

IN THE HIGH COURT OF SWAZILAND

a:Kombis

Federation of Swaziland Kombis (Minibus) Owners Association (Pty) Ltd

vs

Registrar for the Protection of Names, Uniform and Badges

and other

Civ. Case No. 1076/97

Coram S.W. Sapire, A CJ

For Applicant C.S. Dlammi

For Respondent C. Ntiwane

Judgment

(9/02/98)

The applicant in this matter is a company and the application is duly brought in terms of a resolution of the Directors.

This is a claim for a review of the decision of the first respondent, who is the Registrar of the Protection of Names, Uniform and Badges to issue a certificate of registration dated the 14th June, 1995 to the second Respondent which is an association known as the Swaziland Local Kombis (Minibus) Transport Association. The certificate is for the registration of the name of the 3rd Respondent in terms of the Protection of Names, Uniform and Badges Act of 1969.

The first objection taken by the respondents to this application is that it is not properly brought in terms of rule 53 and there is no record of the proceedings of the respondents upon which the decision to review can be made. This is not a point properly taken as in fact there is no decision by the person competent to make the decision. The point being is that it is for the minister to make the decision and that the registrar did not have the power authority or jurisdiction so to do

a:Kombis

The second respondent made application to the 1st respondent for the protection of the name "Swaziland Local Kombis (Minibuses) Transport Association. The application was advertised as required by the provisions of the Act of the Regulation made thereunder and appeared in the Government Gazette of the of the 27th of February, 1995. The applicant lodged an objection as is provided for in terms of the Act and Regulations and put the same for consideration.

According to the provisions of the Act the application for protection is to be made to the Minister. The Minister in terms of the Act was the Minister for Local Administration but that portfolio is now held by the 4th Respondent, the Minister of Home Affairs. No power is given to the Minister in terms of the Act to delegate the powers conferred on him by the Act. Section 5(2) of the regulations framed under the act provides that

"Before granting the application the Minister shall consider any objection which may have been lodged against it in terms of subsection (1) "

In response to the objection that it had lodged, the Registrar wrote to the Applicant on 16th June 1995 inviting the applicant to a meeting to be convened on 26th June 1995, "to discuss the objection."

Shortly thereafter by letter dated 19th June 1995 the Registrar, who is the first respondent wrote to the applicant advising that the objection was overruled. The letter does not say that the application and the objection thereto had been considered by the Minister. No affidavit by the Minister, who is a respondent in these proceedings, has been filed to state that he had put his mind to the question and instructed the Registrar to write to the applicant in terms of the letter of the 19th June. One must take it therefore that the decision stated in the letter of the 19th June, 1995 is that of the Registrar himself. The respondents have not seriously challenged these facts as alleged by the applicant.

As the Registrar is not given power in terms of the Act to do anything but registrar names in accordance with directions and decisions of the Minister the application by the 3rd respondent has not been properly considered and the objection thereto by the applicant has not been properly addressed

3

a:Kombis

I therefore make an order setting aside the decision of the 1st respondent to issue a Certificate of Registration dated 14th June 1955 to the 2nd respondent and declare that the application and the objection thereto are to be heard and considered by the Minister personally before any decision thereon is made. The respondents are to pay the applicant's costs.

S.W. SAPIRE

ACTING CHIEF JUSTICE