Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2024-060858

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED. YE

10/6/2024
DATE

[redacted]
SIGNATURE

In the matter between:

ORTIAS ASSOCIATION (PTY) LTD Applicant

and

AIRPORTS COMPANY SOUTH AFRICA SOC LTD Respondent

Coram: Maenetje AJ

JUDGMENT

Maenetje AJ:

Introduction

[1] The applicant operated a shuttle service at airports controlled by the respondent. It was allocated office space and parking areas at the airports

for purposes of its shuttle service. The respondent has locked out the applicant's members at all its airports and deactivated their access cards. This happened on 3 June 2024. This action by the respondent was not sudden. It was anticipated to happen given the engagements that took place between the applicant and the respondent from much earlier than 3 June 2024.

[2] The applicant seeks the following relief on an extremely urgent basis, having launched the application on 3 June 2024:

> "2. Pending the final determination of an action which the respondent intends to bring to review the decision of awarding the Ortaccab (Pty) Ltd and the Respondent's service level agreement and finalisation of discussion with Ortcaccab which affect the contract already awarded mala fide.
>
> 2.1 That a Rule Nisi be and is hereby issued and that the Respondent is ordered to restored with possession of the structures identified as Ortias at the OR Tambo International Airport terminals, their parking lots and operational office.
>
> 2.2 Alternatively, that the Sheriff is authorised to restore reactivation of the access cards of the Applicants and access to the operational office, at the OR Tambo International Airport Terminal and parking lots.
>
> 2.3 Interdicting and restraining the Respondent from deactivating the access cards of the Applicant's members, and by so doing locking them outside of their office.
>
> 2.4 Interdicting and restraining the Respondent from removing the structure of the Applicant from the OR Tambo Airport.
>
> 2.5 Interdicting and restraining the Respondent from restricting the Applicant to operate their transport business.
>
> 2.6 That the Respondent shall appear on the ___ day of 2024 to show cause why the order should not be made final.
>
> 3. The Respondent to pay the costs of this application on an attorney and own client scale.
>
> 4. Granting the applicant further and/or alternative relief."

[3] Two issues arise, namely, whether the applicant has justified bringing the application on an extremely urgent basis, and whether it has established the requirements for a spoliation order.

Urgency

[4] There is history between the applicant and the respondent going back to 2021. The history critical to the question of urgency is of a shorter duration. It starts in March 2024.

[5] It is common cause that on 25 March 2024 at 12h00 the applicant's members held a meeting with officials of the respondent regarding the applicant's shuttle services at the respondent's airports. The applicant was represented at this meeting by its secretary, vice chairman, treasurer and operator owner. The meeting was held at the OR Tambo International Airport. A report was presented regarding the status of the shuttle operations at the airports. The report presented recommended that shuttle services should be removed completely from the airports and surroundings as it was not lawful to operate them in these premises.

[6] Paragraph 1.5 of the minutes of the meeting of 25 March 2024, attached to the respondent's answering affidavit as annexure "C", records the following:

> "1.5 **Below issues were discussed and agreed upon.**
>
> **ACSA will adhere to the recommendations by end of May 2024**

It is hereby requested for ORTIAS Leadership to cooperate with recommendation and ensure that:

- Return of ACSA Personal Permits and Proxy Parking Cards
- Return of ACSA furniture
- Remove current office structure includes posters and Ortias signages
- Ensure that our Parking space is clean
- Ensure parking accounts is up to date.

NB: Deadline to vacate is 25th May 2024

Meeting adjourned or officially closed: 13h33".

[7] It is clear from the portion of the meeting minutes quoted above that the shuttle services were to end and the applicant's members were to vacate the airport premises by 25 May 2024. They had to return all material that belonged to the respondent, including access cards, and clear and clean all spaces that had been allocated to them.

[8] Counsel for the applicant confirmed to the Court that the operation of shuttle services at airport premises is not lawful and may not be continued. He contested that the applicant agreed to the decisions recorded in the minutes of the meeting of 25 March 2024. He referred to correspondence by the applicant's attorneys to the respondent in an attempt to prove this. He submitted that the applicant requested a written notification of the decision to vacate as per the minutes of 25 March 2024. It is common cause that such a request was made. He submitted that a written notice was only given to the applicant on 9 May 2024. This is also common cause. But this does not mean that prior to receipt of the written notice of 9 May 2024, the applicant was not aware of the decision of 25 March 2024

as recorded in the minutes of the meeting of 25 March 2024. I pause to consider the content of the written notice of 9 May 2024.

[9] Paragraph 1.4 of the written notice of 9 May 2024 refers to the meeting of 25 March 2024. It repeats the content of the minutes regarding the vacation of premises and the return of items belonging to the respondent as quoted above. It refers to this content of the minutes of 25 March 2024 as the "First Notice", i.e., the first notice to vacate. It repeats that shuttle services are not permitted by law to "rank" at the respondent's airports and may only pick up passengers which have been pre-booked. The latter is not disputed by the applicant. By "rank", the notice refers to parking at the airport premises and waiting for passengers, as metered taxis normally do. The written notice concludes in unequivocal terms as follows:

> "4. For the avoidance of doubt, the following conditions must be adhered to by ORTIAS as part of the vacating process –
>
> 4.1. all ACSA access cards issued, and or including ACSA Personal Permits and staff/Proxy Parking cards, must be returned on or before 31 May 2024, by 12:00 PM. The handing over of the mentioned access cards will take place at the 01st Floor Ground Transport Office; and
>
> 4.2. the structure erected by ORTIAS at level 2 MSP1 to be demolished and boards cleared off the ACSA premises by 30 April 2024.
>
> 5. We trust that the above conditions are clear. If further clarity is required, you may contact the AGM: Commercial, Ms Faith Zwane.
>
> 6. All ACSA's rights and contentions remain strictly reserved."

[10] The applicant waited thirteen days to react to the written notice of 9 May 2024 (bearing in mind also what the respondent referred to as the First Notice and that the written notice of 9 May 2024 merely repeated the decisions taken and agreed at the 25 March 2024 meeting, as per the minutes of that meeting). The applicant's response was through a letter by its attorneys dated 20 May 2024. Although the letter is dated 20 May 2024, it was sent to the respondent on 22 May 2024. The letter confirms in paragraph 3 that the respondent gave the applicant 60 days' notice at the meeting of 25 March 2024 to vacate its airport premises. In paragraph 4, the letter requests that the respondent's decision recorded in the minutes of 25 March 2024 be revised and withdrawn or, in the alternative, be put on hold for a further 120 days. The letter gives reasons for the request. One of the reasons is that the applicant is in discussions with Ortaccab for a merger between the two. The merger will enable the applicant to provide metered taxi services. Metered taxis services can lawfully operate at the respondent's airport premises. The letter calls for a response by the respondent on 24 May 2024.

[11] It is significant that the letter of 20 May 2024 does not dispute the accuracy of the minutes of the meeting of 25 March 2024 and what was conveyed at that meeting to the applicant.

[12] Counsel for the applicant contended that the respondent failed to respond to the letter of 20 May 2024 by the stipulated date of 24 May 2024. The facts do not bear this out. The record contains an email from Ms Catherine Hendricks of the respondent transmitted to the applicant's attorneys on 24

May 2024 at 12h00 attaching the respondent's response to the applicant's letter of 20 May 2024. The respondent's response of 24 May 2024 was resent to the applicant's attorneys by email dated 3 June 2024 transmitted at 14h24 by Ms Catherine Hendricks of the respondent. The respondent's letter of 24 May 2024 makes it clear that the requests by the applicant are refused and the premises must be vacated by 31 May 2024 as per the notices to vacate.

[13] The applicant was later allowed to vacate the airport premises by 3 June 2024. It was given the weekend to vacate. Instead of ensuring that its members vacated the airport premises on 3 June 2024, the applicant launched this urgent applicant on extremely time lines. It afforded the respondent extremely truncated timelines for the filing of answering affidavits. The notice of motion required the respondent to file any answering affidavits by no later than 9h00 on 4 June 2024.

[14] This extreme urgency was not justified. The applicant has not provided any cogent reasons for waiting until 3 June 2024 to bring this application seeking the relief that it seeks. It waited from 25 March 2024, 9 May 2024 and 24 May 2024 when each time it was notified that it must vacate the airport premises by 31 May 2024 or, initially, by 25 May 2024. It waited for the respondent to effect the eviction of its members and then approach this Court. It has also not explained why it may not obtain substantial redress in due course.[1] The common cause facts are that it is unlawful

[1] *Export Development Canada and Another v Westdawn Investments Proprietary and Others* [2018] 2 All SA 783 (GJ) para 8-9.

for the applicant's members to continue to operate a shuttle service at airport premises. Until its eviction from the airport premises, it was operating a shuttle service. That is the service for which it utilised office space and parking spaces at the airport premises.

[15] The applicant wishes to merge with an entity called Ortaccab, which operates metered taxi services at airport premises, so that the merged firm may provide lawful metered taxi services at airport premises. Counsel for the applicant submitted that the applicant required an extension of the period in which to vacate the premises in order to progress negotiations with Ortaccab for this purpose. He submitted that the respondent created a legitimate expectation that such an opportunity would be granted to the applicant. He overlooked that there is no clear authority in our law that the doctrine of legitimate expectation confers substantive rights.[2] The doctrine does not confer on the applicant the legal right to resist the notification to vacate airport premises. If a legitimate expectation is established, which is not the case on the pleaded facts,[3] such expectation affords the applicant only procedural rights. The applicant was clearly heard on the issue of vacating the airport premises. This happened at the meeting of 25 March 2024 and in the correspondence exchanged. I have referred to this correspondence above.

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[2] *Bel Porto School Governing Body and Others v Premier of the Province, Western Cape and Another* 2002(9) BCLR 891 (CC) para 96.

[3] For the requirements to establish a legitimate expectation, see *South African Veterinary Council v Szymanski* 2003(4) SA 42 (SCA) para 19; *Duncan v Minister of Environmental Affairs & Tourism & Another* (2010) 2 All SA 462 (SCA) para 15.

[16] Significantly, the merger with Ortaccab is within the control of the applicant and Ortaccab. If they reach agreement, the merged entity would be able to approach the respondent for permission to conduct metered taxi services at airport premises. The respondent would be bound to consider such a request. The allegation that the respondent has concluded an agreement with Ortaccab does not preclude the merger.

[17] In the circumstances, I conclude that the application is not urgent. At the very least, the extreme urgency was entirely unjustified given the facts and circumstances of this case. There is no case for the relief sought to be determined on an extremely urgent basis on which the application was brought. The proper relief is to strike the matter from the roll.

[18] In the circumstances, I make the following order:

(1) The application is struck from the roll with costs, including the costs of two counsel where two counsel was employed.

NH MAENETJE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing : 7 June 2024

Date of judgment : 10 June 2024

For the applicant:	I Nwakodo

Instructed by Thobejane Setlakane Attorneys

For the respondent:	M Skhosana (heads of argument prepared by PL Mokoena SC and M Skhosana)

Instructed by Mncedisi Ndlovu & Sedumedi Attorneys