

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

CASE NO: 45582/2021

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.
28 April 2022.

In the matter between:

MATRIX WAREHOUSE (PROPRIETARY) LIMITED

Applicant

And

Ras,Nicolette

Respondent

JUDGMENT

CRUTCHFIELD J:

[1] The applicant is Matrix Warehouse (Proprietary) Limited, a company trading in electronics, hardware, information technology and related services. The respondent is Nicolette Ras, a real estate agent allegedly trading as Rawson Property Group.

[2] The applicant claims the following relief:

- 2.1 Restoration of the possession of the Hyundai Electra motor vehicle having registration letters and numbers [...] ('the vehicle') to the applicant;
- 2.2 Removal of all 'Rawson Property' paraphernalia and branding from the sides, back and front of the vehicle;
- 2.3 That the respondent reimburse the applicant for any outstanding traffic fines incurred whilst the vehicle was in the respondent's possession; and
- 2.4 That the respondent pay the costs of the application.

[3] The respondent opposes the application. It is common cause that the applicant is the owner of the vehicle. The applicant alleges that one Justin Lowe ('Lowe'), a former director of the

applicant, was involved in leasing the vehicle to the respondent in terms of a written agreement of lease for a three-month period (the 'lease').

[4] The respondent admits that she signed the document comprising the agreement of lease but denies the terms thereof. The lease document was signed on behalf of the applicant by one Mr S Swart ('Swart'), the deponent to the applicant's affidavits in this application.

[5] The material terms of the lease alleged by the applicant included that the respondent would pay R4 000.00 per month for use of the vehicle, the respondent would be liable to service and maintain the vehicle and be liable for payment of any traffic fines incurred in respect of the vehicle whilst in her possession. In addition, the respondent would pay for her petrol used by her and return the vehicle to the applicant upon termination of the three-month period.

[6] It is evident from the document comprising the lease agreement that it is the applicant's standard document used to allow its employees use and the lease of a vehicle.

[7] The respondent took possession of the vehicle on 3 March 2021.

[8] The applicant alleges that the respondent has not paid the sum of R4 000.00 per month for her use of the vehicle, that she failed to return the vehicle to the applicant upon expiry of the three-month duration of the lease, that she failed to pay the traffic fines incurred by her whilst the vehicle was in her possession and that she branded the vehicle on the sides, front and back thereof with 'Rawson Properties' branding. Accordingly, the applicant cancelled the agreement.

[9] As stated, notwithstanding termination of the three-month period and demand made on behalf of the applicant for the return of the vehicle, the respondent remains in possession thereof.

[10] The respondent admits that the vehicle was arranged for her use by Lowe but she relies upon what she terms the 'true facts', being facts other than those alleged by the applicant. Those alleged 'true facts' included that Lowe was in effect a remarkably generous man whom the respondent met on 9 February 2021. Lowe allegedly had four immovable properties that he wished to sell and in respect of which he gave the respondent mandates to do so.

[11] Lowe allegedly wished to assist the respondent 'get on her financial feet'. Lowe allegedly gave the respondent cash of R3 000.00 on 10 February 2021, having met her the day before, as well as on other occasions.

[12] The respondent alleges that Lowe afforded her the use of the vehicle to assist her in her estate agency work and to enable her to conduct her duties, that Lowe said the respondent could brand the vehicle and use it for her personal needs.

[13] In effect, the terms relied upon by the respondent are far removed from those alleged by the applicant and from the document signed by the respondent.

[14] The respondent admits that Lowe informed her that the vehicle belonged to the applicant and that she needed to sign a document to meet the applicant's internal requirements, which she did on 3 March 2021, being the written lease agreement aforementioned, notwithstanding that she was not an employee of the applicant.

[15] According to the respondent, Lowe assured her that she could use the vehicle until she could afford to purchase her own, free of payment to the applicant for the use of the vehicle.

[16] Lowe allegedly informed the respondent that he had 'sorted everything out' with Swart on behalf of the applicant and Swart signed the lease on behalf of the applicant.

[17] Insofar as Lowe allegedly informed and obtained Swart's consent to the respondent's alleged use of the vehicle on the terms alleged by the respondent, that contradicts directly with the respondent's assertion that Swart had no knowledge of the alleged 'true facts' on which the respondent relied. No proof of the alleged 'true' agreement was provided by the respondent, not even an email communication between her and Lowe. The applicant denied the alleged 'true' or alternate agreement relied upon by the respondent and indeed, Swart, not Lowe, represented the applicant in concluding the lease agreement.

[18] The written lease is the sole agreement concluded by the applicant in respect of the use by the respondent of the vehicle. No other agreement was concluded by the applicant.

[19] These are motion proceedings. Such proceedings are determined on the probabilities.¹

[20] The first issue however is whether there is a dispute of fact such that the application must be referred to a hearing for oral evidence as alleged by the respondent.

[21] The applicant operates a business. Its purpose is to render a profit. The probabilities of the applicant making a vehicle available for use by a virtual stranger at no cost to the user for an

¹ *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA).

indefinite period of time, are so remote as to be improbable, unrealistic and unreasonable such as to be rejected without anything further, in terms of the decision of *Wightman t/a JW Construction v Headfour (Pty) Ltd & Another*.²

[22] Furthermore, the vehicle is obviously of economic value to the applicant, which value is reducing in the light of the respondent's use of the vehicle together with her failure to service the vehicle in terms of her obligations under the lease agreement. This is yet a further indication of the improbability of the respondent's version.

[23] Moreover, whatever the relationship between Lowe and the respondent, the inescapable fact is that the vehicle belongs to the applicant. The applicant terminated the respondent's right to possession of the vehicle and is entitled to the return or restoration of possession of the vehicle to the applicant.

[24] In the circumstances, I am of the view that the applicant demonstrated the requisite requirements for a *rei vindicatio*³ and that the applicant is entitled to restoration of possession of the vehicle as claimed by the applicant in the notice of motion to this application.

[25] As regards the costs of this application, there is no basis to order anything other than that the costs follow the merits. There is no reason for a special or punitive order in respect of costs against the respondent in this matter.

[26] By virtue of the aforementioned, I grant the following order:

1. Restoration of possession of the Hyundai Elantra motor vehicle, registration letters and numbers [...], to the applicant.
2. The removal of all 'Rawson Property' paraphernalia and branding from the sides, back and front of the vehicle by the respondent prior to restoration of the possession of the vehicle to the applicant.
3. The respondent is ordered to reimburse the applicant for any outstanding fines incurred whilst the vehicle was in the respondent's possession.
4. The respondent is to pay the costs of this application.

² *Wightman t/a JW Construction v Headfour (Pty) Ltd & Another* 2008 (3) SA 371 (SCA) at 375 – 376.

³ *Chetty v Naidoo* 1974 (3) SA 13 A.

I hand down the judgment.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 28 April 2022.

COUNSEL FOR THE APPLICANT:

Ms R Orr.

Bailie Janke Snyman Attorneys.

COUNSEL FOR THE RESPONDENT:

Mr R Kok.

INSTRUCTED BY:

Leon JJ Van Rensburg Attorneys.

DATE OF THE HEARING:

25 April 2022.

DATE OF JUDGMENT:

28 April 2022.