

**IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA**

3/5/16

CASE NUMBER: 64614/2013

Not reportable

Not of interest to other judges

Revised.

In the matter between:

SA TAXI SECURITISATION (PTY) LTD

Applicant

and

NETSHIDZIVHE, DOREEN TAKALANI

First Respondent

NETSHIDZIVHE, DOREEN TAKALANI N.O.

Second Respondent

JUDGMENT

BRENNER AJ

1. This is an application for the vindication of a Toyota Quantum motor vehicle ("the vehicle"), by the applicant, qua owner, against the first and second respondents, who remain in possession of same. The claim is based on the rei vindicatio.

2. On 4 April 2016, the respondents served a supplementary opposing affidavit in the application. At the hearing on 25 April 2016, the applicant's Counsel preferred no

objection to the introduction of this affidavit, for the sake of finality, and it was so admitted.

3. Possession of the above vehicle was given to the late husband of the first respondent, namely, Ratshilumela Gideon Netshidzivhe, ("the deceased"), in terms of a written lease agreement executed in March 2008 ("the lease"). In terms of clause 3.1 of the lease, it is recorded that the applicant shall at all times remain the owner of the vehicle.

4. The deceased passed away on 8 September 2011. On 21 September 2011, his surviving spouse, being the first respondent, was appointed the executor in his estate. She is now cited in this application as the second respondent, *nomine officio*, qua executor.

5. On 7 May 2013, the applicant had issued Summons out of this Court for vindicatory relief against the first respondent. The action was withdrawn on 11 September 2013 for want of jurisdiction at the relevant time.

6. The present application was issued out of this Court on 28 October 2013. In the founding affidavit, it is asserted by the applicant that, as at 24 October 2013, the capital, arrears and interest on the vehicle amounted to the sum of R190 524,18.

7. Included with the vindicatory relief was a prayer for an order rectifying the lease by the substitution of the description of the vehicle as a "Cam Inyathi 15 seater" with the description "Toyota Quantum", based on an error common to the parties.

8. The application was opposed. The opposing affidavit, served on 2 April 2014, containing the various points in limine mentioned below, as also a challenge to the authority of the deponent to the founding affidavit, Valerie Veliades ("Veliades").

9. On the merits, the first respondent says the following. She admits having possession of the vehicle. She admits that the lease is binding on the parties, despite the error in the description of the vehicle. She avers that the applicant never demanded the return of the vehicle neither did she refuse to hand it over to the applicant. She

contends that she approached the applicant in November 2011 for a settlement figure but the applicant did not want to conclude an agreement with her or to discuss anything relating to the vehicle. According to her, "the amount escalated because the Applicant did not want me to settle it nor to pay the monthly instalments until its legal department dealt with the matter."

10. In its reply, the applicant provides documentary proof of the authority of Veliades, and generally disputes any allegations at variance with the contents of the founding affidavit.

11. The issues in casu were the following, namely: whether this Court had jurisdiction over the case, whether the applicant should have joined the respondent as executor in the estate of the deceased, whether the applicant could apply to rectify the correct description of the vehicle, and, based on new facts introduced by the supplementary affidavit, whether the applicant was entitled to vindicate the vehicle in the face of alleged payments already made and its alleged refusal to render a full statement of account to the respondent.

12. As will be seen from what follows below, the points in limine fell away, leaving only the defence on the merits to be addressed.

13. Concerning jurisdiction, the first respondent avers that she resides in Thohoyandou, in the Limpopo province, this under the Superior Courts Act, 10 of 2013, which commenced on 23 August 2013 ("the Act"), and that proceedings should have been launched out of the "Thohoyandou High Court".

14. This point is without substance. In terms of sections 50(1)(h), and 50(2) of the Act, this Court had jurisdiction over Thohoyandou from 23 August 2013, pending publication of a notice to the contrary. On 15 January 2016, such notice was published, and the Limpopo High Court was given jurisdiction over actions instituted within its designated area, this from 25 January 2016. Therefore, in respect of actions, which would ordinarily have fallen within the jurisdiction of Limpopo, instituted between 23 August 2013 and 25 January 2016, the North Gauteng High Court retained such jurisdiction. In argument before this Court, the respondents' attorney abandoned the

defence based on jurisdiction and was well advised to do so.

15. On 22 May 2014, the applicant gave notice to the first respondent of its intention to amend its notice of motion by the inclusion of her in another capacity, qua executor in the estate of the deceased, and therefore citing her as the second respondent. The notice to amend was not opposed and the amended notice of motion was served.

16. On 16 March 2015, by consent between the parties, the lease was rectified to reflect the correct description of the vehicle as a Toyota Quantum. An order to this effect was granted. A previous order granting default judgment in addition to rectification on 16 March 2015 was recalled, on the appearance of the respondents' representative. Both Counsel for the applicant and the attorney for the respondents confirmed this in argument before Court. By necessary inference, the first respondent had plainly accepted the joinder of herself as second respondent, because only the representative of the estate had the authority to consent to an order rectifying an agreement to which the deceased had been a party.

17. The supplementary opposing affidavit, summarised, persists with the various points in limine and contains the following averments concerning the merits. It is averred that the first respondent had asked for a settlement figure on the vehicle since November 2011, to no avail. Her offer to pay the applicant the sum of R90 000,00 in final settlement was rejected.

18. The vehicle had not been used as a taxi since the death of the deceased, its licence had expired and could not be renewed, and therefore no income had been generated. It had remained parked since his death. The deceased had been able to pay the instalments while the vehicle was used as a taxi.

19. In her view, the applicant should have discussed the matter with the first respondent before resorting to litigation and incurring legal costs and claiming further interest. The applicant had not provided her with a breakdown of how the sum of R225 996,85 had been computed. I interpose to mention that this is not the amount mentioned in the application.

20. She alleges that the deceased had already paid to the applicant the sum of R306 830,00 in respect of the vehicle before his death. This in addition to the initial deposit of R50 000,00. The estate would be severely prejudiced if the vehicle had to be returned to the applicant in the face of the offer to pay the sum of R90 000,00.

21. The registration certificate indicated that the estate is the owner of the vehicle while the applicant is reflected as the title holder. In her submission, a title holder cannot have more rights than the owner.

22. It merits mention that the first respondent produces proof of payment of the sum of R90 734,32 by way of a deposit slip and R 139 361,00 by way of a bank statement of the deceased. But these payments are alleged by her to be for two other vehicles leased by the deceased from the applicant. These vehicles are not part of the claim in the instant case.

23. She does not provide proof of payment of the sum of R306 830,00 for the vehicle forming the subject-matter of the claim in this case. Since she was able to produce documentary proof of payment for two other vehicles, it appears inherently improbable that she would have had difficulty in producing documentary proof of payments made for the vehicle in this application.

24. None of the allegations raised by the respondents gives rise to a sustainable legal defence.

25. In terms of the lease, the deceased agreed that the applicant was the owner of the vehicle. This is corroborated by the registration certificate. The applicant has averred that the sum of R190 524, 18 was owing by the estate as at 24 October 2013. There is no proof to the contrary, apart from the unsubstantiated and rather dubious allegation by the respondents that the sum of R306 830,00 was paid. No proof of payment is provided. The applicant was not obliged to accept the first respondent's offer, nor to negotiate with her in her personal capacity. The applicant had no duty to discuss the matter with the respondents before resorting to litigation.

26. Neither the first respondent, in her personal capacity, nor the second respondent,

in her capacity as executor in the estate, has proved a legal basis for retaining possession of the vehicle.

27. The applicant is entitled to the relief sought by way of the rei vindicatio.

28. In the result, the following order is made:

a. the respondents are ordered to return to the possession of the applicant a certain vehicle being a Toyota Quantum with engine number [...] and chassis number [...] ("the vehicle");

b. the sheriff of the above Court, or his lawful deputy, or the sheriff appointed for the district of Thohoyandou, is authorised, directed and empowered to attach, seize and hand over the vehicle to the applicant;

c. the first respondent, in her personal capacity, is directed to pay the costs of the application.

BRENNER AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

3 May 2016

Appearances

Counsel for the Applicant: Advocate JH Mollentze

Instructed by: Marie-Lou Bester Inc

Counsel for the Respondent: Attorney MP Sebola

Instructed by: Attorneys MP Sebola Inc