

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED. NO

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**SIGNATURE**

20 May 2022  
**DATE:**

**CASE NO: 21/51435**

In the matter between:

**MEC FOR ROADS AND TRANSPORT**

Applicant

**GAUTENG PROVINCE**

And

**WITWATERSRAND AFRICAN TAXI OWNERS ASSOCIATION**

First Respondent

**NANCEFIELD DUBE WEST TAXI OWNERS ASSOCIATION**

Second Respondent

**GAUTENG NATIONAL TAXI ALLIANCE**

Third Respondent

**GAUTENG PROVINCIAL REGULATORY ENTITY**

Fourth Respondent

**MINISTER OF POLICE**

Fifth Respondent

**CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**

Sixth Respondent

**MEC FOR COMMUNITY SAFETY, GAUTENG PROVINCE**

Seventh Respondent

**SOUTH AFRICAN NATIONAL TAXI COUNCIL**

Eighth Respondent

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## JUDGMENT

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DOSIO J:

### INTRODUCTION

[1] This is an urgent application in terms of the provisions of Uniform Rule 6(12) (c) whereby the MEC for Road and Transport, Gauteng Province ('the MEC') seeks an order interdicting the first respondent ('WATA') from utilising an informal taxi rank situated at the corner of Commissioner and Sauer Street Johannesburg. The MEC also seeks an order interdicting the second respondent ('NANDUWE') and its members from picking up (touting) commuters along Commissioner Street, Johannesburg. Having decided it is urgent, I proceeded to consider the matter.

[2] WATA opposes the relief sought on the following grounds:

2.1 That the rank has been in existence for more than 40 years and the MEC's concerns that the rank is a breeding ground for violence are unfounded in that the MEC is in possession of a consent order dated 16 October 2021 interdicting such conduct.

2.2 That the MEC lacks *locus standi* to seek interdictory relief against it, in that issues of where ranking facilities are to be positioned and the authority regarding ranking facilities falls squarely within the powers of the sixth respondent ('the Johannesburg Municipality');

2.3 That the MEC's failure to comply with ss91(3) and 91(4) of the National Land Traffic Act 5 of 2009 ('the NLTA'), makes the application fatally defective;

2.4 That at the meeting held between the MEC, WATA and NANDUWE on 20 October 2021, the MEC held no *bona fide* fear of any reasonable apprehension of harm or prejudice and in fact stated that the ranking facilities could be shared between WATA and NANDUWE.

[3] NANDUWE opposes the relief sought on the following grounds:

3.1 That the application is an abuse of the Court process because the MEC is asking the Court to decide the legality or illegality of the operations by the members of NANDUWE requiring the Court to do an examination of the authority contained in its operating licences and to determine whether they are operating in compliance with that authority.

3.2 That the NLTA provides for:

3.2.1 law enforcement officers (authorised officers) who are specialists with powers, to perform compliance and enforcement duties;

3.2.2 the fourth respondent, the Gauteng Provincial Regulatory Entity ('the GPRE'), to withdraw, suspend, or amend operating licences of operators in the event that they are operating illegally and not in compliance with the conditions of their operating licences; and

3.2.3 emergency powers granted to the MEC where there is violence, unrest or instability, or risk of danger to the safety of passengers and other persons. These powers include the right to suspend operating licences, close routes and ranks in such areas;

3.2.4 the observance of rules of natural justice, to ensure that the rights of individuals are not violated, by prescribing steps to be followed and jurisdictional facts that must pre-exist.

[4] NANDUWE contends that for the Court to exercise executive powers by deciding on the legality and imposing a sanction may result in a real and serious risk of the Court granting orders which are *brutum fulmen*. This is because the persons and institutions established by the NLTA, upon exercising the powers, would differ with the conclusions of the Court.

## **BACKGROUND**

[5] In the early morning of 16 October 2021, violence erupted in the Johannesburg CBD between WATA and NANDUWE who are both taxi associations operating between Soweto and Johannesburg. The violence led to the burning of

several minibus taxis belonging to WATA and NANDUWE. The MEC approached this Court on an extreme urgent basis seeking a rule nisi against WATA and NANDUWE calling upon the respondents to show cause, if any, why the following orders should not be made final, namely:

(a) The first to Third Respondents, the Chairpersons of the First and Third Respondents and or their members are interdicted from preventing, obstructing, or otherwise interfering with the rights of taxi operators and or any public transport operators to operate their transport business between Soweto and Johannesburg CBD.

(b) The First to the Third Respondents, the Chairpersons of the First and Third Respondents and or their members are interdicted from intimidating, committing, or threatening to commit acts of violence against any public transport operator or their agents or employees and members of the public who make use and who wish to make use of the bus service between Soweto and Johannesburg CBD, and

(c) Should the First to Third Respondents fail or refuse to comply with this court order, members of the South African Police Service or Community Safety Department, Gauteng Province are hereby authorized to take necessary steps to ensure that the First to Third Respondent comply with this court order.

(d) The First to third respondents, jointly and severally one paying the other to be absolved are directed to pay the costs of the application.

3. Paragraphs 1(a) to 1(c) above shall operate with interim effect.

4. The Rule Nisi is extended until confirmed or discharged.

5. It is recorded that this order is granted by consent between the Applicant and the First and Second Respondents.'

[6] WATA and NANDUWE were the first and second respondents respectively in the rule nisi granted on 16 October 2021. The application was brought by the MEC pending the finalisation of the verification of taxi route allocations to WATA and NANDUWE

[7] The above prayers have since been operating on an interim basis.

[8] It appears that the dispute between the MEC, WATA and NANDUWE started in late 2015. NANDUWE followed the NLTA and lodged a complaint to the GPRE, whereupon the GPRE on 16 February 2016 wrote a letter, undertaking to convene an inquiry in terms of s79(2) of the NLTA and finalise the dispute in six (6) weeks. The GPRE failed to convene a s79(2) inquiry and NANDUWE had to approach the High Court for urgent relief because of the failure of the GPRE. On 8 June 2021, the High Court granted an order directing the GPRE to convene a ss25 and 79 Inquiry within six (6) weeks to define and describe the routes. The GPRE once again disregarded the court order. The GPRE only convened the s79(2) inquiry in February 2017 and issued a ruling on 29 May 2017, of which ruling WATA took on appeal to the Transport Appeal Tribunal ('the TAT').

[9] On 27 November 2017, the TAT directed the GPRE to conduct a s79(2) inquiry again from scratch, giving proper notice to the operators involved. The TAT also directed the GPRE to finalise the s79(2) inquiry by 29 March 2019, (in 4 months) which to date has still not been done.

## **LOCUS STANDI OF THE MEC**

### The MEC's submissions on *locus standi*

[10] The MEC's counsel argued that the issue pertaining to the *locus standi* of the MEC has no merit and must be dismissed. Counsel argued that as the administrator and regulator of public transport in the province, the MEC has the necessary *locus standi* to interdict the use of an illegal taxi rank and or touting, in that the MEC has the prescribed power to close routes and taxi ranks temporarily in terms of s91 of the NLTA.

[11] Counsel argued that on a proper construction of the legislation under consideration, it could not have been the intention of the legislature to give the MEC powers to close ranks temporarily but deny the MEC any powers to administer and regulate illegal taxi ranks. Such interpretation violates basic interpretation of statute principles.

WATA'S submissions in respect to the lack of *locus standi* of the MEC

[12] WATA's counsel argued that the MEC does not have the *locus standi* to shut down the informal rank if the sole reason for doing so is that it is an informal rank. It was contended that the MEC's responsibilities are identified in s11(1)(b) of the NLTA and that the regularisation of 'informal' taxi ranks does not fall within the powers given to the MEC in terms of this section.

[13] Counsel stated that taxi ranks are expressly dealt with by ss3(1), 3(4) and 11 of the Johannesburg Municipality's Public Transport By-Law ('Johannesburg Transport By-Law') and that it is the Johannesburg Municipality who is expressly empowered to prohibit certain transgressions and to demand that such conduct cease.

Conclusion on the *locus standi* of the MEC

[14] It is important to consider carefully sections 1; 5(6); 8; 9(2); 10 and 11(1)(b) of the NLTA to confirm whether the MEC has *locus standi* to initiate this application.

[15] Section 5(6) of the NLTA states that:

'(6) When a province or municipality cannot or does not fulfil an executive obligation in terms of matters relating to public transport, the Minister may intervene by taking the appropriate steps to ensure the fulfilment of that obligation, including issuing a directive to the provincial executive or municipal council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations and the provincial executive or municipality must comply with such directive.'

[16] Section 8 of the NLTA states that:

'8. (1) The Minister may, after consultation with the MECs, make regulations relating to

(a) any matter which may or must be prescribed by way of a regulation under this Act;

(b) requirements for integrated fare systems, comprising fare structures, levels and technology, to ensure compatibility between such systems;

(c) national norms and standards relating to the qualifications and conduct of inspectors;

(d) a process to be followed for offering alternative services in the place of existing services to holders of operating licences or permits under section 39;

- (e) the types of vehicles that may or may not be used for public transport services and standards or specifications for vehicles, subject to the National Road Traffic Act;
- (f) procedures for the regulation of interprovincial transport;
- (g) standard forms for responses of planning authorities under section 55;
- (h) colour coding and branding of vehicles used for public transport;
- (i) special requirements for drivers of vehicles used for public transport including, but not limited to, testing for knowledge of the area in question;
- (j) policy and principles to be applied in paying subsidies;
- (k) electronic fare collection and ticketing systems and the control of such systems by the provinces or municipalities either alone or in partnership with operators;
- (l) information systems to be kept by the National Public Transport Regulator, each Provincial Regulatory Entity and planning authorities relating to this Act and information to be supplied to the national information system contemplated in section 6 from these systems, including the time within which it must be submitted;
- (m) information to be kept by operators and supplied to authorities contemplated in this Act, including the time within which it must be submitted;
- (n) meetings of the National Provincial Transport Regulator, Public Regulatory Entities and municipalities to which the operating licensing function contemplated in section 1 l(l)(a)(viii) has been assigned;
- (o) procedures at those meetings, quorums and the keeping of records;
- (p) functions and duties of the National Public Transport Regulator and municipalities in addition to those specified in this Act;
- (q) principles for transport planning;
- (r) the content of transport plans;
- (s) procedures for the preparation, updating and approval of transport plans;
- (t) procedures to be followed in promoting public participation in the transport planning process;
- (u) requirements and procedures for negotiated contracts and their conversion to tendered contracts;
- (v) amounts to be paid as a deposit to the Department or other entity to cover possible fines or penalties should the operator fail to comply with this Act or other prescribed requirements;
- (w) information that must be supplied to the National Public Transport Regulator by tourist transport operators applying for accreditation under section 82;

(x) required signage, vehicle identification or livery for vehicles used for tourist transport services;

(y) requirements and time-frames for vehicles and facilities to be made accessible to persons with disabilities, including principles for accommodating such persons in the public transport system;<sup>5</sup>

(z) the time within which an offer made under section 46 must be made or accepted, and the manner in which the procedures and negotiations contemplated in that section must be conducted;

(aa) the period within which application for renewal of existing operating licences must be submitted, and such regulations may provide that such operating licences will remain valid when the application for renewal is being processed;

(bb) requirements regarding liability insurance cover to be taken out by operators to supplement the cover provided in terms of the Road Accident Fund Act,

(cc) generally any other ancillary or incidental administrative or procedural matters that are necessary to prescribe for the proper implementation or administration of this Act.

(2) Before making any regulations contemplated in subsection (1), the Minister must publish a draft of such regulations for public comment in the Gazette, and must consider any comments received in response to such publication.

(3) The regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence, and liable on conviction to a fine or to imprisonment not exceeding three months.

(4) A regulation made in terms of the Transition Act and in force immediately before the commencement of this Act with regard to matters in relation to which the Minister, in terms of subsection (1), is competent to make regulations, is regarded for the purposes of this Act as a regulation made under that subsection until superseded by a new regulation under this section.' [my emphasis]

[17] Section 9(2) of the NLTA sets out the functions of an MEC. It states:

'Functions of MEC's

9 (2) An MEC must –

(a) monitor the implementation of provincial land transport policy and any investigations conducted into matters arising from the implementation, and cause the necessary adjustments, if any, to be made to that policy;

(b) ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;

(c) assist municipalities that lack the necessary staff or resources in meeting their responsibilities and performing their functions and duties with regard to land transport;



(d) produce an annual report on the state of transport affairs in the province in the prescribed manner and submit it to the Minister in the prescribed time;

(e) improve the planning, co-ordination and facilitation of the land transport functions of the province;

(f) promote intergovernmental relations within the land transport environment;

(g) ensure that there is a link with matters having an impact on transport in the province, including land use management, environmental issues, population growth, economic development and investment in infrastructure, to facilitate integration and efficient transport;

(h) set standards, performance criteria and related indicators to ensure intermodal and intramodal co-ordination and efficient management of investment in transport and of transport infrastructure and systems;

(i) take an active role in sourcing international, national, local, private and public funding to promote the objects of this Act in the province; and

(j) co-ordinate transport initiatives with municipalities, and other stakeholders in the transport field by establishing co-ordinating structures or by other methods.' [my emphasis]

[18] Section 10 of the NLTA states:

'10. (1) An MEC may make regulations with regard to—

(a) any matter which, in terms of this Act, may or must be prescribed by an MEC;

(b) a code of conduct for operators or drivers of public transport vehicles, which may differ according to the mode of transport concerned;

(c) the establishment, membership and procedures of co-ordinating structures for transport planning in the province;

(d) frequency of meetings of Provincial Regulatory Entities;

(e) procedures at meetings of Provincial Regulatory Entities, quorums and the keeping of records;

(f) the powers and duties of Provincial Regulatory Entities; and

(g) procedures to be followed in promoting public participation in the transport planning process.

(2) The regulations may provide that any person who contravenes a provision thereof or fails to comply therewith, is guilty of an offence and on conviction liable to imprisonment not exceeding three months or to a fine.

(3) Regulations made in terms of the Transition Act or preceding legislation and in force immediately before the commencement of this Act with regard to matters in relation to which the MEC, in terms of subsection (1), is competent to make regulations, are regarded for the

purposes of this Act as regulations made in terms of this subsection 25 until such time as the MEC makes new regulations under this section.

(4) Where an MEC has failed to make regulations on any matter on which provincial regulations are required under this Act, the Minister may within a reasonable time make such regulations after consultation with that MEC.’ [my emphasis]

[19] Section 11(1)(b) of the NLTA states:

‘11. (1) (b) The provincial sphere of government is responsible for—

(i) the formulation of provincial transport policy and strategy, within the framework of national policy and strategy;

(ii) planning, co-ordination and facilitation of land transport functions in the province, and preparing the Provincial Land Transport Framework in terms of section 35;

(iii) co-ordination between municipalities with a view to ensuring the effective and efficient execution of land transport in the province and promoting provincial legislation with a view to promoting the objects of this Act;

(iv) liaising with other government departments in the national and provincial spheres with responsibilities that impact on transport and land use planning issues, and bringing together key players;

(v) ensuring that municipalities that lack capacity and resources are capacitated to perform their land transport functions;

(vi) building capacity in municipalities to monitor the implementation of this Act;

(vii) ensuring implementation of the provincial integrated development strategy and public transport strategy, with due attention to rural areas, with the focus on less capacitated municipalities or those that do not fulfil their responsibilities in respect of transport service delivery, either by direct implementation or assistance under paragraph (v); and

(viii) performing the other provincial functions assigned to the MEC in terms of this Act.’ [my emphasis]

[20] On a proper interpretation of the above mentioned extracts from the NLTA, I am convinced that the MEC has *locus standi* to initiate these proceedings. Section 8 clearly delineates the roll of the MEC, specifically in relation to operators. Section 11(1)(b) of the NLTA might not fully define the powers of the MEC, however s9(2) of the NTLA does.

[21] WATA’s counsel contends that s11(1)(c) of the NLTA empowers the municipality to deal with ‘informal’ taxi ranks. The word ‘informal’ taxi ranks does not appear in s11(1)(c) of the NLTA.

[22] It is true that s11(1)(c)(xviii) empowers the municipality to manage 'the planning, implementation and management of modally integrated public transport networks and travel corridors for transport within the municipal area...', however, s9(2)(e) of the NLTA also empowers the MEC to 'improve the planning, co-ordination and facilitation of the land transport functions of the province'. In addition, s9(2)(j) of the NLTA empowers the MEC to 'co-ordinate transport initiatives with municipalities, and other stakeholders in the transport field by establishing co-ordinating structures or by other methods'.

[23] It is clear from the definition of 'MEC' in the NLTA that the MEC 'is responsible for public transport in that province'. If in terms of s11(3) of the NLTA the MEC has not assigned any function contemplated in subsection 11(1)(b) to a municipality, then it retains the power to proceed as contemplated in s11(1)(b) and 9 of the NLTA. There is no mention in either the founding affidavit of the MEC or the answering affidavits of WATA or NANDUWE that the MEC assigned any of its functions to the Johannesburg Municipality.

[24] As a result, the argument proffered by WATA's counsel that ss3(1),3(4) and 11 of the Transport By-laws empowers a municipality to prohibit and demand conduct that is in violation of any provision of the Transport By-Law cannot be applicable, especially since such function was not assigned to the Johannesburg Municipality and further because in the definitions of the Transport By-laws, an 'informal taxi' rank is not mentioned. The definition of a 'rank' in the Transport By-Laws 'means a facility inside or outside the road serve demarcated by the Council for use by public passenger road transport for loading and off-loading passengers.' Such definition of 'rank' in the Transport By-Laws cannot apply to informal taxi ranks.

[25] In considering WATA's and NANDUWE's argument that the MEC does not have *locus standi* to bring this application, it is clear that there is a contradiction in the argument of both WATA and NANDUWE, in that on the one hand they argue that the MEC is not empowered to deal with [illegal] taxi ranks and that it does not have the *locus standi* to institute the proceedings, as such powers vest with the Johannesburg Municipality. Yet, surprisingly, they both argue that the MEC is empowered to close an informal rank in terms of s91(1) of the NLTA. This contradiction does not support the argument of either WATA or NANDUWE that the MEC does not have *locus standi*.

[26] In light of the sections of the NLTA referred to above, the point raised by WATA and NANDUWE that the MEC lacks *locus standi* is dismissed.

## **REQUIREMENTS FOR A FINAL INTERDICT**

### **1. Clear right**

#### The MEC's submissions in respect of a clear right

[27] Counsel for the MEC argued that as the administrator and regulator of public transport in the province, the MEC has a clear interest in the matter of an illegal taxi rank and or touting.

[28] Counsel argued that the illegal taxi rank operated by WATA at the corner of Commissioner street and Sauer street (Pixley Seme) has not been authorized and is a source of the violence that led to the burning of taxis on 16 October 2021. Counsel argued that the touting by NANDUWE along Commissioner Street is also illegal.

[29] Counsel contended that the unlawful conduct by WATA and NANDUWE came to the MEC's attention at the meeting that he had with the two respondents and other stakeholders in the taxi industry on 20 October 2021. The purpose of the meeting was to discuss the operational disputes between WATA and NANDUWE.

[30] Counsel submitted that the operating licenses of the members of WATA do not list the 'informal' taxi rank as one of their lawfully allocated taxi ranks. Nor do the operating licenses allocated to members of NANDUWE state that its members are entitled to stop and pick up passengers ("tout") along Commissioner Street.

[31] Counsel contended that in terms of s90 of the NLTA, by operating such illegal taxi rank in violation of their operating licenses, the members of WATA are committing a punishable statutory offence. The same applies to members of NANDUWE who by touting in violation of their operating licenses are committing a punishable statutory offence.

[32] Counsel argued that NANDUWE does not dispute that its members are touting. However, it contends that the touting is lawful. Although the MEC challenged NANDUWE to produce a touting licence, nothing was produced. It was

submitted that the court can safely conclude that the touting is in violation of NANDUWE's operating licenses and accordingly is illegal. Accordingly, it was argued that NANDUWE are committing a punishable statutory offence.

[33] Counsel argued that WATA's illegal taxi rank and NANDUWE's illegal touting is counter-productive to public transport planning which is the root cause of the violence that erupted on 16 October 2021. Hence, it was argued that the MEC has a clear right to stop these illegal activities.

#### WATA's submissions in respect to the MEC's clear right

[34] WATA argued that the MEC has no clear right to the relief which is sought. This is because s11 of the NLTA identifies the responsibilities and the powers of the three spheres of government and the MEC is not empowered to act outside what is contained in s11(1), read with s11(2)) of the NLTA.

[35] WATA's counsel contended that the responsibilities of the MEC are foreshadowed in ss11(1)(b)(i) to (viii) and that the NLTA provides for taxi ranks to fall within the responsibility of the municipal sphere of government, if regard is had to ss11(1)(c)(ii), (iii), (iv), (vi) and (xv).

[36] Counsel contended that the Transport By-Law deals with the operation of taxi ranks within its municipal jurisdiction and that the definition of 'Public Transport Facility' which the By-Law regulates, includes a minibus taxi rank. Furthermore, the Transport By-Law equally created an offence to operate outside of the provisions of the Transport By-Law which offence is enforceable by the Johannesburg Municipality.

[37] Counsel contended that absent a reliance by the MEC on s91 of the NLTA the applicant has no clear right to seek the interdictory relief against WATA.

#### NANDUWE's submissions in respect to the MEC's clear right

[38] NANDUWE's counsel argued that the MEC does not have a clear right, in that the MEC cannot ask the Court to decide the legality or illegality of the operations by the members of NANDUWE as this will require the Court to do an examination of the authority contained in their operating licences and a determination of whether they

are operating in compliance with that authority. Counsel argued that ss87 to 90 of the NLTA provides for law enforcement officers (authorised officers) who are specialists with powers, to perform compliance and enforcement duties. Furthermore, s79(2) of the NLTA provides for the GPRE to withdraw, suspend, or amend operating licences of operators in the event that they operate illegally and not in compliance with the conditions of their operating licences.

## 2. Injury actually committed or reasonably apprehended

### The MEC's submissions in respect to an injury actually committed or reasonably apprehended

[39] Counsel for the MEC argued that the continued conduct of WATA and NANDUWE will cause harm in two ways:

(a) Firstly, violence began on 16 October 2021, resulting in the granting of the interdict on 16 October 2021. The MEC reasonably believes this violence will continue, turning the province into a war zone and affecting innocent public road users, unless WATA and NANDUWE are interdicted.

(b) Secondly, the illegal acts in question hampers the MEC's right to administer and regulate the public transport industry.

### WATA's submissions in respect to an injury actually committed or reasonably apprehended

[40] Counsel argued that at a meeting held on 20 October 2020, the MEC requested that the rank in question jointly be used by both WATA and NANDUWE. Counsel argued the MEC's request of joint usage by both WATA and NANDUWE contradicts the allegation in the founding affidavit that such rank is a 'breeding ground and source of violence'. It was argued that if the rank was truly a source of violence, then the MEC would not have suggested joint use.

[41] Counsel contended that the MEC's letter of 26 October 2021 demonstrates that the MEC did not entertain any reasonable apprehension of harm as the letter merely stated that the MEC 'reserved' his right to close the rank, which implies that the MEC did not intend to act immediately and was agreeable to allowing the illegal

rank to continue pending the outcome of a further event. By reserving his rights, counsel argued there was no change in circumstances between the date on which the letter was penned on 26 October 2021 and the date on which the application was launched. Counsel argued further that there is no reasonable apprehension of harm in light of the interdictory relief which the MEC was granted on 16 October 2021.

NANDUWE'S submissions in respect to an injury actually committed or reasonably apprehended

[42] NANDUWE's counsel submitted that the MEC has not placed a shred of evidence to support his contention of illegality before the Court and should have at least filed a supporting affidavit by the GPRE or an authorised officer. Counsel contended that the supporting affidavit would also not suffice because the GPRE has to conduct a rigorous s79(2) inquiry and hear and consider evidence, before it can come to a conclusion that an operator is operating illegally.

[43] NANDUWE's counsel contended that is improbable that the MEC only knew on 20 October 2021 of the link between the alleged illegality and the cause of the violence that took place on 16 October 2021, because the first thing the MEC would have done when the violence erupted would be to establish the cause. Counsel accordingly argued there is no injury committed or reasonably apprehended.

3. Absence of any other satisfactory remedy available to the MEC

THE MEC'S submissions in respect to the absence of any other satisfactory remedy available to the MEC

[44] The MEC's counsel argued that in light of the existence of two interim orders and one final order against WATA and NANDUWE there is no alternative remedy, except for the granting of a final interdict.

[45] Counsel argued that s91(3) of the NLTA is not applicable to illegal taxi ranks as the section provides for temporary closure of ranks and roads marred with violence. As a result, the MEC is not basing the application *in casu* in terms of s91(3) of the NLTA as the taxi rank at the corner of Commissioner and Pixley Seme street is an illegal taxi rank.

[46] The MEC contends that the illegal taxi rank was merely allowed to be utilized by WATA as part of the peace accord whilst pursuing the arbitration and that the illegal taxi rank would be closed after the completion of the arbitration. Counsel argued that WATA is committing an offence by operating an illegal taxi rank which is inconsistent with its operating licence.

WATA's submissions in respect to the absence of any other satisfactory remedy to the MEC

[47] Counsel argued that there is another remedy available to the MEC, namely, s91 (2) of the NLTA, which provides that if a taxi rank is a danger, then provided the necessary notification is given in terms of s91(3) of the NLTA, the taxi rank may be closed by the MEC. However, counsel argued that the MEC has failed to demonstrate that the informal rank is such an area in respect of which the prescribed extraordinary measures applies and in addition, the MEC has failed to consult with the relevant authorities in terms of s91(1) and failed to publish a notice in terms of s91(3).

[48] Counsel argued that in circumstances where an interdict is sought as a mechanism for the enforcement of the s91 powers of the NLTA, the MEC must first observe the notice and consultation provisions under ss91(3) and 91(4) of the NLTA. Counsel argued further that where the MEC has failed to do so, the MEC cannot demonstrate a clear right for the final interdict sought.

[49] Counsel contended that the MEC invited the Court to read the word 'ranks' as used in s91 to be limited to only lawful ranks. Counsel argued there is no such narrow definition in the NLTA. Counsel argued that the only purpose which will be served by giving the word 'rank' such a narrow limitation, which would be to deliberately exclude an alternative satisfactory remedy to the MEC. Counsel argued the invitation as proffered by the MEC to limit 'rank' to mean lawful ranks does



violence to the wording of s91 and deprives WATA of its rights to a fair procedure under s91 of the NLTA. Counsel argued the MEC cannot invite this Court to act unconstitutionally so that the MEC can avoid his obligations to call for and consider submissions under s91 of the NLTA. Counsel referred the Court to the case of *Cool Ideas 1186 CC v Hubbard and Another*<sup>1</sup> where the Constitutional Court set out the principles a Court must consider when interpreting statutes.

NANDUWE's submissions in respect to the absence of any other satisfactory remedy to the MEC

[50] NANDUWE's counsel supported WATA's counsel that s91 of the NLTA is an adequate alternative remedy giving reasonable protection to the MEC. Counsel argued that the MEC's contention that s91 does not apply to illegal operations is unfounded and that his interdict must fail. It was further argued that the NLTA provides for the GPRE and authorised officers to withdraw, suspend, or amend operating licences of operators in the event that they operate illegally and not in compliance with their operating licences. It was argued such competence does not vest with the MEC, and neither should the MEC delegate such enquiry to the Court.

### **LEGAL PRINCIPLES AND EVALUATION**

[51] The requirements for a final interdict were reaffirmed by the Constitutional Court in the case of *Masstores (Pty) Limited v Pick n Pay Retailers (Pty) Limited*<sup>2</sup> as being:

- (a) the demonstration of a clear right;
- (b) an injury actually committed or reasonably apprehended; and
- (c) the lack of an adequate alternative remedy.

[52] In the case of *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*<sup>3</sup> ("OUTA"), the Constitutional Court held that:

<sup>1</sup> *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC) para 28

<sup>2</sup> *Masstores (Pty) Limited v Pick n Pay Retailers (Pty) Limited* 2017 (1) SA 613 (CC) para 8

<sup>3</sup> *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC)

'1 A court in approaching interdictory proceedings must remain cognisant that the Constitution requires the court to ensure that all branches of government act within the law; [paragraph 44]

2 The test for interdictory relief must be applied cognitive of the normative scheme and democratic principles that underpin the Constitution. This means that the court which considers to grant the interdict must do so in a way that promotes the object, spirit and purport of the Constitution'.<sup>4</sup>

[53] In *Hotz and Others v University of Cape Town*<sup>5</sup> the Supreme Court of Appeal stated that:

'...Once the applicant has established the three requisite elements for the grant of an interdict the scope, if any, for refusing relief is limited. There is no general discretion to refuse relief.'<sup>6</sup>

#### Whether the NLTA applies

[54] The fact that on 26 October 2021, the MEC advised that 'Our client reserves his right to close said illegal taxi rank in terms of section 91 of the NLTA' means exactly what it says. This right is reserved, allowing the MEC to decide whether it could and wanted to proceed in terms of s91 of the NTLA or not.

[55] The matter *in casu* concerns the interpretation of the NLTA with specific reference to s91. If this Court were to accept WATA's and NADUWE's argument that the MEC should have proceeded in terms of s91 of the NLTA and not by way of urgent interdictory relief, then it would mean that this Court would not read down the word 'rank' in s91 to only refer to lawful ranks, but would interpret it to also refer to unlawful ranks.

[56] In the matter of *Cool Ideas*<sup>7</sup> the Constitutional Court had to decide the interpretation of s10(1)(b) of the Housing Consumers Protection Measures Act 95 of 1998. The Constitutional Court held that:

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<sup>4</sup> Ibid para 45

<sup>5</sup> *Hotz and Others v University of Cape Town* [2016] 4 All SA 723 (SCA)

<sup>6</sup> Ibid para 29

<sup>7</sup> *Cool Ideas* (note 1 above)

'A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:

(a) that statutory provisions should always be interpreted purposively;

(b) the relevant statutory provision must be properly contextualised; and

(c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a)' <sup>8</sup>

[57] In determining the purposive approach, the Constitutional Court in *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others* <sup>9</sup> confirmed that the following questions need to be ascertained:

'what is the subject-matter? What object in relation to that subject-matter did Parliament intend to achieve? What part in the achievement of that object was intended to be played by the prohibition in section 29(3)? Would it be inconsistent with achievement of that object if the prohibition were absolute? If so, what exception to or qualification of the prohibition is needed to make it consistent with that object?'<sup>10</sup>

[58] In considering what the subject matter of the NLTA is, it is clear from s2 of the NLTA that the purpose and scope of the NLTA is:

(a) to further the process of transformation and restructuring the national land transport system initiated by the Transition Act;

(b) to give effect to national policy;

(c) to prescribe national principles, requirements, guidelines, frameworks and national norms and standards that must be applied uniformly in the provinces and other matters contemplated in section 146(2) of the Constitution; and

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<sup>8</sup> Ibid para 28

<sup>9</sup> *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others* 2014 (3) BCLR 265 (CC)

<sup>10</sup> Ibid para 84

(d) to consolidate land transport functions and locate them in the appropriate sphere of government.’ [my emphasis]

[59] Much emphasis was placed by WATA on the interpretation of ‘rank’ to include an ‘informal rank’. The request by WATA not to read down the word ‘rank’, thereby including ‘informal’ taxi ranks, must be read contextually and purposively with regard to the statute as a whole.

[60] To include the word ‘informal’ into s91 would plainly controvert not only the plain unambiguous text of s91, but would also go against the clear purpose of s91 and the NLTA statute as a whole which is to ‘prescribe national principles, requirements, guidelines, frameworks and national norms and standards that must be applied uniformly in the provinces and other matters contemplated in section 146(2) of the Constitution’.

[61] The object of s91 of the NLTA is to ensure procedural fairness before a decision is taken under emergency conditions. The object of the NLTA will not be met should this Court not read down the word ‘rank’ thereby including ‘informal’ ranks, as s91 controls legal ranks and not ‘informal’ ranks.

[62] Furthermore, if this Court were not to read down the word ‘rank’ thereby including ‘informal’ ranks, it would create a situation whereby more informal ranks would be created. Should the MEC take steps to seek interdictory relief to close these informal ranks, as it has done in the matter *in casu*, the MEC would once again be met with similar challenges by taxi associations who would insist on relying on a right envisaged in terms of s91(3) of the NLTA, which right only exists for legal taxi ranks and not informal taxi ranks. For this Court to allow such a situation to prevail would go totally against the import and purpose of the NLTA.

[63] Accordingly, the interpretation of s91 as stated by the MEC to apply solely to legal ranks must be upheld and the request by WATA’s counsel not to read the word rank, is misplaced.

[64] Even if this Court is wrong as regards the interpretation of the word ‘rank’, there can be no doubt that the clear wording of the NLTA affords the MEC the power to temporarily close legal ranks should violence erupt. On a proper construction of the NLTA, it could not have been the intention of the legislature to give the MEC

powers to close legal ranks temporarily but deny him any powers to administer and regulate informal or illegal taxi ranks. Such interpretation violates basic principles of the interpretation of statutes.

[65] Although WATA's counsel argued that WATA would be deprived of its right in terms of s91 to make representations, due to the fact that s91 does not apply to informal ranks, then WATA cannot be deprived of a right they never enjoyed to start with. The deprivation that WATA seeks to rely upon is aimed at a limited target, namely, those taxi ranks who do have a valid operating licence designating the use of a specific taxi rank and who are then deprived of the usage of such specific taxi rank. ,

[66] It is clear from the operating licence particulars issued to WATA, which are in effect from 27 July 2021 to 26 July 2028, that the only taxi ranks and places where passengers may be loaded and off-loaded on the start journey on national route code 10003Z1001Y500119741 are:

'JEPPE STATION TAXI RANK', 'GREEN VILLAGE TEMPORARY TAXI RANK', 'IKWEZI TAXI RANK', 'LOADING AT MTHETHWA STORES IN MAFOLO', 'LOADING AT ORLANDO S.A.P.S', ' INTO MAIN ROAD MAYFAIR OFF-LOADING'. 'LOADING AT FORDSBURG PLAZA', 'IN MARKET STREET LOADING AND OFF-LOADING'. Although the return journey on national route code 10003Z1001Y500119741 allows for travelling on Commissioner street, it is clear that nowhere is mention made of an allowance to load or off-load passengers on the corner of Commissioner and Pixley Seme Streets.

[67] In respect to national route code 10003Z1001XC00119742, the only taxi ranks and places where passengers may be loaded and off-loaded by WATA on the start journey and return journey are:

'HIGHGATE SHOPPING CENTRE TAXI RANK', and 'LOADING AT MTHETHWA STORES IN MOFOLO'.

Once again no mention is made of an allowance to load or off-load passengers on the corner of Commissioner and Pixley Seme streets.

[68] In the operating licence particulars of WATA for the period 27 July 2021 to 26 July 2028, thirty-four additional national route codes are included, over and above the national route codes referred to in paragraph [67] supra. With the exception of national route code 1001ZD1001Y500119855, which allows for off-loading of passengers at Commissioner street, none of the other national route codes or board route codes allow for loading or off-loading of passengers at Commissioner street.

[69] Even though national route code 1001ZD1001Y500119855 allows for off-loading of passengers at Commissioner street, it does not stipulate that this may take place at the corner of Commissioner and Pixley Seme street.

[70] I therefore do not find that the argument of deprivation raised by WATA is compelling as the taxi rank in question is not legal.

#### Whether the MEC has established a clear right

[71] The word “clear” relates to the degree of proof required to establish the right and should strictly not be used to qualify the right. In order to establish a clear right, the applicant has to prove on a balance of probabilities the right he seeks to protect.<sup>11</sup>

[72] The MEC has a clear right in that it is the executive authority responsible for the administration and regulation of public transport issues in the Gauteng Province. The MEC is further responsible to ensure the safety of commuters and the public on all public roads around the Gauteng Province. The MEC is not relying on s91 of the NLTA to close the informal rank used by WATA, instead it is relying on its inherent right to administer and regulate public transport in Gauteng.

[73] It is true that the Minister did not in terms of s11(2) of the NLTA assign any function to the MEC to institute this application, however, the provisions of ss9(2)(a), (b),(e),(g) and (h) of the NLTA makes it preemptory that the MEC must take control of transport issues concerning the province. Although it was argued that s11(1)(b) of the NLTA does not empower the MEC to deal with informal taxi ranks, and that

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<sup>11</sup> (see *N v S and Others* (940/2013) [2014] ZAECMHC 18 (24 April 2014), para 44 – 45)

s11(c) empowers municipalities to deal with informal ranks, I find this distinction irrational, as neither s11(b) or 11(c) of the NLTA mention the word ‘informal’ taxi rank. This is clearly attributable to the fact that the NLTA deals with legal taxi ranks and not informal or illegal taxi ranks.

Whether the MEC has another satisfactory remedy

[74] The MEC bases its application for an interdict purely on the fact that WATA is operating a taxi rank which is illegal and that WATA continues to use this taxi rank with the full knowledge that it is illegal. Even if WATA has been using this area to drop off its passengers since the 1980’s, it still does not change the fact that it is an illegal taxi rank. As a result, WATA should be interdicted from using it. Whether or not the use of this illegal rank by WATA came to the attention of the MEC after the meeting held on 20 October 2021, or not, the fact remains it is still illegal.

[75] Although WATA argued that the MEC does have another remedy as set out in terms of s91, for the reasons set out in paragraphs [54] to [70], this Court disagrees.

[76] Even if this Court is wrong, and s91 of the NLTA is applicable, s91 does not grant the MEC the authority to permanently close a taxi rank, as s91 only provides for the temporary closure of taxi ranks. The specific provisions of s91 confirming the temporary nature of the remedy are ss91(2)(a), (b) and 91(3)(c).

[77] Section 91(2) states:

‘(2) The MEC may, by notice in the Provincial Gazette, give notice that—

- (a) one or more or all the routes or ranks in such a declared area are closed for the operation of any type of public transport service, for the period stated in the notice;
- (b) any operating licence or permit authorising any of the services referred to in paragraph (a) on a closed route or routes or at a closed rank or ranks in the declared area is suspended for the relevant period;’ [my emphasis]

[78] Section 91(3)(c) describes the relevant period as being:

“the period for which the proposed regulations will be in force;”

[79] Even if this Court is wrong in stating that s 91 of the NLTA is not applicable, and that s91 does include the 'final' closing down of a taxi rank, as opposed to 'temporarily' suspending the use of such taxi rank, the fact remains that the Supreme Court of Appeal in the case of *Hotz*<sup>12</sup>

'...it is one thing for a judge to express the hope that parties may, by sensible engagement with one another, resolve their differences without any need for the court to intervene, and another thing altogether to refuse a litigant relief to which they are in law entitled, on the basis of a view that constructive engagement, third party mediation or the application of common sense would be preferable means of addressing the differences between the parties. Courts sometimes suggest to parties that there are ways other than litigation to resolve grievances and redress wrongs, but all they can do is encourage the parties to explore these alternatives. They cannot impose them upon the parties. In particular they cannot deny a legal remedy to a litigant entitled thereto on the basis that they should seek a remedy through some other non-legal means.'<sup>13</sup>

'This understanding of the nature and purpose of an interdict is rooted in constitutional principles. Section 34 of the Constitution guarantees access to courts, or, where appropriate, some other independent or impartial tribunal, for the resolution of all disputes capable of being resolved by the application of law. The Constitutional Court has described the right as being of cardinal importance and 'foundational to the stability of an orderly society' as it 'ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes without resorting to self-help'. It is 'a bulwark against vigilantism, and chaos and anarchy'. ... In granting an interdict the court is enforcing the principle of legality that obliges courts to give effect to legally recognised rights.'<sup>14</sup>

[80] This Court finds that in the circumstances of the matter *in casu*, the only appropriate and suitable remedy available to the MEC is a final interdict prohibiting the use of the taxi rank in question by WATA and its members.

[81] As regards the interdict sought by the MEC to prevent NANDUWE allegedly touting passengers along Commissioner Street, the situation is somewhat different.

[82] The MEC has placed before the Court a copy of the operating licence of a member of NANDUWE as annexure 'Q. Although NANDUWE did not file an affidavit

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<sup>12</sup> *Hotz* (note 5 above)

<sup>13</sup> *Ibid* para 38

<sup>14</sup> *Ibid* para 39



dealing with the contents of the operating licence, NANDUWE's counsel dealt with this in argument. NANDUWE contended that the operating license filed, supports NANDUWE's contention that intra-provincial and local operating licences allow and do not prohibit operators from loading passengers waiting for taxis along the route. Counsel argued that the route description in the operating licence cannot indicate where the operator must stop because the operator stops to pick up passengers when stopped by passengers who need to be picked up. Counsel contended that 'the taxi "touts" when it is moving from its point of origin to its destination or the designated route.

[83] The GPRE is the entity responsible for the issuing of operating licenses for road-based transport services within the province of Gauteng in terms of the NLTA. The GPRE is the regulatory entity within the Department of Road and Transport, with regulatory authority to issue operating licences as envisaged in s51 of the NLTA.

[84] The GPRE has the competency to monitor and oversee public transport and to receive and decide on applications for intra-provincial public transport in terms of s24 of the NLTA. The GPRE is also competent in terms of s79(3) to withdraw, suspend or amend an operating license which has been erroneously issued by it on specified circumstances.

[85] The GPRA has not filed a confirmatory affidavit to support the argument of the MEC that picking up commuters along Commissioner street by members of NANDUWE is in contravention of NANDUWA's operating licence.

[86] The operating licence issued to NANDUWE, which is attached to this application and which was valid from 14 June 2021 to 13 September 2021 describes the return route as follows:

'Start JOHN PAGE DRIVE (c/o JOHN PAGE Dr and MAIN street), Turn left COMMISSIONER STREET, Turn left SIMMONS STREET, Turn right ANDERSON STREET, Turn left BUSWAY, Continue PAT MBATHA BUS WAY, Continue PAT MBATHA BUS & TAXI WAY. Continue SOWETO HIGHWAY, Turn left KLIPSPRUIT VALLEY MAIN ROAD, Turn Right MOROKA NANCEFIELD ROAD, Turn Right ROODEPOORT ROAD, End (c/o ROODEPOORT Rd and MPUTHI St).'

[87] It is clear from the return route depicted on this operating license that NANDUWE had the right to travel along Commissioner street.

[88] The GPRA would be best equipped to deal with any violations of NANDUWE's operating licence. For this Court to get involved and declare the picking up or dropping off of commuters on Commissioner street by NANDUWE as illegal would amount to the Court exercising executive powers, whereas the persons and institutions established by the NLTA, upon exercising their powers, would differ with the conclusions of the Court. At no stage in this application were the operating licenses of NANDUWE or the specific routes that NANDUWE may utilize to pick up or drop off passengers discussed in detail and as a result it would be improper for this court to deal with it. To obtain an interdict against NANDUWE is not the only available remedy to the MEC. As a result, the MEC's claim in respect to prayer 3 is dismissed.

[89] Although prayer 3 in the notice of motion refers to the third respondent, it is clear that the MEC intended prayer 3 to be applicable to NANDUWE.

Whether an injury is actually committed or reasonable apprehended

[90] It is clear that with the violence that erupted on 16 October 2021, the MEC had to take action to prevent further violence erupting especially since WATA was refusing to stop using the taxi rank. Any use of an informal or illegal taxi rank will affect the administration of public transport and the regulation thereof on a continual basis. The fact that possibly six other taxi associations are also using this informal taxi does not justify its use by WATA. The application of the MEC *in casu* seeks to solely interdict WATA's members from using the informal taxi rank and as a result this Court is confined to solely consider WATA's usage of this informal taxi rank.

[91] In the absence of an allowance granted to WATA members to load and off-load passengers at the corner of Commissioner and Pixley Seme streets, the continued usage of this informal taxi rank by WATA will most probably cause more violence with other taxi companies who may also want to start using this informal taxi rank.

[92] There can be no argument that there was significant unrest between the members of WATA and NANDUWE, which unrest related to a dispute regarding who

had authority to transport passengers at the informal taxi rank in question. Although there have been orders granted by this court that the MEC and the GPRE resolve this dispute, to date it has not yet been resolved. If this behaviour is not stopped, it will cause more problems and more violence in the future. The fact that there is an agreement in place that both WATA and NANDUWE will stop fighting, this does not guarantee that violence may not arise in the future.

[93] Previous Court orders have been granted that the MEC engage with WATA and NANDUWE, however, the suggested alternatives do not seem to be working, or resulting in an effective alternative to the grant of an interdict. The MEC launched the application *in casu* due to the fact that after a meeting was held on 20 October 2021 between the MEC, WATA and NANDUWE, WATA wrote a letter to renegeing from what was agreed between the MEC, WATA and NANDUWE

[94] Against this backdrop, this Court does not find that granting a final interdict in favour of the MEC against WATA would go against public policy or that it would be unconstitutional to do so.

### **Costs**

[95] Counsel for the MEC seeks that the respondents pay costs of this application on a punitive scale, such costs to include the costs consequent upon the employment of two Counsel, jointly and severally. Counsel also asked this Court to dismiss the counter application that was launched by WATA with costs.

[96] The basic and trite rule to an award of costs is that it is a discretionary matter which vests with the court.<sup>15</sup> This discretion is a wide, unfettered and equitable one, which is to be exercised judicially with due regard to all relevant considerations, which include, *inter alia*, the nature of the litigation being conducted before it and the conduct of the parties or their representatives.<sup>16</sup>

[97] A Court will grant a punitive costs order to mark its disapproval of some conduct which should be frowned upon. Such orders are not readily granted and this is because persons have a right to bring their complaints before a court in order to obtain a decision and a Court should not penalize such persons if they are

<sup>15</sup> (see *Kruger Bros & Wasserman v Ruskin* 1918 AD 63 at p. 69).

<sup>16</sup> (see *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at [25].

misguided in doing so. In the matter of *Biowatch Trust v Registrar, Genetic Resources*<sup>17</sup>, the Constitutional Court held that this Court must protect an unsuccessful private party against an adverse cost order where there is no impropriety in which the manner of the litigation was undertaken.

[98] It is true that this was a protracted matter which took the whole day to deal with, however, this matter could also have long been resolved had the MEC and GPRE consulted more fully with WATA. In addition, it appears that the MEC has allowed this illegal rank to be utilised by WATA for a long period, prior to the outbreak of the violence on 16 October 2021.

[99] This Court does not find that this matter warrants costs on a punitive scale. Accordingly, this Court will order that costs will follow the result. As regards the employment of two counsel, although it was argued by WATA's counsel that this is not a complicated matter, this Court disagrees as there was a prolonged argument by WATA's counsel not to read down the word 'rank' in s91 of the NLTA and various cases were referred to. As a result, I find it just that costs include the employment of two counsel.

[100] As regards the argument by the MEC's counsel that this Court should dismiss the urgent counter application which was brought by WATA with costs, this Court disagrees. The counter application brought by WATA was a conditional counter application which was aimed at trying to finalise the dispute by means of arbitration. The conditional counter application which was intended only to be taken by consent and expressed as such in the affidavit was wholly rejected by the MEC. This resulted in the conditional counter application being withdrawn by WATA. This Court does not believe that it should attract a cost order, specifically when its aim was to reach some consensus between the parties to resolve the dispute.<sup>18</sup>

## **Order**

[101] In the result, I make the following order:

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<sup>17</sup> *Biowatch Trust v Registrar, Genetic Resources* 2009 (6) SA 232 (CC) para 20

<sup>18</sup> (see *John Walker Pools v Consolidated Aone Trade & Invest 6 (Pty) Ltd (in liquidation) and Another* 2018 (4) SA 433 (SCA), para 10).

- (1) The forms and service set forth in the rules of this court are dispensed with in terms of rule 6(12) and this application is heard as a matter of urgency.
- (2) The first respondents and or their members are interdicted from using and or operating the illegal taxi rank at the corner of Commissioner and Sauer Street (Pixley Seme) streets, Johannesburg CBD.
- (3) The first respondent is to pay the costs of the application which will include the costs of two counsel.
- (4) Prayer 3 is dismissed with costs in favour of the second respondent.

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JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG

*This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 20 May 2022.*

**Appearances:**

On behalf of the plaintiff:	Adv. H.W Sibuyi SC Adv. M. Mokwena
Instructed by:	The State Attorney
On behalf of the first respondent	Adv. I. Veerasamy
Instructed by:	Pather & Pather Attorneys
On behalf of the second respondent	Mr. S Sekhu