

THE HIGH COURT OF SWAZILAND
JIKA NDLANGAMANDLA

Applicant

And

NQABA GWEBU

1st Respondent

THE CHAIRMAN ROAD TRANSPORTATION APPEALS
BOARD

2nd Respondent

THE ATTORNEY GENERAL

3rd Respondent

Civil Case No. 288/2003

Coram

S.B. MAPHALALA - J

For the Applicant

MR. Z. MAGAGULA

For the Respondents MR. M. MABILA

JUDGMENT

(1st December 2006)

[1] The Applicant has filed an urgent application for an order in the following terms:

1. Dispensing with the procedures pertaining to time limits and manner of service provided for in the rules of court and hearing this matter as one of urgency.
2. Condoning the Applicant for non-compliance with the said Rules of Court.
3. Pending determination of Applicant's complaint (as set out in annexure "CO") by the Road Transportation Board (and where and when necessary by the 2nd Respondent) the 1st Respondent be interdicted and restrained from using permit no. 17429.

Alternatively

4. Pending compliance with the agreement made and entered into by and between the Applicant and the 1st Respondent (and approved and/or endorsed by the RTB), the 1st Respondent be interdicted and restrained from plying the routes between Mangena, New Heaven, Mbulungwane, Salema, Mhlaleni and Manzini.
5. Costs.

[2] The Application is founded on a supporting affidavit of the 3rd Respondent which at paragraph 5 thereof states that this application is an interlocutory application seeking compliance with an agreement made between him and 1st Respondent, and approved by the Road Transportation Board, which agreement was consequent to a meeting held by virtue of an order by this court issued on the 8th December 2005, marked "COI". In the said affidavit the Applicant relates at length the consequence of events leading to the application that the present application is necessary to maintain the *status quo* pending determination of the matter by Road Transportation Board. He avers further that he has a clear right and if the interdict is not issued he will suffer irreparable harm. Furthermore that the 1st Respondent has no assets which he may attach in the event he sues him for damages. That he cannot be afforded substantial redress at a hearing in due course.

[3] The 1st Respondent opposes the application and has filed an Answering affidavit in this regard.

[4] It would appear to me that the position adopted by the 1st Respondent is the correct one on the facts of this case. Firstly, this application is not interlocutory in that the earlier application between the parties was finalized when the order of court was issued on the 8th December 2005. It appears to me that there is no cause for the application before the court. The matter between the parties is pending before the Road Transportation Board where arguments were made and all that was left was for the Board to deliver its ruling.

[5] Secondly, the Applicant is asking the court to usurp the powers of the Road Transportation Board by determining the merits of the complaint by Applicant.

[6] I further agree with the 1st Respondent that in the present case the Applicant ought to ask the court to order the Road Transportation Board to deliver its ruling if he is aggrieved by the delay in delivering the ruling. The order of the 8th December 2005 did not have the effect of invalidating or suspending 1st Respondent's permit.

[7] In the result, for the afore-going reasons the application is dismissed with costs.

S.B. MAPHALALA

JUDGE