

IN THE HIGH COURT OF SWAZILAND

CASE NO. 2447/06

In the matter between:

CITY COUNCIL OF MANZINI

and

THE SWAZILAND INTERSTATE TRANSPORT

TRANSPORT ASSOCIATION

1st RESPONDENT

TRANSNATIONAL (PTY) LIMITED

T/A ZEEMANS TRANSPORT

2nd RESPONDENT

CORAM: Q.M. MABUZA -AJ

FOR THE APPLICANT: ADVOCATE FLYNN INSTRUCTED BY
ROBINSON BERTRAM FOR

1st RESPONDENT : MR. MDLADLA

FOR 2nd RESPONDENT : MR. MOFOKENG

RULING 13/7/06

[1] Before me is an urgent application brought by the City Council of Manzini who is the Applicant.

[2] The Applicant seeks the following order:

1. That the rules in relation to service time limits as provided for by the rules of this Honourable Court be and are hereby dispensed with in that this matter be enrolled as one of urgency.

2. That the Respondents be ordered to remove their concrete barriers or any other objects that has been placed at the entrance and exit points of the Applicants premises known as the Satellite Bus Rank, Manzini.

3. That a *rule nisi* be and is hereby issued and to be returnable on a date to be determined by this Honourable Court in the following terms:-

3.1. That the Respondents be interdicted and restrained from interfering in any way whatsoever with the operations of Satellite Bus Rank.

3.2. That the Respondents be and are hereby ordered to comply with the memorandum of understanding entered into between the Applicant and the first Respondent on the 2nd May 2006.

3.3. That the Second Respondent be interdicted and restrained from entering Applicant's premises known as the old bus rank for purposes of servicing its cross-border route and that it be ordered to re-locate to the new bus rank known as the Satellite Bus Rank.

3.4. That the Second Respondent be interdicted and restrained from inciting other cross-border passenger operators to relocate back to the old bus rank or instigating such relocating.

4. That prayers 3.1 to 3.4 operate as an interim interdict pending the final determination of this application.

5. The Commissioner of Police or the Station Commander for the Manzini Police Station be and are hereby authorized and directed to take such lawful action as may be necessary to ensure that the order granted is complied with, and to maintain peace and order and to prevent any violence against the employees of the Applicant.

6. That the Respondents be ordered to pay costs of this application inclusive of costs of Counsel.

7. That the Applicant be and hereby granted such further and/or alternative relief as this Honourable Court may be deem fit.

[3] Briefly the position is that the applicant seeks to restore law and order and good governance in the City of Manzini where certain operators belonging to the 1st Respondent have run amok and have taken the law into their own hands.

[4] From the papers filed off record it seems that the Satellite Bus Rank which is owned by the Applicant is under the control of the 1st Respondent by virtue of a Memorandum of Understanding entered into and signed by the 1st Respondent and the Applicant on the 2nd May 2006.

[5] The rights and duties of both parties are set out therein. The rights and duties of the Applicant are set out in clause 4 thereof and those of the 1st Respondent are set out in clause 5 thereof. Clause 4 provides as follows:

"RIGHTS AND DUTIES

Council shall:

4.1. Keep the facility clean and tidy and ensure that no refuse is allowed to accumulate within the facility, except in appropriate receptacles .

4.2. Keep the facility in a good state of repair.

4.3. Maintain the property in good order and condition including but not limited to preventing blockages and obstructions from occurring in the drains, sewerage and water pipes serving the facility.

4.4. Promptly repair or make good all damage reasonably (not negligently) occurring in the facility from time to time.

4.5. Shall at its own expense provide for water and electricity required in the facility.

4.6. Shall assist the Association in establishing an office structure within the facility."

[6] Clause 5 provides as follows:

"RIGHTS AND DUTIES OF THE ASSOCIATION. The

Association shall:

5.1 Exercise all reasonable skill, care and diligence in the management of the facility and shall carry out its obligations in accordance with relevant laws and regulations, including but not limited to traffic laws, public health laws, municipal laws and laws governing public transport in general.

5.2. Manage operation of public transport within the facility and will make quarterly returns to the Council on the management of the facility.

5.3. Be responsible for control over and discipline of public transport personnel within the facility who contravene laid down rules and regulations.

5.4. Ensure safety of public traveling in public transport from the facility.

5.5. Ensure orderly loading and offloading of passengers, without placing an obligation on the part of Council to provide an alternative facility for non-loading or offloading vehicles.

5.6. Create a conducive, neutral and convenient traveling environment within the facility.

5.7. Not use the facility or allow them to be used, in whole or in part for any purpose other than that which is stated in clause 2 of this agreement.

5.8. Ensure that no act, matter or thing whatsoever, shall be done or permitted to be done which may cause or lead to pollution of the environment or result in the creation of any hazard to health of other persons or become an annoyance/discomfort or nuisance to or damage or in any way interfere with the peace and comfort of persons and/or adjoining properties in the neighbourhood.

5.9. Cooperate with Royal Swaziland Police, Municipal Police or other security personnel in promotion of order and public safety.

5.10. Prevent vandalism of facility by public transport personnel.

5.11. Provide personnel (marshals) to assist RSP and Municipal Police in enforcement of law and order within the facility, who shall in execution of their duties be subordinate to the RSP.

5.12. Ensure the appropriate use of entrance and exit routes as approved by Council.

5.13. Ensure payment of user fees to Council when and if instructed to assist in the upkeep and maintenance of the facility."

[7] Clause 6 vests the management of the said facility on the 1st Respondent and provides as follows:

"MANAGEMENT

The authority to manage the operations of the facility will vest on the Association, which shall comply with such reasonable rules and regulations as are laid down by Council in terms of the Municipal Legislation"

[8] The 1st Respondent has failed to carry out its obligations in terms of clause 5 and 6 of the Memorandum of Understanding in and has also failed to state before this Court why they have failed to do so.

[9] The 2nd Respondent is a member of the 1st Respondent and is also governed by the terms and conditions of the Memorandum of Understanding.

[10] Counsel for the 2nd Respondent has raised certain points *in limine* namely :

"1. The Memorandum of Agreement between the parties does not give rise to any obligations to be fulfilled by the 2nd Respondent in that,

1.1. The said Memorandum of Agreement although in existence and binding between the parties has not yet come into effect or has not commenced in its operation as there is no commencement date inserted therein in terms of clause 3.

1.2. There is in terms of clause 17 of the Memorandum of Agreement a suspensive condition, which has not yet taken place to give effect to the operation of the Memorandum of Agreement.

To the extent of 1.1 and 1.2 above the Memorandum of Agreement is not effective and therefore Applicant cannot demand performance of the terms therein.

2. The intended removal of the 2nd Respondent by the Applicant from the

Old Bus Rank is unlawful and ultra vires the urban Government Act 8/1969 and its Bye-Laws read together with the Road Traffic Act in that,

2.1. The peremptory procedure laid down in section 3 of the Public Service vehicles Bye-Laws 1970 have not been fulfilled and therefore any actions by the Applicant to the contrary are unlawful and beyond the four comers of the enabling statute.

The Applicant has further failed to establish in its papers to establish the requirements of an interim interdict."

[11] The points *in limine* in my view fall to be decided under clause 15 of the Memorandum of Understanding which is the Arbitration clause and not by this Court. Clause 15 provides as follows:

"ARBITRATION

15.1. This agreement shall be executed by the parties in good faith;

15.2. Any dispute, differences, impasse or deadlock between the parties relating to this agreement or validity or meaning or rights and obligations of the parties, rectification of default, termination and compensation arising thereof must be referred to arbitration in terms of the Arbitration Act."

[12] This Court has jurisdiction however to intervene where it is obvious that law and order has broken down and the lives of the public are endangered.

[13] I am satisfied that the requirements of an Interdict have been met and hereby grant:

- a) The order sought in terms of prayers 1, 2, 3, 3.1, 3.2, 3.3, 3.4, 4 and 5.
- b) That a rule nisi hereby issue returnable on the 28/7/06.
- c) That the Respondent may anticipate the return date.
- d) That costs are hereby reserved.

Q.M. MABUZA -AJ