

# IN THE HIGH COURT OF ESWATINI

**HELD AT MBABANE**

**CASE NO. 546/2020**

In the matter between:

**SIMISO SIMELANE**

Applicant

And

**THANDABANTU PETER NSIBANDE**

First Respondent

**MUSA SIMELANE**

Second Respondent

**MANZINI BUS OWNERS ASSOCIATION**

Third Respondent

**ROAD TRANSPORTATION BOARD**

Fourth Respondent

**MANDLAYEDVWA TOURS (PTY) LTD**

Fifth Respondent

**Neutral Citation:** *Simiso Simelane v Thandabantu Peter Nsibande & 4 Others (546/2020) [2023] SZHC 364 (12 December 2023)*

**CORAM:**

**N.M. MASEKO J**

**FOR APPLICANT:**

**MR. SANELE MABILA**

**FOR 1<sup>ST</sup>, 2<sup>ND</sup> AND 5<sup>TH</sup> RESPONDENTS:** **MR. O. NZIMA**

**HEARD: 14/08/2020**

**DELIVERED: 12/12/2023**

**Preamble:** Civil Law – Interdict – Basic requirements to be proved by an applicant seeking interdictory relief, and where such

requirements have not been proved, the application stands to be dismissed.

**Held:** The point *in limine* on the failure of applicant to prove basic requirements for the grant of the interdict is hereby upheld, and consequently the application is dismissed.

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### JUDGMENT

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#### **MASEKO J**

- [1] The Applicant launched these proceedings for an interdictory relief to compel the 3<sup>rd</sup> Respondent to forthwith stamp Fresh Application Forms for the grant or takeover of a road transportation service permit being Permit No. 1295, to be submitted to the 4<sup>th</sup> Respondent.
- [2] Further the Applicant is seeking an interdict against the 3<sup>rd</sup> Respondent from stamping and/or authorising fresh applications for taking over Permit No. 1295 by any other person other than the Applicant. Further the Applicant seeks another order for directing the 4<sup>th</sup> Respondent to issue him with a temporary permit to operate Permit No. 1295 pending finalisation of this matter and lastly Applicant seeks an order interdicting the 4<sup>th</sup> Respondent from granting a permit to anyone which seeks to take over the route of Permit No. 1295 Mandlayedvwa Tours pending determination of the issue between 1<sup>st</sup> Respondent and Applicant.

#### **APPLICANT'S CASE**

- [3] The Applicant's case is predicated on an affidavit deposed to by the 1<sup>st</sup> Respondent at Manzini Police Station found at page 20 of the Book of Pleadings (Book) which allegedly grants him the authority to take over the

Road Transportation Service Permit No. 1295 with business style Mandlayedvwa Tours.

- [4] The Applicant claims that despite the fact that the 1<sup>st</sup> Respondent deposed to this affidavit but he (1<sup>st</sup> Respondent) refuses to hand over same to the 4<sup>th</sup> Respondent so that his application can be processed. Applicant alleges further that the 1<sup>st</sup> Respondent has also refused to cooperate with the 3<sup>rd</sup> Respondent in this matter.
- [5] The Applicant further alleges that he paid E70 000-00 (Emalangeni Seventy Thousand) legal fees to a certain firm of attorneys on behalf of the 1<sup>st</sup> Respondent on the understanding or agreement that Applicant will take over the aforesaid permit. The aforesaid agreement between the parties was oral. Applicant states that the delay by the 1<sup>st</sup> Respondent to honour their oral agreement is causing delay as the permit has expired and further he has seen that the 2<sup>nd</sup> Respondent has painted his bus and branded it Mandlayedvwa Tours as opposed to his trade name Sukuma Ndoda Transport. This means that the permit will now be utilised by the 2<sup>nd</sup> Respondent.
- [6] Applicant states that an effort to renew the permit (1295) at the 4<sup>th</sup> Respondent's offices was made and he was advised that his name has been substituted with that of the 2<sup>nd</sup> Respondent to be the person authorised to renew permits for the 5<sup>th</sup> Respondent, and therefore this resulted to his bus being left with no permit.

**THE 1<sup>ST</sup>, 2<sup>ND</sup> AND 5<sup>TH</sup> RESPONDENTS' CASE**

- [7] The 1<sup>st</sup> Respondent filed an Answering Affidavit and the 2<sup>nd</sup> Respondent filed a Confirmatory Affidavit thereto.
- [8] The 1<sup>st</sup> Respondent has raised the following point *in limine*, namely:-
- (i) that the Applicant has failed to satisfy the requirements for the grant of an interdict, and has also failed to adequately allege them ex facie his Founding Affidavit.
- [9] In his Founding Affidavit the Applicant has scantily mentioned irreparable harm and absence of alternative relief or remedy to afford him substantial redress in due course.
- [10] The 1<sup>st</sup> Respondent argues that the Applicant has not established a clear right, and has not established that an injury has already been committed and/or reasonably apprehended, and that he has no other remedy or protection, and also that the balance of convenience favours the grant of the relief sought. 1<sup>st</sup> Respondent submit that the failure to establish these requirements for the grant of the interdict renders these proceedings to be dismissed with costs.
- [11] The 1<sup>st</sup> Respondent further alleges that a road transportation permit is not subject to any sale agreement because it is owned by the 4<sup>th</sup> Respondent, and that Permit No. 1295 is held by the 5<sup>th</sup> Respondent and not himself.

## **ANALYSIS OF THE CASE AND THE LAW APPLICABLE**

[12] It is common cause and authority is legend that any interdictory relief can only be granted if the essential and basic requirements for that interdict are established by an Applicant in any application for an interdict. The basic requirement that supercede all the other requirements is that the Applicant must establish a clear right for final interdict and prima facie right for an interim interdict.

[13] At pages 1454-1457 **Herbstein and Van Winsen** in their book titled *THE CIVIL PRACTICE OF THE HIGH COURTS OF SOUTH AFRICA 5 ed Vol 2, 2012 Juta* states as follows:-

*“Interdicts are orders of Court which normally prohibit (prohibitory interdicts) or compel (mandatory interdicts) the doing of a particular act to avoid injustice and hardship. Another purpose of a mandatory interdict is to remedy the effects of unlawful action already taken. The procedure is usually resorted to when other remedies are not available or when the delays associated with the use of other remedies could cause irreparable harm.*

*---An interdict can either be final if the order is based on a final determination of the rights of the parties to the litigation or interim, pending the outcome of proceedings between them.*

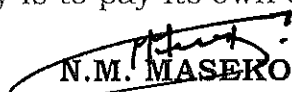
*In order to succeed in obtaining a final interdict, whether it be prohibitory or mandatory, an Applicant must establish:-*

- (a) a clear right*
- (b) an injury actually committed or reasonably apprehended; and*
- (c) the absence of similar or adequate protection by any other ordinary remedy.”*

[14] The position of the law of interdicts is clear that where the applicant has failed to prove these basic requirements for the grant of the interdict the Court will dismiss the application, and that is the position *in casu*. Even though the Applicant has cited the 5<sup>th</sup> Respondent, it appears that the crucial relief is being sought against the 1<sup>st</sup> Respondent yet the permit holder is the 5<sup>th</sup> Respondent who is a juristic person.

[15] In the premises –

1. The point *in limine* is upheld.
2. The application is dismissed.
3. Each party is to pay its own costs.

  
N.M. MASEKO  
JUDGE