



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1146/17

In the matter between:

MANDLA SIBUSISO MATSEBULA

APPLICANT

and

**THE SECRETARY OF THE ROAD
TRANSPORTATION BOARD
THE ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT**

Neutral Citation : Mandla Sibusiso Matsebula vs The Secretary, Road
Transportation Board (1146/17) [2019] SZHC 26 (18
JUNE 2019)

Coram : MABUZA – PJ

Delivered : 18 JUNE 2019

SUMMARY

Transport: Road Transportation Board – Accused of granting a road permit and refusing to issue it – Application to compel it to issue permit - Board denies grant as being fake – Application dismissed with costs.

JUDGMENT

MABUZA -PJ

[1] I tender my sincere apologies for the delay in delivering this judgment. It was concluded a long time ago.

The Applicant seeks an order directing the 1st Respondent to issue to a road transportation service permit which he says the Road Transportation Board (RTB) granted to him per letter dated 20 June 2017.

[2] The application is opposed by the Respondents who have raised points of law in addition to resisting the application on the merits.

[3] The Applicant is an adult male of Manzini.

- [4] The 1st Respondent is Secretary of the Road Transportation Board cited herein in his official capacity responsible for issuance of Road Transportation Service Permit under the Ministry of Public Works and Transport.
- [5] The 2nd Respondent is the Attorney General who is the Principal Legal Advisor of the Swaziland Government and cited herein in his official capacity as such and whose offices are situated at the Ministry of Justice Building, 4th Floor, Usuthu Link Road, Mbabane in the Hhohho District.

The Applicant's Case

- [6] On or about May or June 2016 the Applicant applied to the Road Transportation Board (the RTB) for a road transportation service permit to operate a scheduled passenger motor vehicle between Manzini and Lesibovu via Mhlamanti, Thembeni, Sigege, Kamkhulu, Joy Mission. He was then invited to appear before the Board to motivate his application.
- [7] Thereafter he says that he received correspondence from the Road Transportation wherein the Board's decision was to the effect that he must submit a motor vehicle within 90 days. He says that the practice and in

essence once the Board directs that an Applicant to submit a motor vehicle within 90 days it means that the application has been successful. He referred this Court to Annexure “MSM 1” as proof of the RTB’s approval. It states:

**“ Your ref:
Our Ref: 6361**

01st June 2017

**Sibusiso Mandla Matsebula
P.O. box 6357
Manzini**

Dear Sir/Madam

RE: ROAD TRANSPORTATION BOARD DECISION

I am directed by the Road Transportation Board to inform you that your application for a Road Transportation Service Permit on its meeting held on the 01st June, 2017.

The Board decided the following:

- . Submit motor vehicle within 90 days.**

Yours faithfully,

**Lucky Dlamini
Secretary – Road Transportation Board**

[8] Upon being directed to submit a motor vehicle within 90 days he says that he approached his financier and solicited a loan to purchase the motor vehicle. He successfully got the loan and purchased the motor vehicle and duly submitted same to the RTB.

[9] He says that he submitted the motor vehicle to the Board within the 90 days stipulated and then waited for correspondence from the Board through the post but there was nothing forthcoming. After a few weeks he went to the Transportation Board offices to enquire about the progress of the matter. He met one of the Board members within the corridors who asked him what his business was on that day to the Board. He responded that he was making a follow up on his application. The Board member advised that he should check up with the clerks because as far as he knew the Board had granted him the Road Transportation service permit.

It is important to note that the Board members' name and details are not stated nor is there any supporting affidavit from this Board member.

[10] He then approached the Clerks who also were perplexed as to why was he was at the Board offices because he was granted a permit. He told them that he did not receive any correspondence from the Board. He was advised that correspondence dated 20th June 2017 was sent to him almost a week ago, however, a copy of the board's decision was retrieved from the computer and further shown the schedule of the granted permits. He referred this Court

to Annexure “MSM 2” from the RTB as proof of the permit having been granted to him. It reads as follows:

**“ Your ref:
Our Ref: 6361**

20th June 2017

**Sibusiso M. Matsebula
P.O. Box 6357
Manzini**

Dear Sir/Madam

RE: ROAD TRANSPORTATION BOARD DECISION

I am directed by the Road Transportation Board to inform you that your application for a Road Transportation Service Permit on its meeting held on the 20th June, 2017.

The Board decided the following:

- . Granted Scheduled Passenger Service Permit.**

Yours faithfully,

**Lucky Dlamini
Secretary – Road Transportation Board**

[11] He requested a meeting with the Secretary of the Board to ascertain as to what was holding him from issuing the permit. The Secretary told him that he was not going to issue the permit because the Applicant lied before the Board that the other permit was cancelled. The Applicant says that he was

perplexed as to the averments of the Secretary because he had made a new application before the Board which was eventually successful.

[12] The Applicant says that the motor vehicle is lying idle and he is unable to service the loan with his financier who purchased the motor vehicle on his behalf due to the fact that there is no income coming forth. Further, the community whom he is supposed to service is also suffering as there is no enough transport. To that end he has filed Annexure “MSM 3” which states:

**“Gundwini Royal Kraal (Umphakatsi)
P.O. Box 1399
Manzini
27/06/2016**

ROAD TRANSPORTATION BOARD

To whom it may concern

Dear Sir/Madam

On behalf of inner council of Gundwini umphakatsi under Prince Logcogco, under Manzini Region. We like to acknowledge that MANDLA SIBUSISO MATSEBULA ID. No. 6804196100290 of NYAKENI, who is operating under INTANDO YEMAKHOLO TRANSPORT. He has been asked by the community to help them with the transport from Lesibovu to Manzini via Joy Mission.

Therefore we request your office to help where possible.

Yours faithfully

**Jabulani Nhleko
Secretary**

**Jan Mngometulu
Indvuna**

The Respondent's case

- [13] In 2015 the Applicant leased permit No. 1295 from Mandla Yedwa Tours (Pty) Ltd t/a Mandla Yedwa Tours. The way the lease worked was that the Applicant was the owner of the vehicle and Mandla Yedwa (Pty) Ltd was the permit holder.
- [14] The permit issued to Mandla Yedwa (Pty) Ltd was a scheduled passenger service to operate from Lesibovu, Mhlamanti, Thembeni, Sigege, Kamkhulu, Joy Mission and Manzini Bus Rank.
- [15] It was a condition of the permit issued to Mandla Yedwa that permit holder and the vehicle owner must be the same. The Road Transportation Act 5/2005 empowers the Road Transportation Board to cancel a permit where a material condition imposed in granting of such permit is not complied with by the holder. Evidence of this non-compliance is found in Annexure A which states:

**“Your Ref:
Our Ref: 1295**

**Mandla Yedwa Tours (Pty) Ltd
P.O. Box 3184
Manzini**

09 November 2015

Dear Sir/Madam

RE: MISUSE OF PERMIT NO. 1295

The Road Transportation Board has learnt of an alleged misuse of permit granted to you it is alleged that you have allowed your permit to be used by Mandla Sibusiso Matsebula.

Pursuant to this allegation, the Road Transportation Board invites you to appear before it on the 24th November 2015 at 0900 hours in the Board Room of the Ministry of Public Works and Transport (Ground Floor) to afford you a chance to clear yourself of these allegations.

By copy of this letter, Mandla Sibusiso Matsebula is also invited to substantiate his allegations of usage of permit.

You are advised to honour this invitation. Failure to heed to this call show be viewed as contempt of the Board.

Yours faithfully,

**P.M. NTSHALINTSHALI
SECRETARY – ROAD TRANSPORTATION BOARD**

**cc. Mandla Sibusiso Matsebula
P.O. Box 6357
Manzini”**

[16] The Applicant fell out with the permit holder of permit No. 1295, subsequently to the falling out, the Applicant reported to the Board that Mandla Yedwa (Pty) Ltd was leasing permit No. 1295. The Board considered the lease as breach of a material condition and cancelled the permit. The cancellation was confirmed by the Road Transportation Appeals Board.

[17] In August 2016. Mandla Yedwa (Pty) Ltd Instituted proceedings against the appeals Board decision before this Honourable Court under case No. 1390/2016. The present Applicant is the 2nd respondent in case No. 1390/2016.

[18] Mandla Yedwa (Pty) Ltd obtained a rule allowing it to use permit No. 1295 pending finalization of the proceedings against the Appeals Board. As often happens, as soon as Mandla Yedwa obtained the interim order, it lost enthusiasm of prosecuting its review application. The application is still pending. In effect there is a permit and a schedule for the route the Applicant wants to operate.

[19] The Board has not granted the Applicant a Road Transportation Permit. A decision by the Board that an Applicant for a permit should submit a motor vehicle within 90 days does not mean the permit has been granted. The reason for requiring an Applicant to submit a motor vehicle is to assist the Board to assess whether the Applicant is capable of carrying out the service applied.

[20] The Respondent's affidavit is deposed to by Lucky Dlamini, the Secretary to the RTB. In it he states that the letter dated 20 June 2017 addressed to the Applicant was not written by him because it is unsigned and does not bear the Board's date stamp. He does not know the source of the letter and it does not communicate the Board's decision. And that the Applicant's application is still pending before the Board.

[21] The Respondent further raised points of law, namely, that of non-joinder of Mandla Yedwa (Pty) Ltd t/a Mandla Yedwa Tours (Mandla Yedwa) and *lis pendes*.

Non-joinder

[22] The effect on not joining Mandla Yedwa is that:

- (a) **There is a permit for the Lesibovu to Manzini via Joy Mission Route.**
- (b) **The permit holder is Mandla Yedwa (Pty) Ltd t/a Mandla Yedwa Tours.**
- (c) **The Applicant wants a permit for the same route.**
- (d) **Mandla Yedwa (Pty) Ltd t/a Mandla Yedwa Tours has a direct substantial interest in the relief sought by the Applicant.**

- (e) **Mandla Yedwa (Pty) Ltd t/a Mandla Yedwa Tours ought to have been joined in this application.**
- (f) **The Applicant's failure to join Mandla Yedwa (Pty) Ltd t/a Mandla Yedwa Tours is fatal to this application.**

[23] It was argued for the 1st Respondent that the Applicant is well aware that the permit which he seeks is operated by Mandla Yedwa and he ought to have joined Mandla Yedwa because the latter has a direct and substantial interest in the matter.

[24] The 1st Respondent fortified his arguments by citing the following authorities:

- (a) **In *The Commissioner of Police v Maseko* Civil Appeal No. 3/11, the Supreme Court stated that;**

“... non-joinder is a matter that no court, even at the latest stage in the proceedings, can overlook, because the Court of Appeal cannot allow orders to stand against persons who may be interested, but who had no opportunity to state their case”.

- (b) **In the *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 659, the Court stated that;**

“if a party has a direct and substantial interest in an order the court might make in the proceeding, or if such order cannot be


sustained or carried into effect without prejudicing that party he is a necessary party and should be joined in the proceedings unless he has waived his right to be joined”.

Lis pendes

[25] The Applicant is aware of High Court case No. 1390/2016, which involves the same subject matter as this application which is permit No. 1295 where the Applicant is cited as the 2nd Respondent. In that case, there is a *rule nisi* that permit No. 1295 be allowed to operate pending finalization of case 1390/2016, and that case is still pending before this Honourable Court.

Conclusion

[26] I agree with the submissions made by Mr. Mkhonza for the Respondents. The points of law are upheld and the application is dismissed with costs.



BANE
Crim. C

**Q. M. MABUZA
PRINCIPAL JUDGE**

For the Applicant : Mr. M. Dlamini

For the Respondents : Mr. M.J. Mkhonza