 The respondent undertakes to only load passengers in accordance with the rules of the Majakathata Association.

5 Any action, review or application brought by the appellants is to be instituted within 60 days of the date hereof, failing which the order granted in prayer 3 shall lapse.

6 Each party is to pay their own costs.'

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S E WEINER

JUDGE OF APPEAL

Appearances

For the first and second appellants:	M J Ponoane
Instructed by:	Ponoane Attorneys, Bloemfontein
For the respondent:	N Bahlekazi
Instructed by:	Mlozana Attorneys, Bloemfontein.