



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

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. <i>yes</i>
<i>16/8/16</i>	<i>[Signature]</i>
DATE	SIGNATURE

16/8/16

Case no. 57991/2016

In the matter between:

ZO Abdullah

Applicant

and

The Station Commander of the

Pretoria West Police Station

First Respondent

Crazy Motor Din CC

Second Respondent

Minister of Safety and Security

Third Respondent

JUDGMENT

RABIE, J

1. The applicant launched an urgent application for an order directing the first respondent to return her VW Polo motor vehicle and to ensure that the vehicle is

not marked as a stolen and recovered vehicle. Costs were claimed from all the respondents.

2. The first and third respondents did not oppose the application but the second respondent did. The applicant, firstly, alleged that the first respondent is in the unlawful possession of the vehicle. She also relied on her right as owner to claim the vehicle.
3. As background the applicant stated that during October 2015 she wanted to buy a vehicle for her personal use. Her brother was in the business of buying and selling motor vehicles and he succeeded in sourcing the particular vehicle from the second respondent who is in the business of selling vehicles and with whom he had had a long business relationship. The applicant says that her brother concluded an agreement with the second respondent in terms of which he would pay for the vehicle in instalments whilst she would take possession thereof prior to the full purchase price having being paid. She stated that she took possession at the end of October 2015. Furthermore that her brother had made payment for the vehicle through one of his companies. She stated that the full purchase price of R87,000 had been paid during October and November 2015.
4. The applicant also referred to a invoice furnished by the second respondent to her brother reflecting that the vehicle had been "fully settled". This document was dated 27 November 2015. The applicant thus concluded that she is the owner of the vehicle. The vehicle has also been registered in her name.
5. On 19 July 2016 two members of the SAPS attended her home and advised her that the vehicle had been reported stolen by the managing member of the second

respondent who had stated that the vehicle had been stolen from him by her brother. They intended to confiscate the vehicle. The applicant stated that for a number of reasons she decided to tender the vehicle over to the SAPS. The vehicle is presently stored at the SAPS impound in Pretoria.

6. The applicant alleged that the conduct of the second respondent and also that of the first respondent was unlawful. The applicant's claim is for final relief.
7. The second respondent filed an answering affidavit wherein the deponent to the affidavit on behalf of the second respondent, Mr R. Abdulla, disputed the claim of the applicant. I shall very briefly refer to his version. He stated that he and the brother of the applicant had had a long business relationship but that during or about July 2015 this relationship started to encounter problems. He stated that in the period July to November 2015 the brother purchased a total of nine vehicles from the second respondent of which one of the vehicles was the one which forms the subject of this application. He stated that the brother failed to make full payment of the vehicles purchased from the second respondent. The deponent referred to the vehicles and the amounts paid and the balances outstanding. He further referred to three VW Polo vehicles of which the one in issue, was one of the three. He stated that the initial agreement was that the brother would pay for these vehicles by supplying the second respondent with three Toyota vehicles the value of which would be set off against the value of the three Polo vehicles. However, the Toyota vehicles were never tendered by the brother and accordingly the brother remained indebted to the second respondent to the amount of R 365 000, 00 in respect of the three Polo vehicles.

8. The second respondent stated that the brother is currently indebted to himself and/or the second respondent in the cumulative amount of R1 875 000, 00 in respect of all nine vehicles.
9. He further stated that during or about November or December 2015 and after he had confronted the brother in respect of the monies owed, the brother agreed to pay the outstanding monies by means of post dated cheques which were purportedly issued in the name of one of his companies. This company was 101 Twenty Nkosi Trading Pty Ltd. However, during January 2016 when the deponent attempted to bank the first of these cheques, he was informed by the bank that the account had been closed. He also later established that the brother had no connection with this particular company.
10. In any event, the deponent immediately confronted the brother in respect of the dishonoured cheque whereupon the brother furnished him with a new series of 15 post dated cheques in the amount of R125 000,00 each, issued purportedly by another of the entities in which the brother had an interest namely Blue Bean Trading Enterprises 197 CC. The first of these cheques were payable on 31 May 2016. The cumulative amount of these cheques was R1 875 000,00 and related to all nine vehicles sold to the brother, including the Polo vehicle in question.
11. The deponent stated that he accepted the cheques in good faith and accepted the brother's explanations and had no doubt that the brother would faithfully honour his obligations. The deponent suggested that an attorney be approached to document the arrangement and although the brother initially agreed thereto, he eventually refused to sign the agreement stating that the cheques would suffice to confirm his indebtedness.

12. The deponent attempted to bank the first check on 2 June 2016 but it was returned marked "refer to drawer".
13. All attempts to have the vehicles returned to him came to nought and it was at this point that the deponent established that the initial checks issued by 101 Nkosi Trading were in fact not signed by the brother and that he was in fact not a director of that entity. The deponent stated that he became highly suspicious of the behaviour of the brother and accordingly during July 2016 reported the matter to the Pretoria West police station. He was informed that the brother's actions constituted fraud and that the motor vehicles could be impounded pending the outcome of the criminal investigation into the brother's conduct. It appears that such a charge was laid and the conduct of the police referred to above, namely to attach the Polo vehicle, resulted from this charge.
14. The deponent consequently denied that the applicant or her brother became owners of the vehicle and consequently that either of them could succeed with a rei vindicatio claim. He also noted that he cannot understand how the vehicle came to be registered in the name of the applicant since neither he nor the second respondent had signed a Notice of Change of Ownership which is a document required by the motor vehicle registration authority to be completed and signed by both the seller and the purchaser of a motor vehicle before registration in the name of a purchaser can be effected.
15. The deponent also stressed the fact that the Polo vehicle had not been paid for and that the brother thus never became owner of the vehicle and neither did the applicant.

16. As far as payments are concerned the deponent referred to the payments which were made during October and November 2015 whilst it is clear from a Whatsapp conversation that the discussions regarding the Polo vehicle only occurred on 22 November 2015. The vehicle was furthermore only purchased by the second respondent on 26 October 2015 and thus the first alleged payment for the vehicle which allegedly occurred on 13 October 2015, cannot be the truth.
17. As far as the invoice stating that the vehicle had been "fully settled" the deponent stated that this document was accepted in good faith and on the presumption that the three Toyota vehicles would be delivered to the second respondent as payment for the three Polo vehicles. At that point it was not considered that monetary payment would be made for the Polo vehicles. It is not necessary to further refer herein to the allegations and arguments on behalf of the parties.
18. As far as the applicant's allegation is concerned that the SAPS is in the unlawful possession of the vehicle because a warrant had not been obtained, the allegation cannot be sustained. On the applicant's own version she consented to the seizure of the vehicle and consequently the police officials were entitled to do so. The vehicle had thus been lawfully seized by the SAPS. Regarding the basis upon which the members of the SA PS seized the vehicle it is not known what the evidence was that was presented to them which prompted them to seize the vehicle. For this reason alone it cannot be found that the seizure was unlawful.
19. If the seizure by the police was lawful, the fact that the applicant may be the owner, does not assist her. I shall nevertheless address the issue of her alleged ownership. As far as the applicant's rei vindicatio claim is concerned the applicant claims final relief. The applicant thus bears the onus to prove on a

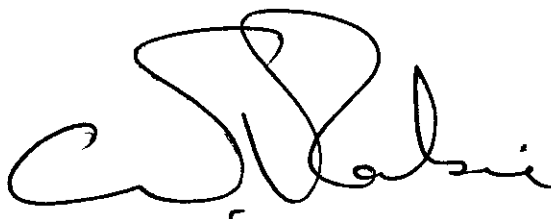
balance of probability that she is the owner of the vehicle. In her replying affidavit the applicant did not address the version of the deponent on behalf of the second respondent in any particular detail. She denied in general terms the conclusions drawn by the deponent on the facts presented by him and boldly stated that his defence is unsustainable and that she is the owner of the vehicle. She took the view that if there is a dispute between the second respondent or the deponent and her brother, such dispute has to be adjudicated separately and cannot affect her rights to the vehicle.

20. I disagree with this conclusion. According to the respondent, whose version I have to accept for purposes of this application, the vehicle was sold to the brother but since he had failed to pay the purchase price of the vehicle, ownership in the vehicle never passed to the brother. The applicant's title in and to the vehicle cannot be stronger than the title of her brother. On the second respondent's version the brother never obtained title in respect of the vehicle and consequently neither did the applicant. The deponent explained that he had been fraudulently induced to accept the first set of cheques in the place of the exchange of vehicles and that those cheques were not honoured. Furthermore, the second set of checks which were dated December 2015 and January 2016 were also not honoured. This version of the deponent was not rebutted by the applicant and neither did she rebut his version regarding the invoice indicating that the transaction regarding the Polo had been "fully settled". In the circumstances the applicant had failed to prove ownership of the vehicle.

21. It is not necessary for me to decide whether the brother had defrauded the brother or the second respondent or not or whether he had stolen the vehicle or

not. I have mentioned before that it is unknown what the evidence was upon which the police decided to seize the vehicle but on the assumption that the evidence was similar to that presented by the deponent to this court, I cannot conclude that the seizure had been unlawful.

22. In the result I am of the view that the application should be dismissed. As far as costs are concerned, there is no reason why costs should not follow the event.
23. In the result the following order is made:
 1. The application is dismissed with costs.

A handwritten signature in black ink, appearing to read 'C.P. Rabie', written over a horizontal line.

C.P. RABIE

JUDGE OF THE HIGH COURT