

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 2020/1698

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

  
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K.E. MATOJANE

21 OCTOBER 2021

In the matter between:

**SUPA BIKE (PROPRIETARY) LIMITED**

Applicant

and

**VENTER MANUFACTURING COMPANY  
(PROPRIETARY) LIMITED**

Respondent

**Delivered:** *This judgment was handed down electronically by circulation to the parties and/or their legal representatives by email, and by uploading same onto CaseLines. The date and time for hand-down is deemed to be have been on 21 October 2021.*

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**JUDGMENT**

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**MATOJANE J:**

## **INTRODUCTION**

[1] The Applicant, who is self-represented, launched an application against the respondent seeking the following relief:

- "2. An order by the Honourable Court to reinstate the Distribution Agreement between the parties and have the contract enforced on its terms which was cancelled for breach;
3. An order by the Honourable Court to award damages to the Applicant for the loss of earnings;
4. An interdict by the Honourable Court imposing restraints the remedial Addendum sought to demarcate."

## **BACKGROUND**

[2] On 9 April 2018, the parties concluded a Dealer Agreement. The Applicant was granted the right during the continuance in force of the agreement to purchase and resell venter trailers manufactured by the respondent in Botswana.

[3] On 23 August 2019, the Applicant instructed his attorneys to draft and forward an addendum to the agreement stating, among others, that the respondent would not supply its products to third parties within the territory of Botswana.

[4] The respondent refused to sign the Addendum to the agreement giving the applicant exclusive rights to distribute its products in Botswana. On 27 August 2019, the Applicant gave the respondent a 30 days' notice cancelling the distributorship agreement for the alleged breach of contract.

[5] The respondent opposed the relief sought for being devoid of merit, vague and incomprehensible. To save costs and time, the respondent issued a notice in terms of Rule 6(5)(d)(iii) informing the Applicant that it intends to argue that no cause of action is disclosed in the founding affidavit and that the application falls to be dismissed with costs in that:

- "1. The Dealer Agreement (Annexure B2 at page 40) on which all the relief claimed depends is no longer in existence, having been cancelled by the Applicant on 27 August 2019 (Annexure D6 at page 196);
2. The Dealer Agreement in any event never afforded Applicant any exclusive rights to deal in respondent's products, hence Applicant's attempt (unsuccessfully) to seek an amendment of the said agreement in terms of a proposed Addendum (Annexure D2 at page 187);
3. The relief claimed in paragraphs 2-4 of the Notice of Motion (at page 2) cannot be sustained on the basis of the allegations made in the founding affidavit in that -
  - 3.1 The claim in paragraph 2 (an Order for reinstatement of the Distribution Agreement "and (to) have the contract enforced on its terms which was cancelled for breach") is not only vague and embarrassing but devoid of merit in the light of the cancellation of the agreement (a fact established on Applicant's own version);
  - 3.2 The claim in paragraph 3 (damages for alleged loss of earnings) is not justiciable in motion proceedings, and Applicant fails, in any event, to plead or establish a proper case in support of the alleged claim in circumstances where no breach of the agreement can exist absent a provision for exclusive marketing rights in Applicant's favour and where the agreement has been cancelled;
  - 3.3 The claim in paragraph 4 "(An interdict by the Honourable Court imposing restraints the remedial Addendum sought to demarcate)" the relief as formulated by the Applicant is incomprehensible. It appears to be a futile attempt by Applicant to somehow enforce- by Order of the Court —an agreement (namely the proposed Addendum (Annexure D2 at page 187), which was never agreed.

[6] The matter served before Madam Justice Opperman on 8 December 2020. The court postponed the matter *sine die* (with costs reserved) and granted the Applicant leave to supplement its founding affidavit to deal with whether or not the Dealer Agreement contains a tacit term that grants the applicant exclusive distribution of rights in Botswana.

[7] The order further recorded that the Applicant is not persisting with prayers 2 and 4 of the notice of motion. Accordingly, the only relief that remains for determination is prayer 3 in the notice of motion being "an order by the court to award damages to the applicant for loss of earnings."

[8] In its supplementary affidavit, the Applicant states that:

"This Tacit Term was inferred by the culmination of the following express terms of "the agreement" as well as other circumstances and usual business practice thus set forth:"

[9] The Applicant has failed to show that the dealer agreement contains a tacit term which grants the applicant exclusive distributorship rights in Botswana.

[10] The difficulty of having employed motion proceedings to claim damages was definitively dealt with in *Economic Freedom Fighters and Others v Manuel*<sup>1</sup>. The SCA held that the determination of the quantum of damages must take place after oral evidence has been led. Accordingly, it is the trial court that can adjudicate the claim for damages, not motion court as argued by the applicant.

[11] I find that the Applicant has failed to establish a cause of action against the respondent, and accordingly, the Applicant falls to be dismissed with costs,

## **ORDER**

[12] In the result the following order is made:

1. The application is dismissed with costs including the costs of the postponement on 8 December 2020.



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**K.E. MATOJANE**  
*Judge of the High Court*  
*Gauteng Local Division, Johannesburg*

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<sup>1</sup> 2021 (3) SA 425 (SCA) (17 December 2020).

<b>Heard:</b>	19 October 2021
<b>Judgment:</b>	21 October 2021
<b>For Applicant:</b>	H.T. Abnett (sole director)
<b>Instructed by:</b>	(Self Representing)
<b>For Respondent:</b>	J Booyse
<b>Instructed by:</b>	Keith H Lang