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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 36116/2013

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

.....
DATE

.....
SIGNATURE

In the matter between:

S A TAXI DEVELOPMENT FINANCE (PTY) LTD

Applicant

And

NZAMA JOHN VALOYI

Respondent

J U D G M E N T

MASHILE J:

[1] This is a summary judgment application based on the breach of a written lease agreement of a 2008 Toyota Quantum Sesfikile with Engine No. 2T..... and Chassis No. JT..... The parties concluded the aforesaid lease agreement on 17 October 2011 at Johannesburg.

[2] Pursuant to signature of the agreement by both parties, the Applicant delivered the vehicle to the Respondent. The lease agreement provided that ownership of the vehicle would despite delivery of the motor vehicle to the Respondent remain vested in the Applicant. Furthermore, the lease agreement stipulated that the Respondent would pay the recoverable amount to the Applicant as follows:

2.1 Initial deposit of R30 000.00;

2.2 First rental of R10 261.20 on 7 December 2011;

2.3 Thereafter the Respondent was to make payment of 64 equal rentals in the sum of R10 261.20 on each corresponding day of each consecutive month.

[3] Another provision of the lease agreement is that in the event that the Respondent fails to pay the rental on due date or fails to satisfy any of his other obligations arising from the lease agreement, the Applicant shall without prejudicing any of its other rights in law be justified to:

- 3.1 Cancel the lease agreement and in such event:
 - 3.1.1 Claim return and possession of the motor vehicle;
 - 3.1.2 Retain all payment already made by the Respondent;
 - 3.1.3 Claim payment of the difference between –
 - 3.1.3.1 The outstanding amount at the date of cancellation of the lease agreement less a rebate on finance charges calculated from date of termination of the lease agreement;
 - 3.1.3.2 The amount at which the motor vehicle is valued in terms of the lease agreement or the resale value thereof, whichever is the greater.
- 3.2 Claim interest on the amount referred to in the lease agreement calculated at 24.00% per annum alternatively, at the current interest rate linked to the fluctuation of the interest rate calculated from date of termination of the lease agreement to date of payment;
- 3.3 Costs at the scale as between Attorney and client;

- 3.4 Claim all expenses incurred in tracing the Respondent before or after the institution of this action, attachment, removal, storage, valuation and the sale of the motor vehicle.

[4] The Respondent breached the agreement in that it failed to pay rentals in that on 12 November 2012 he was in arrears with his payments in the sum of R11 084.47. Following this breach of the agreement, the Applicant instituted action against the Respondent seeking confirmation of the termination of the agreement, return of the motor vehicle to the Applicant forthwith, forfeiture of all amounts paid by the Respondent in terms of the agreement, expenses incurred for removal, valuation, storage and sale for the motor vehicle and payment of costs as at the scale between attorney and client. The Respondent delivered a Notice of his Intention to Defend, which move prompted the Applicant to launch this summary judgment application wherein it persists with judgment as prayed for.

[5] The Respondent denies that he has entered appearance to defend solely for the purposes of delay. He has raised three points *in limine* and a defence on the merits generally. The three points *in limine* are:

- 5.1 The deponent to the affidavit in support of summary judgment, Ms Valerie Ann Valiades, does not have the necessary authority to depose to the affidavit on behalf of the Applicant;

5.2 This Court does not have jurisdiction to hear this matter as the Respondent does not reside within its area of jurisdiction;

5.3 The Applicant did not conduct a credit assessment prior to advancing the loan;

5.4 On the merits, the Respondent disputes being indebted to the Applicant in any amount whatsoever and maintains that his rentals are up to date.

[6] I will now examine the points *in limine* and the defence on the merits in the order in which they appear above.

MS VALERIE ANN VALIADES'S LACK OF AUTHORITY

[7] The Respondent concedes that generally an applicant is not obliged to furnish proof that he or she has the requisite authority to depose to an affidavit in support of a summary judgment application. However, he contends that an applicant will be under obligation to furnish proof of authority in those instances where he or she has been specifically asked to do so in terms of Uniform Rule 7(1) of this Court

[8] I agree with the Respondent's contention completely. However, there is no evidence from the papers filed by the Respondent in this matter that he has complied with the aforesaid rule. The closest attempt that he has made is

to mention in his affidavit resisting summary judgment that the Applicant should comply. There is no formal notice by which he required the Applicant to comply with the rule within 10 days of the date of service of the notice. That being the case, the time within which he should have requested compliance with the rule, 10 days, has come and gone. Accordingly, this point *in limine* is rejected.

THIS COURT'S LACK OF JURISDICTION TO HEAR THIS MATTER

[9] The Respondent argues that this court does not have jurisdiction to hear this matter as he does not reside within the area of jurisdiction of this court and that he made payment of the rentals in Pretoria. Generally, there are two bases on which a court can found jurisdiction in a matter. Thus a court will have such jurisdiction where the cause of action arose within its area or a respondent resides within its area. *In casu*, the Respondent is correct that he does not reside within the jurisdictional area of this Court and that he made the rental payments elsewhere.

[10] While the Respondent is correct, the residence of a respondent is not the sole ground on which jurisdiction can be founded. The whole cause of action arose in Johannesburg because the agreement was concluded and finalized there. For that reason, this Court has jurisdiction. This point *in limine* is devoid of any merit and must necessarily fail.

RECKLESS CREDIT

[11] The Respondent asserts that the Applicant did not conduct any assessment to determine whether or not he was a suitable candidate to whom it could advance finance for the motor vehicle. He submits that insofar as he can remember he was not presented with a credit application to complete. The Applicant denied this submission during argument in court. Most importantly though is the Applicant's argument that the effect of a transaction being declared reckless is that the *status quo ante* is restored. In this case therefore the Respondent must return the vehicle and claim that the credit that the Applicant advanced to him was reckless.

[12] I agree with the Applicant. A party cannot claim that the financed transaction was reckless and then elect to hang on to the possession of a motor vehicle, which he claims he cannot afford. Instead the Respondent continues to keep the motor vehicle and operates it as a taxi. This is highly prejudicial to the Applicant as the more he keeps and utilizes it for his taxi business, it depreciates in value such that the Applicant might not recover its loss. This point *in limine* too cannot stand as a defence to the Applicant's claim.

[13] On merits, the Respondent simply does not have a defence. The argument presented by him is the most unsound and feeble. The Applicant has successfully demonstrated that the Respondent is in arrears with his rentals. The burden of proving that the rentals are not behind shifted to the

Respondent. He must show that in fact the amount claimed by the Applicant is incorrect as he has been paying the correct amount monthly.

[14] The Respondent has drably failed to discharge that burden. He has failed to produce proof of payment of the rentals into the correct account of the Applicant. Had he done so, the Applicant would have been in a position to reconcile his account and probably the need to institute this action would have been obviated. In the absence of such lack of evidence, the court cannot come to the Respondent's assistance. It is inescapable to conclude that the Respondent does not have a *bona fide* defence as envisaged in Uniform Rule 32 of this Court and that he has indeed entered an appearance to defend solely for the purposes of delay.

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

1. Summary Judgment is granted in favour of the plaintiff against the defendant.
- 1.1 The cancellation of the agreement between the Plaintiff and Defendant is confirmed.
- 1.2 The defendant is ordered to return the 2008 Toyota Quantum Sesfikile with engine number J..... to the plaintiff.
- 1.3 The defendant forfeits all payments by it in terms of the agreement.
- 1.4 The Defendant is ordered to pay all the expenses incurred with regard to the removal, valuation, storage and sale of the vehicle.

- 1.5 The defendant is ordered to pay costs on the attorney and client scale.

B MASHILE
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

COUNSEL FOR THE APPLICANTS: ADV. R Stephenson

INSTRUCTED BY: Marie –Lou Bester INC

COUNSEL FOR THE RESPONDENTS:

INSTRUCTED BY: Pieter Coetzee Prokureurs

DATE OF HEARING: 30 January 2013

DATE OF JUDGMENT: 6 February 2015