THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 252/2022

In the matter between:

PUTCO (PTY) LTD	**APPELLANT**
and	
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	**FIRST RESPONDENT**
THE SOUTH AFRICAN NATIONAL TAXI COUNCIL	**SECOND RESPONDENT**
ALEXANDRA, RANDBURG, MIDRAND, SANDTON TAXI ASSOCIATION	**THIRD RESPONDENT**
ALEXANDRA TAXI ASSOCIATION	**FOURTH RESPONDENT**
IVORY PARK TAXI ASSOCIATION	**FIFTH RESPONDENT**
MIDRAND TAXI ASSOCIATION	**SIXTH RESPONDENT**
RABIE RIDGE TAXI ASSOCIATION	**SEVENTH RESPONDENT**
RANDBURG LOCAL AND LONG DISTANCE TAXI ASSOCIATION	**EIGHTH RESPONDENT**
MEC FOR ROADS AND TRANSPORT, GAUTENG	**NINTH RESPONDENT**

Neutral citation: *PUTCO (Pty) Ltd v City of Johannesburg Metropolitan Municipality and Others* (Case no 252/22) [2023] ZASCA 31 (30 March 2023)

Coram: SALDULKER, SCHIPPERS, MBATHA and MOLEFE JJA and UNTERHALTER AJA

Heard: 10 March 2023

Delivered: 30 March 2023

Summary: Statutory interpretation – National Land Transport Act 5 of 2009 (NLTA) – negotiated contracts under s 41 – breakdown in negotiations – transport operator seeking interdict to refer dispute to mediation or arbitration under s 46(2) of the NLTA – inapplicable to disputes arising from negotiation of contracts under s 41 – operator not establishing prima facie right – appeal dismissed.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Mudau J sitting as court of first instance):

1 The application to adduce further evidence is refused with costs, including the costs of two counsel.

2 The appeal is dismissed with costs, including the costs of two counsel.

JUDGMENT

Schippers JA (Saldulker, Mbatha and Molefe JJA and Unterhalter AJA concurring)

[1] The appellant, Putco (Pty) Ltd (Putco), operates a subsidised public bus service in Gauteng, which it has done for decades. The first respondent, the City of Johannesburg Metropolitan Municipality (the City), is a 'planning authority' as defined in the National Land Transportation Act 5 of 2009 (the NLTA).[1] In terms of s 40 of the NLTA, planning authorities are required to integrate public transport services subject to contracts in their areas, as well as appropriate uncontracted services, 'into the larger public transport system in terms of relevant integrated transport plans'. The second to eighth respondents are various taxi associations. They did not participate in the proceedings in the court below, nor in this appeal. The ninth respondent is the Member of the Executive Council responsible for the Gauteng Department of Roads and Transport (the GDRT), who abided the decision of the court below.

[1] The NLTA defines 'planning authority' as meaning 'a municipality in relation to its planning functions'.

[2] The main issue in this appeal, which is with the leave of this Court, concerns the meaning and effect of ss 41 and 46 of the NLTA. Putco contends that the dispute resolution mechanism (mediation or arbitration) in s 46(2) applies to its dispute with the City regarding its market share of the integrated public transport network (IPTN) being implemented by the City. The City's case is that the dispute arises from negotiations conducted under s 41 of the NLTA, to which s 46 is inapplicable. More specifically, the City asserts that s 46(2) applies only where a public transport operator has an existing contract, as defined in the now repealed National Land Transport Transition Act 22 of 2000 (the Transition Act), with the relevant contracting authority. Putco does not have such a contract with the City.

[3] The basic facts are not contentious and may be briefly stated. The City has developed an Integrated Public Transport Operational Plan aimed at combining all existing modes of public transport (including bus and taxi routes) into a single network. The well-known feature of the Plan is the Rea Vaya Rapid Bus System (the Rea Vaya system), which is being implemented in phases on identified routes within the Municipality of Johannesburg. In order to implement this system, the City negotiated with bus and taxi operators, including Putco, whose routes were 'affected', ie those who were likely to lose passengers to the Rea Vaya system, to remove or reduce their existing services. In return, those operators were offered shares in bus operating companies which the City had incorporated to run the newly integrated network.

[4] The City negotiated Phases 1A and 1B of the Rea Vaya system with affected taxi and bus operators, which culminated in negotiated contracts under s 41 of the NLTA. Putco became a 26% shareholder in the bus operating company that was incorporated for, and that currently operates, Phase 1B of the Rea Vaya system. Putco however submitted that its contract with the City in relation to

Phase 1B was concluded in terms of s 46 and not s 41 of the NLTA. I return to this aspect below. Phase 1A commenced in 2010 and Phase 1B in 2013.

[5] This case concerns Phase 1C(a), a component of Phase 1C, which covers an area from the Johannesburg central business district to Sandton, known as the North East Quadrant (NEQ). Implementation of Phase 1C(a) of the Rea Vaya system will affect the current services provided by Putco between Soweto and the greater Sandton area. Putco renders these services in terms of an Interim Contract 48/97, concluded on 26 March 1997 between the GDRT and Putco under the Transition Act (and amended on 6 August 1997 and 7 December 2007).

[6] On 19 September 2017 the City, various taxi associations, Putco and another bus operating company, JR Choeu Express and Coaches (JR Choeu), entered into a Negotiation Framework Agreement in respect of the North East Quadrant Integrated Project (the NFA). The role of the NFA, essentially, is to facilitate negotiations between the parties in the restructuring of public transport services in the NEQ, by establishing rules and a framework for the various phases of the negotiations. The NFA records that the parties had agreed to develop and implement an integrated operational plan, which includes entering into negotiated contracts as envisaged in s 41 of the NLTA; and that the negotiated contracts to be concluded between the City and affected operators should be achieved through a structured and time-bound negotiation process, based on defined principles. The NFA contains specific dispute resolution procedures aimed at the final resolution of disputes between the parties. These include the appointment of independent facilitators to execute dispute resolution mechanisms.[2]

[2] Clause 14 of the negotiation framework agreement provides:
'DISPUTE RESOLUTION
14.1 In the event that the Parties are unable to reach agreement within a reasonable time, the Independent Facilitators will be requested to propose and execute a dispute resolution mechanism which can involve further internal or external mediation or facilitation and/or non-binding expert determination;
14.2 A dispute should be declared only after the Parties have extensively canvassed an issue and exhausted their own efforts. The Independent Facilitators should make a determination in this regard.
14.3 Facilitators may propose that the Core Group becomes involved;

[7] For several years, Putco and the City negotiated how many shares Putco should have in the operating companies formed by the City to run each phase of the Rea Vaya system. Negotiations in relation to Phase 1C(a) broke down after the City would not budge from its offer to Putco of a 0.27% shareholding in the new bus operating company. Putco claimed that there was no agreement between it and the City on the 'affectedness criteria' to be applied to Phase 1C, and that the criteria used to conclude agreements between the City and minibus taxi operators could not be applied to Putco. The City however contended that all the parties, including Putco, had agreed upon a data collection and analysis exercise, the results of which were used to determine the extent to which an operator was affected by the Rea Vaya system; and that a report of a study conducted on behalf of the City showed that Putco was affected to a very limited extent. JR Choeu agreed with the study and its outcome, and withdrew from the process. The City also asserted that negotiations were held openly with the taxi industry, and that Putco refused to accept the outcome of negotiations because it was not what Putco had expected.

[8] Thus, the central dispute between Putco and the City in the negotiation of the contracts under s 41 of the NLTA regarding Phase 1C(a), related to the affectedness criteria. The City appointed a facilitator to help resolve the dispute. However, there were delays that frustrated its resolution. Consequently, on 27 October 2020 Putco instituted proceedings in the Gauteng Division of the High Court, Johannesburg (the high court), to bring the dispute resolution process to finality by convening a meeting of the Core Group, contemplated in the dispute resolution procedures in the NFA. Subsequently, a meeting of the Core Group was convened and it was agreed that the dispute be resolved through arbitration, subject to agreement on the terms of reference and the identity of the arbitrator.

14.4 In the event that the Core Group, including Elders becomes involved, clear terms of reference of the role should be proposed by the Independent Facilitators. . . .

14.5 In the event that the above does not succeed, the Parties will revert to their principals for a further mandate in respect of the matter which had led to deadlock or a further dispute resolution process which could be binding.'

[9] However, Putco and the City could not agree on the terms of reference of the arbitrator and the dispute remained unresolved. On 30 June 2021 Putco launched an application in the high court, essentially for an order interdicting the City from incorporating a bus operating company or another corporate entity for the purposes of Phase 1C(a) of the Rea Vaya system; and from negotiating, concluding or implementing an agreement with any of the second to eighth respondents, regarding their shareholding in such bus operating company or corporate entity. The interdict was sought pending the final outcome of a dispute resolution process between Putco and the City under s 46(2) of the NLTA, including mediation under regulation 7 of the National Land Transport Regulations on Contracting for Public Transport Services, 2009 (the Regulations),[3] and failing mediation, referral to an appropriate court for settlement of the dispute.

[10] The high court (Mudau J) dismissed Putco's application for an interdict, on the basis that it had not established a prima facie right. The court held that the question whether s 41 or s 46 of the NLTA applied to the negotiations between the parties had been settled in *Golden Arrow Bus Services (Pty) Ltd v City of Cape Town and Others*,[4] in which this Court held that the two provisions deal with entirely different situations. Section 46 governs '[e]xisting contracting arrangements' (although it does make provision for the inclusion of an operator in an existing contract) and does not apply to contracts that have yet to be concluded. By contrast, s 41 applies to 'negotiated contracts' and makes no provision for disputes that may arise out of s 41 negotiations to be referred to mediation or arbitration.[5]

[3] The regulations are published under GN R877 in *GG* 32535, 31 August 2009.
[4] *Golden Arrow Bus Services (Pty) Ltd v City of Cape Town and Others* [2013] ZASCA 154; [2014] 1 All SA 627 (SCA) (*Golden Arrow Bus Services*).
[5] Ibid paras 11 and 14.

[11] Before considering the parties' submissions on this issue, it is necessary to deal with Putco's application under s 19*(b)* of the Superior Courts Act 10 of 2013, to adduce further evidence on appeal. The evidence sought to be adduced comprises an Inter-Governmental Authorisation Agreement concluded between the City and the GDRT in February 2018 (the intergovernmental agreement). The stated purpose of the intergovernmental agreement is to provide efficient and continuous public transport services, which the parties acknowledge is the responsibility of government. The parties undertake to achieve that purpose, inter alia, by the GDRT assisting and supporting the City in building its capacity to manage subsidised service contracts; establishing an agreed framework for co-operation and co-ordination between the parties; and ensuring that the parties exercise their powers and perform their functions in a manner that does not encroach on each other's functional and institutional integrity.

[12] Putco's basic contention is that the obligations imposed on the GDRT and the City by the intergovernmental agreement demonstrates that s 46 of the NLTA applies to its extant interim contract, even though that contract was concluded with the GDRT and not the City. Then it is said that the intergovernmental agreement puts paid to the City's argument that it is not a party to Interim Contract 48/97 and therefore is not bound by the provisions of s 46(2).

[13] The City opposes the application to adduce further evidence on two grounds. First, Putco has not met the requirements for adducing further evidence on appeal, as the intergovernmental agreement is irrelevant. Second, the appeal has become moot: more correctly, an interdict is not granted for a past invasion of rights.[6] After the high court dismissed Putco's application, the City concluded

[6] *Philip Morris Inc and Another v Marlboro Shirt Co SA Ltd and Another* [1991] 2 All SA 177 (A) at 187; *Stauffer Chemicals Chemical Products Division of Chesebrough-Ponds (Pty) Ltd v Monsanto Company* [1988] 3 All SA 279 (T) at 283.

contracts with the second to eighth respondents in respect of Phase 1C(a) of the Rea Vaya System. Consequently, the interdict sought would serve no purpose.

[14] The principles governing the powers of an appellate court to receive further evidence are well-settled. Further evidence on appeal is allowed only in special circumstances because it is in the public interest that there should be finality to a trial or application.[7] The basic requirements are that there must be some reasonably sufficient explanation why the evidence sought to be adduced was not presented at the trial; there should be a prima facie likelihood of the truth of the evidence; and the evidence should be materially relevant to the outcome of the proceedings.[8]

[15] The intergovernmental agreement is irrelevant to the main issue in this appeal. This is fundamentally because the proper construction of ss 41 and 46 of the NLTA is a matter of law and not fact, and cannot be based on evidence.[9] This was rightly conceded by counsel for Putco, but then it was submitted that the intergovernmental agreement was reflective of the intention of the legislature. The submission is untenable and no more need be said about it.

[16] Further, the argument that the intergovernmental agreement demonstrates that the City is bound by Interim Contract 48/97, despite not being a party to that contract, is unsound. The interim contract envisaged in s 46(1) and (2) is one 'as defined in the Transition Act'. That Act defined an 'interim contract' as,

'a contract, not being a current tendered contract, for the operation of a subsidised scheduled service, the term of which expires after the date of the commencement of this Act, and which-

[7] *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* 2005 (2) SA 359 (CC) para 41, following *Colman v Dunbar* 1933 AD 141 at 161-3.
[8] See Van Loggerenberg *Erasmus Superior Court Practice* at A2-70–A2-72B and the authorities collected in fn 7.
[9] *KPMG Chartered Accountants (SA) v Securefin Ltd and Another* [2009] ZASCA 7; 2009 (4) SA 399 (SCA) para 39.

(a) was concluded before that date between the province and the Department on the one hand, and the public transport operator who is to operate that service, on the other hand, and is still binding between them or only binding between the province and that operator; or
(b) is binding between that public transport operator and any transport authority or a core city or a municipality, due to the assignment to it, after the date of commencement of this Act, of the rights and obligations of the province under the contract contemplated in paragraph (a).'

There is no evidence on the papers that the Gauteng Province has assigned Interim Contract 48/97 to the City, and the intergovernmental agreement contains no such assignment. It follows that Interim Contract 48/97 is one between the GDRT and Putco, as envisaged in s 46(1) of the NLTA. The intergovernmental agreement cannot, and does not, change the statutory position.

[17] The high court thus rightly held that the provisions of s 46 are inapplicable in this case because Interim Contract 48/97 is between the GDRT and Putco, not between the City and Putco. Thus, the submissions on behalf of Putco that the absence of a contract between it and the City 'is no obstacle to the applicability of section 46'; and that 'section 46 by design, superimposes itself onto, and disrupts, existing contractual relationships', are incorrect.

[18] The application to adduce further evidence on appeal must accordingly be refused. By reason of the conclusion to which I have come, it is unnecessary to consider the remaining ground of opposition to that application: the issue of mootness. In any event, the City has not tendered any evidence concerning the contracts allegedly concluded with transport operators after the interdict was refused, or the current status of Phase 1C(a) of the Rea Vaya System, in order for this Court to determine whether an interdict would no longer serve any purpose.

[19] I return to the main issue – the proper construction of ss 41 and 46 of the NLTA. These provisions read in relevant part:

'**41 Negotiated contracts**

(1) Contracting authorities may enter into negotiated contracts with operators in their areas, once only, with a view to-

(a) integrating services forming part of integrated public transport networks in terms of their integrated transport plans;

(b) promoting the economic empowerment of small business or of persons previously disadvantaged by unfair discrimination; or

(c) facilitating the restructuring of a parastatal or municipal transport operator to discourage monopolies.

(2) The negotiations envisaged by subsections (1) and (2) must where appropriate include operators in the area subject to interim contracts, subsidised service contracts, commercial service contracts, existing negotiated contracts and operators of unscheduled services and non-contracted services.

(3) A negotiated contract contemplated in subsection (1) or (2) shall be for a period of not longer than 12 years.

(4) The contracts contemplated in subsection (1) shall not preclude a contracting authority from inviting tenders for services forming part of the relevant network.

(5) Contracting authorities must take appropriate steps on a timeous basis before expiry of such negotiated contract to ensure that the services are put out to tender in terms of section 42 in such a way as to ensure unbroken service delivery to passengers.

. . .

46 Existing contracting arrangements

(1) Where there is an existing interim contract, current tendered contract or negotiated contract as defined in the Transition Act in the area of the relevant contracting authority, that authority may-

(a) allow the contract to run its course; or

(b) negotiate with the operator to amend the contract to provide for inclusion of the operator in an integrated public transport network; or

(c) make a reasonable offer to the operator of alternative services, or of a monetary settlement, which offer must bear relation to the value of the unexpired portion of the contract, if any.

(2) If the parties cannot agree on amendment of the contract or on inclusion of the operator in such a network, or the operator fails or refuses to accept such an offer, the matter must be referred to mediation or arbitration in the prescribed manner to resolve the issue.

(3) The Minister may make regulations providing for the transition of existing contracting arrangements and the transfer of the contracting function in terms of this section or section 41,

including the transfer or amendment of existing permits or operating licences to give effect to its provisions in the case of an assignment under section 11(2).

. . .'

[20] These provisions make it plain that there is a clear distinction between contracts entered into in terms of s 41, and 'existing contracting arrangements' to which s 46 applies. The NLTA assigns the responsibility for the conclusion of s 41 contracts to the municipal sphere of government. Section 11(1)*(c)* of the NLTA provides:

'The municipal sphere of government is responsible for –

. . .

(xxvi) concluding subsidised service contracts, commercial service contracts, and negotiated contracts contemplated in section 41(1) with operators for services within their areas;'.

[21] The purposes of negotiated contracts are set out in s 41(1)*(a)*, *(b)* and *(c)*, which include integrating services forming part of an IPTN in terms of a municipality's integrated transport plan, and discouraging monopolies. These are entirely new contracts negotiated in terms of the NLTA. The contracting authority, the City, is obliged under s 41(2) to negotiate – not to reach an agreement with an operator who has an interim contract. None of the operators with whom the City negotiates under s 41 has any pre-existing right to render a public transport service when it embarks on negotiations. As this Court has said, s 41 'facilitates the quick implementation of the transport system within a municipality'.[10] This interpretation is buttressed by the immediate context: s 41(4) provides that the power to conclude negotiated contracts under s 41(1) shall not preclude a municipality from inviting tenders for the relevant services.

[22] Section 46 on the other hand, deals with contracts concluded before the commencement of the NLTA and regulates existing rights.[11] Its purpose is to

[10] *Golden Arrow Bus Services* fn 4 para 11.
[11] Ibid paras 11 and 13.

ensure that existing contracts do not stand in the way of the conclusion and implementation of new contracts under the NLTA.

[23] Flowing from the different situations to which ss 41 and 46 apply, there are two kinds of negotiations envisaged by the NLTA: (i) those which precede the conclusion of s 41 contracts; and (ii) negotiations that take place in terms of s 46(1)*(b)* to amend existing interim contracts. The negotiations under s 41 are aimed at the conclusion of once-off contracts for a maximum period of 12 years, and obviate the need for the contracting authority (a municipality) to tender for public transport services.[12] Given its purposes, s 41 makes no provision for disputes that may arise out of s 41 negotiations to be referred to mediation or arbitration, and for good reason. As is evidenced by the NFA, these negotiations are technical, complex, and involve existing competitors (minibus taxi operators and bus operators), all with competing interests. The potential for disputes is manifest. In this case the City and transport operators have been engaged in protracted negotiations for several years – since 2017.

[24] If Putco, or any negotiating party, could declare a dispute and demand its resolution by mediation or arbitration, the City could become bogged down in endless mediation and arbitration proceedings, and it would be impossible to reach timely s 41 contracts. This, in turn, would prevent the City from carrying out its duties under s 40 of the NLTA, which enjoins planning authorities 'as soon as possible . . . to integrate services subject to contracts in their areas', after the commencement of the NTLA – 8 December 2009.[13] So too, since s 41 concerns the negotiation of new contracts, there can be no disputes to resolve in respect of existing rights. There is simply a process to negotiate new contracts which will either result in agreement or fail in that endeavour.

[12] Ibid para 11.
[13] *Golden Arrow Bus Services (Pty) Ltd v City of Cape Town* 2013 JDR 0828 (WCC) para 27.

[25] Section 46(2) of the NLTA, by contrast, mandates the settlement of disputes by mediation and arbitration where, for example, negotiations for the amendment of an existing interim contract as envisaged in s 46(1) have failed. Section 46(1) grants a contracting authority (in this case, the GDRT) three alternative options to deal with the difficulties created by an existing interim contract, when an IPTN is introduced by way of a section 41 contract. The authority may (a) allow the contract to run its course; (b) negotiate an amendment of the contract with the operator to provide for its inclusion in an IPTN; or (c) make a reasonable offer of alternative services or a monetary settlement to the operator. The authority has a discretion as to which option to exercise.

[26] Negotiations to amend an existing interim contract under s 46(1)*(b)* of the NLTA must be conducted by the parties to that contract: after all, only they can 'agree on the amendment of the contract' contemplated in s 46(2). However, counsel for Putco submitted that the City is bound by the provisions of s 46(2), for the following reasons. Putco's existing interim contract is 'in the area of the relevant contracting authority', ie the City, within the meaning of s 46(1). The negotiations and the contract which resulted in Putco's contract for Phase 1B of the Rea Vaya system were done in terms of s 46, as it is the holder of an existing interim contract. The City's offer to Putco of a 0.27% shareholding in a new bus operating company, constitutes inclusion in an IPTN under s 46(1)*(b)*; or an offer of a monetary settlement as envisaged in s 46(1)*(c)* of the NLTA.

[27] These submissions are unsustainable for three reasons. First, they are insupportable on the facts. The NFA makes it clear that negotiations were conducted with the view to the conclusion of s 41 contracts. Putco itself invoked the dispute resolution procedures of the NFA. Moreover, the answering affidavit states that Phases 1A and 1B of the Rea Vaya System were concluded through negotiated contracts in terms of s 41. This was not disputed by Putco, save for a contention that s 41 and s 46 'are not mutually exclusive'. The offer to Putco of

a 0.27% shareholding in a new bus operating company is an offer to enter into a negotiated contract under s 41(1) of the NLTA, pursuant to the negotiations envisaged in s 41(2).

[28] Second, s 46 of the NLTA does not grant a municipality any power to conclude a contract for a public transport service: that power is conferred by s 11(1)*(c)*(xxvi), in terms of which a municipality may only enter into the contracts specified in that provision. The principle of legality dictates that a body exercising public power must act within the powers lawfully conferred on it.[14] Putco's submission that the City concludes negotiated contracts under s 41, with operators who do not have existing interim contracts, but that it does so with Putco in terms of s 46, is both illogical and at odds with the scheme of s 41 of the NLTA.

[29] Third, as already stated, the authority vested with the power in s 46 cannot be the municipality because that power is conferred on the entity which concluded the existing contract; hence 'that authority' is given the three alternative options to deal with an existing interim contract in s 46(1)*(a)-(c)*. In addition, Putco's construction disregards the assignment of responsibilities to the three spheres of government in s 11(1) of the NLTA. It states that the national sphere of government is the acting authority for interim contracts concluded in terms of the Transition Act; and that where a province is performing a function contemplated in s 11(1)*(a)* on the date of commencement of the NLTA, it must continue to do so unless the Minister of Transport has assigned that function to a municipality.[15]

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[14] *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Council* [1998] ZACC 17; 1999 (1) SA 374 (CC) paras 56 and 58.

[15] Section 11(1) of the NLTA provides:

'(1) The responsibility of the three spheres of government are as follows:

(a) The national sphere of government is responsible for-

. . .

(xi) acting as contracting authority for subsidised service contracts, interim contracts, current tendered contracts and negotiated contracts concluded in terms of the Transition Act;

. . .

[30] The dispute between Putco and the City relates to Phase 1C(a) of the Rea Vaya System, which is regulated by a s 41 contract. It is not a dispute envisaged in s 46(2) of the NLTA. Reading the dispute resolution mechanism in s 46(2) as applying to negotiated contracts under s 41, disregards the different objects of ss 41 and 46, and would impose a contract on parties who have not agreed to its terms, which is inimical to the scheme of s 41 of the NLTA.[16]

[31] Putco's argument that it is entitled to invoke the dispute resolution mechanism in regulation 7 of the Regulations against the City to resolve the dispute arising from negotiations relating to a s 41 contract, can be dealt with shortly. As stated above, Interim Contract 48/97 is between Putco and the GDRT, not the City, and s 46 of the NLTA does not apply to contracts negotiated under s 41. That being so, Putco cannot invoke a regulation that gives effect to s 46(2), as the basis for the grant of an interdict.

[32] In the result, the following order is issued:

1 The application to adduce further evidence is refused with costs, including the costs of two counsel.

2 The appeal is dismissed with costs, including the costs of two counsel.

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A SCHIPPERS

JUDGE OF APPEAL

(6) Subject to section 21, where a province is performing a function contemplated in subsection 1*(a)* on the date of commencement of this Act, it must continue performing that function, unless that function is assigned to a municipality by the Minister in terms of this Act.'

[16] *Golden Arrow Bus Services* fn 4 para 26.

Appearances:

For appellant:	A E Franklin SC and J Mitchell
Instructed by:	Bowman Gilfillan Incorporated, Johannesburg
	McIntyre Van der Post Incorporated, Bloemfontein
For first respondent:	V Notshe SC and AM Rakhutla
Instructed by:	Poswa Incorporated, Johannesburg
	Poswa Incorporated, Bloemfontein