

In the High Court of Swaziland

Civ. Case 1513/93

In the matter between:

Eldah Mnisi

Applicant/3rd
Respondent

and

Hermon Sambo Gule

1st Respondent/
Applicant

Road Transportation Board

2nd Respondent/
1st Respondent

The Attorney General

3rd Respondent/
2nd Respondent

CORAM:

Hull, C.J.

FOR APPLICANT:

Mr. Flynn

FOR THIRD RESPONDENT

Mr. Mamba

Judgment

(11/2/94)

The Road Transportation Act 1963 (Act 37 of 1963) prohibits the operation of public service vehicles on public roads otherwise than in accordance with a permit issued under Part III.

That Part of the Act provides for applications for permits, public notification of such applications, the making of objections, and the hearing and determination of applications.

The authority to whom applications are made and by whom they are determined in the first instance is the Road Transportation Board, which is a body established by the

statute. There is also a right of appeal to the Road Transportation Appeals Board.

Under section 10, the Road Transportation Board has the duty of advertising applications. One purpose of advertising is to invite objections.

The secretary to the Board has a duty under subsections (3) and (4) of section 10 to give written notice, (inter alia) to persons who have objected, of the time and place of the hearing.

In considering applications, the Board has a duty to comply with the provisions of the Act and to the extent that the Act does not exclude them, the rules of natural justice. The Act does not do so. On the contrary, the scheme of Part III reflects the rules of natural justice, so far as it runs.

By the present application, the applicant here seeks to have reviewed, corrected and set aside a decision of the Board on 14th October 1993 granting a permit (No. 04400) to the third respondent.

Three grounds of review are argued. The first is that the third respondent's application was not advertised in accordance with section 10.

The other two are that the Board failed to invite the applicant here, as an objector, to the hearings of the application of the third respondent, and in particular the final hearing on 14th October, and that it refused to hear him on that last occasion when he sought to be heard.

The Board has not appeared in this hearing. There is contention between the applicant and the third respondent as to the facts and as to whether the applicant himself observed all the requirements of the Act.

The following things however are quite clear. The applicant did at the outset lodge with the Board in December 1991 an objection to the third respondent's application, which at that time was advertised with the number 00400.

He appeared at a hearing on 25th May 1993, at which time the third respondent's application had the number 04400. He did so having found out, by chance, that it was set down on that day.

The hearing was adjourned to 15th July 1993. The applicant here was invited by the Board to that meeting, as an objector. The hearing was, however, again adjourned.

The matter then came on for hearing on 14th October. The applicant here was not invited to that meeting. He attended but was not permitted to be heard, on the basis essentially that no notice of objection was on the file. On being shown a letter dated 1991, the Board concluded that the dates on it had been tampered with.

The fact was, however, that the Board and the third respondent clearly knew that the applicant here was an objector. He had been accorded that status at the previous hearing.

The Board was obliged to take into account his objection before reaching its decision. It did not do so. It had not given him notice of the hearing. It is not disputed that, apart from the argument as to whether he had duly notified his objection, the applicant here was a person with locus standi at the hearing before the Board, being an owner of transport services. The failures to notify him of the hearing of 14th October and, more particularly, to hear him at that hearing were serious irregularities.

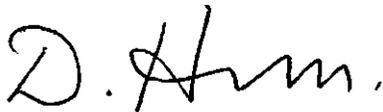
Mr. Mamba contends that he had not suffered any real prejudice, as the third respondent's permit does not

interfere with his own service. With respect, that is beside the point where the irregularities in the hearing of her application are as serious as they were here. He was, in respect of those irregularities, also entitled to come directly to this court by way of review.

Assuming for the argument that they have merit, the objections taken by the third respondent are inconsequential. They were not raised at the hearing in July. They are beside the point.

This application is granted. The decision of the Board granting the permit 04400 to the third respondent on 14th October 1993 is set aside. The matter is remitted to the Board, with directions to hear and determine the application in accordance with law.

The third respondent must pay the applicant's costs on this review.



DAVID HULL
CHIEF JUSTICE