



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**Case Number: 22419/2017**

In the matter between:

<b>MINIBUS TAXI INDUSTRY TASK TEAM</b>	First Applicant
<b>CAPE ORGANISATION OF DEMOCRATIC TAXI ASSOCIATIONS</b>	Second Applicant
<b>TAXI ASSOCIATIONS AFFILIATED TO CODETA</b>	Third Applicant
<b>CAPE AMALGAMATED TAXI ASSOCIATION</b>	Fourth Applicant
<b>TAXI ASSOCIATIONS AFFILIATED TO CATA</b>	Fifth Applicant
<b>PARK CITY TAXI OPERATORS ASSOCIATION</b>	Sixth Applicant
<b>KENFACTA TAXI ASSOCIATION</b>	Seventh Applicant
<b>ROUTE 7 TRANSPORT SERVICES</b>	Eighth Applicant
<b>MITCHELLS PLAIN CENTURY CITY TAXI ASSOCIATION</b>	Ninth Applicant
<b>MAIN ROAD TAXI ASSOCIATION</b>	Tenth Applicant
<b>PROTEAVILLE TAXI ASSOCIATION</b>	Eleventh Applicant
and	
<b>SANTACO, WESTERN CAPE</b>	First Respondent
<b>VERNON BILLET N.O.</b>	Second Respondent
<b>MR. MATA N.O</b>	Third Respondent
<b>MR. NAZEEM ABDURAHMAN N.O.</b>	Fourth Respondent

<b>MR. M. DIBELA N.O</b>	Fifth Respondent
<b>MR. L.W. NGIXI N.O.</b>	Sixth Respondent
<b>MR. S AMSTERDAM N.O</b>	Seventh Respondent
<b>MR. M. ADAMS N.O.</b>	Eighth Respondent
<b>MR. D.C. SCHOLTZ N.O</b>	Ninth Respondent
<b>MR. W.D. JOSEPH N.O.</b>	Tenth Respondent
<b>MR. N. MATAYITAYI N.O</b>	Eleventh Respondent
<b>THE MEC FOR TRANSPORT AND PUBLIC WORKS, WESTERN CAPE</b>	Twelfth Respondent
<b>SANTACO NATIONAL</b>	Thirteenth Respondent

Heard: 24 April 2008

Delivered: 6 June 2018

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## JUDGMENT

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**BOQWANA, J**

**Introduction**

[1] This case involves a long drawn out dispute between taxi associations within the Western Cape and the first and thirteenth respondents respectively (i.e. SANTACO Western Cape and SANTACO National). The applicants have approached this Court seeking relief ranging from declaratory to mandatory orders, as follows:

- “1.1 Declaring that the purported abandonment of the Constitution of SANTACO Western Cape at the special general meeting held on 5 – 8 October 2008 was irregular.
- 1.2 Declaring that the upcoming elections of the regional and provincial structures in the Western Cape shall be governed by the aforesaid Western Cape

Constitution, save insofar as the Western Cape Constitution is in conflict with the National Constitution of SANTACO.

- 1.3 Declaring, for the reasons as set out in Judge Farlam's supplementary opinion, that there are only 8 regions in First Respondent.
- 1.4 Declaring that the provisions of clauses 1.2, 2.4, 2.5 and 3.3 of the MANCO working document dated 29 March 2017 are inconsistent with the provisions of the SANTACO National Constitution and as such are invalid.
- 1.5 Compelling Thirteenth Respondent, alternatively First Respondent, to announce the dates for the regional and provincial elections in the Western Cape and to hold said election.
- 1.6 Directing Second to Eleventh Respondents to vacate the offices of First Respondent one month prior to the date of the elections, as provided in clause 15.6 of the Western Cape Constitution.
- 1.7 Prohibiting Second to Eleventh Respondents from purporting to represent the Western Cape minibus taxi industry either in discussions with Government or at the SANTACO structures prior to the date upon which they vacate the office of First Respondent.
- 1.8 Directing Twelfth Respondent to arrange a pre-elective conference, to be attended by the chairpersons and secretaries of all 156 registered taxi associations in the Western Cape, for the purpose of discussing the rules of the forthcoming elections and the Constitutional provisions to be applied to said elections, in accordance with the agenda attached hereto as 'A'.
- 1.9 Prohibiting the outgoing members of First Respondent from attending the regional and/or provincial conference as delegates and/or from standing for election unless they have been nominated for election by the local or regional structures.
- 1.10 Interdicting Thirteenth Respondent from holding the national elective conference until such time as the Western Cape regional and provincial conferences have been finalised and the results ratified by the independent electoral observers appointed by Twelfth Respondent.
- 1.11 Costs. ”

[2] The applicants advised the Court that they were not persisting with prayers 1.7 and 1.10 respectively. In respect of prayer 1.10, I was advised that that prayer has been superseded by events, as the SANTACO National elections have already taken place.

[3] The first to tenth respondents, on the other hand, have brought a counter-application seeking declaratory orders “*that the Constitution of the Western Cape Provincial Taxi Council adopted by the full Council of the Western Cape Provincial Taxi Council at Montague in March 2006 is invalid and of no force and effect*” and that the “*Western Cape Provincial Taxi Council is governed by the South African National Taxi Council (SANTACO)*”.

[4] SANTACO National filed an answering affidavit. However, it neither filed heads of argument nor appeared in Court at the hearing of the matter on 24 April 2018.

[5] For convenience, the first to tenth respondents will be referred to collectively as “the respondents”. The twelfth respondent as “the MEC”, the thirteenth respondent as “SANTACO National” and the first respondent as “SANTACO Western Cape”. The eleventh respondent is deceased.

[6] The first applicant is a group that styles itself as a task team nominated and mandated by representatives of the minibus taxi industry, who attended the draft Comprehensive Integrated Transport Plan (“CITP”) hosted by the City of Cape Town on 28 to 30 August 2017 to, amongst others, engage with the MEC in calling for a pre-elective conference. The other applicants are various taxi associations, some of whose legal standing, along with that of the first applicant, was challenged by the respondents in their answering papers. Mr Bridgman, who appeared for the respondents, however, advised during oral argument that they were not persisting with that point, as a sufficient number of applicants had the requisite *locus standi*.

[7] There was also an issue of the non-joinder of the City of Cape Town raised on the respondents’ answering papers, which was hardly argued before me. It, in any event, would not take the matter any further.

## **Background**

[8] SANTACO is an acronym for the South African National Taxi Council, which is an umbrella body formed to organise, develop and restructure the taxi industry in South Africa and to engage with government on behalf of its constituent members. Its constitution (“National Constitution”) was adopted in 2001 and subsequently amended in 2005. Various provincial structures were established in terms of the National Constitution, which would, together with SANTACO National, liaise with government on behalf of their constituent members. Government in turn communicates and consults with the taxi industry through SANTACO National or the relevant provincial body of SANTACO. It enters into agreements with SANTACO and allocates funding to SANTACO and its Provincial Councils for the functioning of its national and provincial offices, for developmental projects and for the holding of national, provincial and regional conferences, including the elective conferences at which the office bearers in the various structures are elected.

[9] Membership of SANTACO comprises Provincial Taxi Councils (“PTC(s)”) from all nine provinces established in terms of the National Constitution, individuals/operators, together with their sub-structures and affiliates. The National Constitution, amongst others, also provides for the Management Council (“MANCO”) and the National Executive Committee (“NEC”). A PTC is the highest organ of SANTACO in each province, and in terms of clause 26.5 of the National Constitution such PTC shall call a Provincial Conference every 4 years. The PTC shall, in terms of clause 26.6, consist of a maximum of 300 delegates, 60% nominated equally from the respective regions and the remaining 40% to be determined by the PTC by way of proportional representation, having regard to the membership in the respective region.

[10] The PTCs shall carry out the decisions of the National Conference, MANCO and the NEC.

### Applicants' case

[11] In March 2005 SANTACO Western Cape drafted and adopted a Western Cape Provincial Taxi Council Constitution ("Provincial Constitution"). This constitution was purportedly abandoned in October 2008 in a special meeting of the Provincial Council for the Western Cape, and the National Constitution was adopted in that meeting to operate in its stead. Although subsequent elections were held in 2013 in accordance with the National Constitution, the applicants allege that the abandonment of the Provincial Constitution was not valid.

[12] According to the applicants, the purported abandonment of the Provincial Constitution meant that there were no longer any constitutional provisions in terms of which the membership of SANTACO in the Western Cape could hold the provincial structure accountable for its decisions. For instance, the Provincial Constitution set a formula by which proportional representation at the Council was determined; it provided for 90 members of the Provincial Council to meet quarterly; it set out the terms of office of the Council and the executive and provided detailed rules governing the election process. Save to state that the term of office of the elected executive shall be 4 years, the National Constitution, which now acts as a Provincial Constitution in the Western Cape, does not, according to the applicant, specifically address any of these issues.

[13] The abandonment of the Provincial Constitution also led to a marked decrease in the level of interaction between the provincial structure, the regional structures and the local taxi associations, with the result that the associations and the members are not consulted before policy decisions are taken by the executive, or before SANTACO Western Cape gives its support to a national policy decision. There have been no Provincial Council meetings since the elective conference of 2013 and there have been very few regional conferences since then. The lack of engagement has led to a complete breakdown in the trust relationship between local, regional and provincial structures. In the view of the industry, there is a leadership vacuum in the province.

[14] Since the last elections were held in March 2013, as both the Provincial and the National Constitutions required them to be held every 4 years, no elections were called or held prior to June 2017. Representatives of some of the applicants engaged with the MEC to convey to him their concerns, such as the holding of elections and to request that he calls a pre-elective conference at which the industry could discuss their concerns surrounding the impending elections. They were, however, consistently told that the MEC would only engage with the recognised representatives of SANTACO Western Cape and not with a “splinter” group.

[15] On or about 20 July 2017 SANTACO Western Cape addressed a letter to all regional persons and secretaries, advising that the SANTACO Western Cape regional and provincial elections would take place during the period of September to November 2017. Complaints arose regarding having sufficient time to consult. Irregularities, browbeating and intimidation of members, in certain regions, were also raised. These, together with the breakdown of communication between SANTACO Western Cape and the associations, and the alleged refusal of the MEC to engage with the representatives of the minibus taxi industry, led to a wide provincial withdrawal of services, or a “strike”, by members of the industry on 18 September 2017, which threatened to continue until such time as the MEC agreed to meet with the minibus taxi industry representatives, with the view to discussing the need for elections and for a pre-elective conference.

[16] Following the strike, a meeting was held between the first applicant, the MEC and the executive of SANTACO Western Cape, on 20 September 2017, at which meeting the MEC proposed that a retired Judge be appointed to provide him with an opinion on the issues in dispute between the industry and SANTACO Western Cape, and the legality of the demands made by the first applicant. Both the first applicant and SANTACO Western Cape agreed to this proposal and Judge Farlam, assisted by Advocate Tanya Golden SC, was appointed to provide a legal opinion and to further mediate the disputes between them. Parties were given an opportunity to provide Judge Farlam with a list of issues that they wanted him to

address and also to provide him with written submissions. The issue of the abandonment of the Provincial Constitution was amongst the issues that he was asked to determine.

[17] He was further requested to provide an opinion on the following other issues: whether the office of the executive of SANTACO Western Cape was vacant, given that their four year term of office had lapsed at the very latest in June 2017; whether MANCO is empowered to issue an electoral working document setting out the rules governing the regional, provincial and national elections; whether the exclusionary provisions in clauses 2.4, 2.5.3 and 2.5.4 of the MANCO document were constitutional and whether the provisions of clause 3.3 of the MANCO document was constitutional, insofar as it related to the local regional and the provincial elections.

[18] Judge Farlam provided the parties with his legal opinion on 20 October 2017, wherein he expressed a view that the National Constitution did not prohibit PTCs from adopting constitutions of their own, save that the Provincial Constitution shall not be inconsistent with the provisions of the National Constitution. Secondly, that the October 2008 resolution which purportedly adopted the National Constitution and which replaced the Provincial Constitution of the Western Cape, was invalid. Thirdly, the current office bearers of SANTACO Western Cape were validly elected at the 2013 elections, which were based on the National Constitution. Fourthly, the current executive committee holds office until a new committee is elected in the upcoming elections. Fifthly, that the election working document adopted at a special meeting of MANCO on 29 March 2017 is valid, save for paragraphs 2.4, 2.5.4 and 3.3 thereof, which are inconsistent with the National Constitution and accordingly invalid. Judge Farlam added that the election working document could otherwise be regarded as a useful checklist of what was required to conduct the elections. Finally, he found that clauses 11.1 and 11.2 of the Provincial Constitution are inconsistent with clause 26.6 of the National Constitution and accordingly invalid. He found that the



composition of the delegates at the Provincial Taxi Conference, provided for in clause 26.6 of the National Constitution, comprises 60% of the number of delegates nominated equally from the respective regions, and the remaining 40% is to be determined by the PTC by way of proportional representation, having regard to the membership of the respective regions. "Membership" refers to individual members as opposed to associations. He identified other invalid provisions of the Provincial Constitution that had a direct bearing on the elections, which I need not repeat.

[19] The applicants do not seem to have a quarrel with Judge Farlam's opinion, save for some concerns regarding the manner in which the Provincial Council is to be constituted. According to them the formula set out in the National Constitution, and discussed by Judge Farlam in his opinion, does not neatly work out when applied to 8 regions, as opposed to 9. There would either have to be a Provincial Council of more than 90 members, which would necessitate a constitutional amendment of the Provincial Constitution, or there would have to be a change in how the 90 members are nominated. This issue, as well as that of proportional representation (which accounts for 40% of the Council in terms of clause 26.6 of the National Constitution), would need to be determined prior to the elections, at a pre-elective special conference, as members are not able to nominate representatives without certainty as to the number of potential representatives.

[20] According to the applicants, after the receipt of Judge Farlam's opinion, instead of discussing arrangements for the elections, parties began to revisit the issues that had already been dealt with by Judge Farlam in his opinion. It was clear that there was no reasonable prospect of achieving a solution to the impasse. Members of the first applicant accordingly withdrew from the mediation process. The applicants allege that notwithstanding SANTACO Western Cape's alleged willingness to hold elections, no elections have been held to date in the Western Cape, and the applicants are concerned that the present executive will remain in office indefinitely, or that an election would be called prior to the issue of the

constitutions, and the MANCO clauses, being decided upon by this Court. They allege that the issue of the outgoing clause, with regards to the current executive members, is crucial, because the MANCO clause effectively allows an additional 24 votes at Provincial level, thus increasing the total potential number of votes to 114 (i.e.  $90+24 = 114$ ).

[21] The applicants seek to have an extraordinary meeting (pre-elective conference) of the minibus taxi industry prior to the elections, following the decision to be given by this Court on the issues that they have outlined. In this pre-elective conference a number of other practical issues would be discussed, including: how the proportional representation is to be determined; the status of the persons who were suspended by SANTACO Western Cape in relation to the elections; whether they will be allowed to vote; and what would the election criteria and the nomination process be, as well as other ancillary matters relating to the manner in which the elections are to be run.

[22] The applicants allege that these issues would ordinarily have been dealt with by the Provincial Council at one of its annual meetings, or at a special meeting or at an extraordinary Provincial Conference. However, because there had not been any Provincial Council meetings since the last elective conference, and there is no functional Provincial Council in existence at the moment, the applicants seek an order directing the MEC to call a taxi indaba, or pre-elective conference, prior to the elections.

### **Respondents' Case**

[23] The respondents devote the bulk of their answering affidavits to criticising the applicants for causing instability in the taxi industry, by being responsible for carrying out route invasions and hostile takeovers. They single out the supporters of the second applicant, CODETA, and those of the fourth applicant, CATA, as being responsible for such acts.

[24] Insofar as the issue at hand is concerned, the respondents allege that the Provincial Constitution is, in and of itself, invalid, as it was adopted by the

Western Cape PTC and not by a Conference. The deponent to one of the respondents' answering affidavits, Mr Vernon Billet, who is the chairman of SANTACO Western Cape, alleges that whilst the Provincial Constitution bears the date of March 2006 and records the place of adoption as Montague, it was adopted by Council at Avalon Springs in 2006, and that he was present at that meeting. He alleges further that the Council did not have the authority to make Constitutional amendments and that this power vested with the Conference, as set out in Judge Farlam's legal opinion. He contends that Judge Farlam rejected the notion that there was no difference between Council and Conference meetings, and as a consequence of that the Provincial Constitution must also be invalid. He further contends that Montague could not have held a Conference, because there had been a Conference four months earlier. For all these years he had been under the impression that the Provincial Constitution adopted in Montague was valid. He only realised this not to be the case when he had access to the relevant documents in 2017. He alleges that he had been prevented from bringing this information to Judge Farlam's attention, because SANTACO Western Cape's executive was denied access to their offices. This was done on the pretext advanced on behalf of the first applicant that the executive had automatically ceased to hold office as required by paragraph 15.6 of the Provincial Constitution.

[25] He contends further that because the National Constitution is supreme, and the Provincial Conference is prescribed in clause 8 of that constitution, *"a question must be asked whether an organ of SANTACO National has the competence to create a Constitution which gives SANTACO Western Cape a legal personality separate from SANTACO National."*

[26] He states further that SANTACO National had to consult before it approved a standard Provincial Constitution, and that, that had not been done. He alleges that the adoption of the Provincial Constitution may also be considered to be contrary to paragraph 6 of the National Constitution, particularly paragraph 6.4, which states that no member shall have dual membership with another organisation

of a similar nature without the prior written consent of SANTACO having been sought and obtained. He alleges further that the Provincial Government supported the Provincial Constitution and that he and others acted as though it was valid, as did Judge Farlam. It nevertheless appears to be obvious now that it was invalid from the beginning.

[27] According to him when they followed the Special Council directive of 6 October 2008, and the MANCO directive of 29 March 2017, to ignore the Provincial Constitution and follow the National Constitution, they may have done so for the wrong reasons, but they were right to reject the Provincial Constitution.

[28] Although SANTACO National was not present in Court, it is worth referring to its answering affidavit, which was deposed to by Mr Phillip Taaibosch, its president. Mr Taaibosch alleges that in 2008 SANTACO National instructed all its provincial, regional and local structures to revisit their constitutions and policies, if any, to ensure that they were in line with the SANTACO National Constitution and that such constitutions be amended to conform to the National Constitution, alternatively be abolished. He contends that the said structures had to adhere to the provisions of their then constitutions and policies, insofar as the process to amend and abolish was concerned. The SANTACO National procedure to amend or abolish the constitution could not be applied by the said structures, as it was not yet applicable to their processes. He further contends that all provinces abolished their constitutions and have since been relying on the SANTACO National Constitution, and that all other structures, such as regions and local taxi associations affiliated to SANTACO, have new constitutions which have been endorsed and approved by SANTACO National, as they are in line with the SANTACO National Constitution.

[29] He contends further that all provincial, regional and local taxi associations are independent from SANTACO National with respect to running their affairs. However, all actions conducted by their branches and members must be in line with the National Constitution. SANTACO National does not get involved in

elections or participate in them; they merely provide each province with dates on which to hold executive elections and the SANTACO National election committee would then attend such elections.

[30] SANTACO National only gets involved in the affairs of the provinces if there are internal disputes which need to be resolved through internal mediation processes. Referring any SANTACO dispute to any other body for intervention before exhausting internal mediation processes, would be irregular.

[31] As per clause 27.1 of the SANTACO National Constitution, each province is responsible for establishing and determining its demarcations, as far as regions are concerned. He further contends that all constitutions not in line with the SANTACO National Constitution are not recognised and therefore not applicable in any of their structures. According to him, the Western Cape Province attended to the process of abolition of their constitution and all subsequent elections of the Western Cape were conducted in line with the National Constitution.

[32] SANTACO National does not recognise the mediation process by Judge Farlam, as it engaged on issues outside its jurisdiction. SANTACO National also does not recognise the legal opinion he provided and it is not considered to be binding on it. The national office, however, agrees with his view that the Provincial executive remains in office until the next elections. SANTACO National could not intervene in the process of abolishing the Provincial Constitution, in that the National Constitution was not applicable to the then provincial structure. Their office was only notified of the outcome (that same had been abolished) and no issues as to procedure were raised until now by the applicants, after 12 years. (The applicants allege that Mr Taaibosch was present at the special meeting where the Provincial Constitution was abolished and provided further transcripts of that meeting as part of their replying papers to confirm that).

[33] SANTACO National, had, on 14 February 2018, attempted to meet with the applicants and SANTACO Western Cape to resolve this matter, but its efforts were in vain.

[34] SANTACO National undertakes to issue dates for the next Provincial election for the Western Cape; however, the National elections could not be held up by just one province. As already mentioned, I have been informed the National elections proceeded before the hearing of this matter. Mr Taaibosch is of the view that any Court decision in this matter would be premature. In his view, the issues that the applicants allege would be discussed at the pre-elective conference can only be entertained by a SANTACO National Conference at the Annual General Meeting or Special Meeting.

[35] The issue of the Provincial Conference and special general meeting remain the prerogative of the provincial structure and its members. The calculations of the percentages depend on the province's demarcation, as determined by the provincial structure concerned.

[36] Furthermore, a suspended member cannot be allowed to participate in any SANTACO activities.

#### **Twelfth respondent's case**

[37] Insofar as the MEC's involvement is concerned, he alleges that this matter has to do with a dispute between different groups in the taxi industry, that it would be inappropriate for him to get involved in internal organisational disputes, and that therefore the relief sought against him is misplaced. Insofar as there is an allegation that he made an undertaking to fund a pre-elective conference, such undertaking is not borne out by evidence and is in any event something a Court cannot compel him to do.

#### **Analysis**

[38] This case, in my view, largely turns on the validity of the Provincial Constitution. This is because the respondents seem to have made common cause with the fact that the Provincial Constitution was irregularly abandoned (albeit for "wrong reasons" as they allege). The respondents' entire case is premised on the fact that the Provincial Constitution was invalid on a number of fronts. I agree

with Ms Ipser who appeared for the applicants that, on the constitutional invalidity point, the respondents should bear the onus as this issue is raised as a counter-application.

[39] The respondents' first contention, that the Provincial Constitution was adopted at a place called Avalon Springs as opposed to Montague, is without merit. Montague clearly appears on the first and last pages of the Provincial Constitution and there is no reason to invalidate the constitution on that basis.

[40] As to the issue that the Provincial Constitution was adopted by a Council, rather than a Conference as required by the National Constitution, the last page of the Provincial Constitution records that: "*This Constitution was adopted by the full council of the Western Cape Provincial Taxi Council on the 5<sup>th</sup> of March 2006 at the Montague Conference." In terms of clause 26.10 of the National Constitution, the PTC may call extraordinary Provincial Conferences if requested to do so by two-thirds of all the regions in the PTC. Clearly, the PTC called a Conference. It is clear from the last paragraph of the said constitution that the Provincial Constitution was adopted at a Conference and by the full council. It appears from paragraph 81 of the applicants' replying affidavit that, in March 2006, a special conference was called specifically for the adoption of the Provincial Constitution. This Provincial Constitution was adopted by 90 members of the full council. The demarcation plan attached as an annexure to the applicants' replying affidavit, states in its preamble that "[a]t the four day Provincial Conference of the Western Cape Provincial Taxi Council (WCPTC) held at Montague from the 5<sup>th</sup> – 8<sup>th</sup> of March 2006, it was resolved during the morning session on the 2<sup>nd</sup> day of that conference that the 18 regions and/or motherbodies be rationalized into 8. The following clustering of the regions and/or motherbodies was adopted: ...". (Own emphasis)*

[41] Dr Achmat Dason, who is the chairman of the sixth applicant, deposed to an affidavit and provided a brief background to the adoption of the Provincial Constitution in 2006. In his affidavit, he alleges that a special conference was held

in Montague in March 2006 for the adoption of the Provincial Constitution. Mr Sikulela Victor Wiwi, the chairman of the fourth applicant, also asserts that he was present at the Provincial Conference in Montague in March 2006, and could confirm that the Provincial Constitution was properly heard by the full council sitting in conference. With all this evidence, there can be no doubt that the Provincial Constitution was properly adopted in March 2006.

[42] It is instructive that Mr Billet, who now disavows the validity of the adoption of the Provincial Constitution in Montague, had at all times regarded it as valid, until fairly recently. He was also present in Montague when it was adopted. His attack on the validity of Provincial Constitution's adoption accordingly does not withstand judicial scrutiny.

[43] As to the point that the Provincial Constitution is invalid because it contained clauses that are in conflict with the National Constitution, that argument also does not hold, because any inconsistency with the National Constitution simply means that the impugned clauses would be trumped by the provisions of the National Constitution, as Judge Farlam stated in his opinion. They do not invalidate the entire constitution.

[44] The strongest of the respondents' arguments, is that clause 7 dealing with the "Character of the Council" makes the Provincial Constitution repugnant. In terms of this clause the Provincial Council:

“7.1.1 is a corporate and juristic personality with perpetual succession and legal existence independent of its affiliates;

7.1.2 may sue and be sued in its own name;

7.1.3 has the power to enquire, and dispose of movable and immovable property in its own name.”

[45] In the first instance, I agree with Ms Ipser that the challenge was not framed, in the answering papers, in the same manner as it was argued by Mr Bridgman on behalf of the respondents. During oral argument, my understanding



of the respondents' submission was that the clause purporting to give SANTACO Western Cape its own juristic personality, sought to diminish SANTACO National's stature as the only SANTACO organisation, and that that cannot be done without SANTACO National's clear consent. It creates a Provincial structure as a separate body, making the constitution repugnant.

[46] The issue in the respondents' answering papers was whether it was competent to create a constitution "which gives SANTACO Western Cape a legal personality separate from SANTACO National".

[47] Clause 7 of the Provincial Constitution is identical to clauses 2.1 to 2.3 of the National Constitution. It seems as though it was simply copied, as is, from the National Constitution. SANTACO National has expressed that Provincial structures can or are entitled to have their own constitutions and to govern their own affairs, provided that such constitutions do not contradict or are not in conflict with the provisions of the National Constitution.

[48] Following the debate on this issue in Court, I asked counsel to present me with supplementary notes to address the issue of whether the essence of clause 7 in the Provincial Constitution made the constitution void. Mr Bridgman conceded, in his supplementary note, that there is no authority to support a proposition that a Provincial body is not permitted to assume juristic personality separate from its mother body.

[49] It seems, from my reading of the respondents' supplementary note, that they agree that it is possible for an organ such as the Provincial Council of SANTACO to have its own legal personality; the point of contention is that such cannot be done "*without the cooperation and consent of SANTACO National*".

[50] The answering affidavit suggested that a Provincial structure, as an organ of SANTACO National, does not have the competence to hold separate legal personality. Nowhere was it alleged by the respondents that SANTACO National's consent was required before the creation of separate legal personality by a Provincial structure.

[51] The National Constitution does not prevent the PTCs from adopting their own constitutions. That much is confirmed by Mr Taaibosch in his answering affidavit. It further does not specifically provide for consent to be obtained from the SANTACO National Executive office prior to the adoption of a Provincial Constitution.

[52] In any event, even if that were to be the case, there is no evidence to suggest that the reason for the abandonment of the Provincial Constitution in 2008, was because it was not accepted by SANTACO's National office. In fact, both Mr Bisset and Mr Nazeem Abdurahman, on behalf of the fourth respondent, stated in their answering affidavits that the Provincial Constitution may have been abandoned for the wrong reasons. Close scrutiny of the documentary evidence, particularly the transcript of the special meeting held in October 2008 where the Provincial Constitution was abandoned, shows that the Provincial Constitution was abandoned because it contained gaps - certain loopholes. For instance it did not provide for the appointment of deputies in certain positions. There was never any suggestion in that meeting that the Provincial Constitution was being abandoned because of its being repugnant as it created juristic personality, amongst others, or that it did not have the blessing of the SANTACO National office. It was suggested at the meeting that the loopholes identified presented impracticalities as regards to the functioning of the provincial structure, as a result of the constitution not making provision for certain positions. There was also no suggestion that SANTACO National had instructed that the Provincial Constitution be abandoned at that meeting, as Mr Taaibosch seems to suggest.

[53] Mr Taaibosch admitted that the Provincial structures are allowed to operate independently of SANTACO National. Indeed they are allowed to manage and control the funds and assets of SANTACO in the province, in terms of clause 26.18.4 of the National Constitution. They are also empowered to perform many other functions in terms of clause 26.18, such as organising, establishing and servicing all structures in the province in terms of clause 26.18.6; developing the

policies of SANTACO in the province as per clause 26.4; deciding on the date and the venue of the Provincial Taxi Conference as per clause 26.15; determining where their head offices shall be, as stated in clause 26.3; and calling Provincial Conferences every 4 years, at which office bearers would be elected in accordance with the processes determined by the Conference (as per clauses 26.5, 26.6 and 26.7).

[54] As is apparent from the papers, SANTACO National and SANTACO Western Cape do not consider each other to be two separate juristic persons, in the sense of being two independent bodies. The PTC is an organ of SANTACO National as well as its Provincial structure. The issue which all the parties seem to be in agreement about is that the Provincial structures must conduct themselves in line with the National Constitution. To the extent that any provisions of the Provincial Constitution are in conflict with the National Constitution, the provisions of the National Constitution will prevail and there should be no controversy about that.

[55] If SANTACO Western Cape is correct that it cannot operate as a juristic entity independent of SANTACO National that may mean that it lacks the necessary *locus standi* to even be sued in these proceedings in the first place. The proper respondent in this regard would be SANTACO National. Secondly, it may mean that SANTACO Western Cape is not capable of entering into any agreements, only SANTACO National, and it may not be capable of incurring rights and obligations in its own right, which may include any contractual relationships with the Provincial Government, including its ability to independently source funding provincially.

[56] To sum up on this issue, there seems to be no quarrel with the argument that nothing prevents a Provincial Structure from having a separate legal personality for practical purposes; the only issue was that SANTACO National's consent should have been obtained and it was not. No legal basis or evidence was presented to support this contention.

[57] Turning to the issue of the irregular abandonment of the Provincial Constitution in 2008, I need not spend much time on the issue. The special meeting did not have the power to pass a resolution abandoning the Provincial Constitution. Abandoning the Provincial Constitution because it did not provide for certain positions, and replacing it with SANTACO National Constitution, amounted to the amendment of the Provincial Constitution. The Provincial Constitution could only be amended by the full council at the Provincial Conference, if the amendment was passed by two-thirds of the 90 member council sitting in conference (see clause 24 of the Provincial Constitution). The special general meeting held in 2008 where the Provincial Constitution was abandoned was not a Provincial Conference. It was not a four year conference as provided for in clause 22.2 of the Provincial Constitution, nor was it an extraordinary provincial conference as permitted by clause 26.10 of the National Constitution. This is clear from the agenda for the meeting, stated in a letter dated 11 September 2008, and the utterances of the speaker at the special meeting, as appears in the transcribed record of the meeting. The proposal of the abandonment of the Provincial Constitution was raised *impromptu* at the meeting by a speaker, which issue seems to have been supported by those that attended. There is no evidence that it was adopted by two-thirds of the full council. In the circumstances, the submissions made by the applicants that the abandonment of the Provincial Constitution was irregular and invalid must stand. Judge Farlam's conclusion in this regard was correct.

### **Relief sought**

[58] This takes me to the question of whether the relief sought by the applicants can be granted. I have no difficulty in granting an order declaring that the Provincial Constitution was irregularly abandoned.

[59] As regards a declaratory order that the impending elections shall be governed by the Provincial Constitution, save in insofar as it is not in conflict with the National Constitution, clause 22 of the Provincial Constitution dealing with Provincial Conferences is not in conflict with the National Constitution. There is

no reason why this order should not be granted save that it must be worded in the inverse: that the elections will take place in terms of the National Constitution and those provisions of the Provincial Constitution dealing with elections which are not in conflict with it.

[60] The next relief deals with the validity of the amendment made by SANTACO Western Cape in 2010, in relation to the regional demarcations in the province. In terms of clause 27.1 of the National Constitution, the provincial structure is responsible for determining the regions in a province. The regional demarcations in the Western Cape, as defined in the Provincial Constitution were amended at the 2010 Provincial Conference, which was only attended by 51 members. The conference thus did not quorate and could not amend the Provincial Constitution in that manner. Judge Farlam was therefore correct in holding that only 8 regions would be eligible to participate in the conference, one of which would be the “old” undivided Boland region. The evidence provided by the applicants in this regard, and the conclusions reached by Judge Farlam, have not been disputed. The respondents have simply taken the position, as they have done in respect of other allegations, that the Provincial Constitution is invalid and thus Judge Farlam’s finding was not applicable. There is accordingly no reason not to uphold the applicants’ allegations in this regard and to grant the relief sought.

[61] I turn to deal with the validity of certain clauses in the MANCO election working document dated 29 March 2017, which sets out the rules governing the elections that are to take place. The National Constitution does not provide for the issuance of a document regulating elections by MANCO; instead clause 15.11.1 of the National Constitution makes provision for the NEC to establish an electoral committee which shall facilitate the electoral process in regard to the national conference, MANCO, the NEC and the PTC. Be that as it may, the only issue that is before me for consideration in this case, is whether clauses 1.2, 2.4, 2.5 and 3.3 of the MANCO working document are valid.

[62] Clause 1.2 provides that: “*The Elections will be strictly conducted by SANTACO and with no substitution of the constitution of SANTACO.*” To the extent that this clause seeks to suggest that the Provincial Constitution may not govern the elections it is invalid.

[63] Clause 2 of the MANCO document provides a list of who may stand for elections. In terms of clause 2.4: “*Candidates wishing to stand for elections must have been members of Associations with a Permit/Operating Licence for at least 5 years in order to qualify.*” (Own emphasis.)

[64] Clause 2.5 provides that:

“ All members should be:

“ 2.5.1 SANTACO members who are registered members in the Associations

2.5.2 Permit holders

2.5.3 Vehicle owners

2.5.4 Current COF/ Roadworthy Certificate

2.5.5 SANTACO card carrying members

2.5.6 Must have an ID ” (Own emphasis)

[65] Clause 3.3 states as follows: “*All present Executive members in all these structures are delegates to the various Conferences and if eligible, can stand for elections.*”

[66] The applicants allege that these clauses for eligibility are not contained in both the National and Provincial Constitutions. There is no requirement in either of the constitutions that a member of an association must have held an operating licence for at least 5 years and be in possession of a current roadworthy certificate in order to participate in the elections as required in clause 2.4 of the MANCO document.

[67] As regards clause 2.5 it is not clear why the applicants, in their Notice of Motion, seek a striking out of the entire clause 2.5 of the MANCO document, because before Judge Farlam they submitted that the requirements in sub-clauses 2.5.2 and 2.5.3 “*can possibly be implied from the requirement that a member should belong to a registered taxi association*”. In any event, even in their argument before me they seemed to press more against sub-clause 2.5.4. Other sub-clauses in 2.5 were not forcefully challenged by the applicants as being provisions that can present a challenge to voting members, except if they are properly communicated. To that end, it seems to me only the offending paragraphs of the MANCO document should be struck out. Clauses 2.4 and 2.5.4 are indeed in conflict with the National Constitution, as there are no requirements in the National Constitution that members should have a current COF/Roadworthy Certificate, or a valid operating licence, for at least five years.

[68] The applicants are correct that these requirements effectively amend the National Constitution without the necessary process for doing so having been followed; they are accordingly invalid. Mr Bisset stated in his answering affidavit that this order is unnecessary as the respondents “*will take due regard for the opinion of Justice Farlam.*”

[69] Clause 3.3 is inconsistent with clauses 26.6 and 27.4 of the National Constitution, which provide that the delegates would be drawn from their respective regions or local councils in a 60/40 ratio. There is no provision in the National Constitution for the outgoing or *ex-officio* executive members to be delegates at the Conference or for them to vote at the Conference in their capacity as the outgoing executive. The only clause in the National Constitution which provides for *ex-officio* executive members is clause 10.2.3, which relates to the National Conference. Clause 10.2 states that the National Conference shall comprise of a maximum of 800 delegates and that that includes, amongst others, all *ex-officio* member of the NEC.

[70] SANTACO Western Cape contends that the provision relating to the National Conference was also intended to be followed in respect of the composition of the Provincial Conference, and for this reason, the ex-officio members of the SANTACO Western Cape Exco have always attended Conferences as voting delegates. They also allege that the National Constitution will be amended to clear up this error.

[71] It is clear that clause 3.3 of the MANCO document is inconsistent with the National Constitution and therefore invalid.

[72] The next issue to be considered is whether this Court can compel SANTACO National, alternatively SANTACO Western Cape, to announce the dates for the regional and provincial elections in the Western Cape and to hold those elections. The respondents have stated that it is unnecessary and unwarranted to grant this order, because they all are eager to hold the elections and they have made this clear in their affidavits. They allege that it is the actions of the applicants which have prevented the holding of elections. Apart from stating that it would be unnecessary to grant such an order, the respondents have not argued that it would be improper for the Court to grant such an order. It should then follow that the respondents should have no difficulty in ensuring that they act in accordance with the respective constitutions and arrange for elections to be held within a reasonable period after the granting of the judgment by this Court.

[73] Regarding prayer 1.6, which seeks the Court to order the second to tenth respondents to vacate office, it would be inappropriate, in my view, to grant relief of this nature in circumstances where no infringement has been alleged. The Court cannot anticipate that there would be an infringement of the Provincial Constitution by the second to tenth respondents. It follows that once a date for the elections has been provided in terms of clause 15.6 of the Provincial Constitution, the second to tenth respondent would have to comply with the Constitution, which requires them to vacate their office one month prior to that date.



### Costs

[79] As to costs, in view of the fact that this has been a protracted battle between the parties, lasting a number of years, and that it is a matter that presents complex organisational constitutional issues and dynamics between the two groups, being SANTACO Western Cape and the local associations as well as SANTACO National, it seems to me that each party should be ordered to pay its own costs. Although the relief against MEC was incompetent, it would not be appropriate in these circumstances to grant a cost order against the applicants.

### Conclusion

[80] In conclusion, I hope that the parties will put their differences aside and focus on the interests of the members of SANTACO, the taxi associations, and other relevant stakeholders, who most importantly and ultimately are the consumers of their services, i.e. members of the public whom they serve and who rely on their services. It is also in the interest of all the parties that some form of an indaba or special conference be called before the elective conference in the Western Cape is held, so as to set out and agree on the issues that are not clear in the constitutions and the elective working document of MANCO. It is also in the interest of the organisation that SANTACO National provides the necessary support to the Provincial structure, as well as the MEC, to do whatever he can within permissible parameters and within his capabilities, in the interest of stability in the taxi industry. It seems to me all parties should approach this special conference with an open mind, with a view to finding a workable solution to this protracted battle.

[81] It is also important that a Provincial Conference be held as soon as possible. SANTACO National and SANTACO Western Cape must announce the dates of the elections and hold the elections in accordance with both the National and Provincial Constitutions, it being recorded that the provisions of the National Constitution prevail, insofar as there is any conflict between the two. The respective respondents have expressed their keenness to hold lawful elections.

They must follow suit in ensuring that, that happens. There should be no reason why they should not be willing to announce the election dates as a matter of urgency.

[82] For these reasons, the following order is made:

1. It is declared:
  - 1.1 That the purported abandonment of the Constitution of the Western Cape Provincial Taxi Council (“SANTACO Western Cape Constitution”), dated March 2006, at the special general meeting held on 5 – 8 October 2008, was irregular;
  - 1.2 That the impending elections of the Regional and Provincial structures in the Western Cape shall be governed by the relevant sections of the Constitution of the South African National Taxi Council (“SANTACO National Constitution”) and those provisions of the SANTACO Western Cape Constitution which are not inconsistent therewith;
  - 1.3 That for the reasons as set out in this judgment there are only 8 regions in the First Respondent;
  - 1.4 That the provisions of clauses 1.2, 2.4, 2.5.4 and 3.3 of the SANTACO Management Committee (“MANCO”) election working document of 29 March 2017, are inconsistent with the provisions of the SANTACO National Constitution and as such are invalid.
2. The Thirteenth and/or First Respondents are directed to announce the dates for the Regional and Provincial elections in the Western Cape within 30 days of this order;
3. The relief sought in paragraphs 1.6, 1.8, and 1.9 of the Notice of Motion, is refused;

4. The Counter-Application brought by the First to Tenth Respondents is refused.
5. Each party is to pay its own costs.



**N P BOQWANA**

**Judge of the High Court**

**APPEARANCES**

For the Applicant:	Adv. M. A. Ipser
Instructed by:	Holmes Attorneys, Cape Town
For the First Respondents:	Adv. M. Bridgman
Instructed by:	Parker Attorneys, Cape Town
For the Twelfth Respondents:	Adv. D Potgieter SC with Adv. A Coetzee
Instructed by:	State Attorney, Cape Town
For the Thirteenth Respondent:	No appearance
Instructing Attorneys:	Mangena Attorneys, Pretoria