




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

CASE NO: 80288/17

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
16/01/2019 DATE	
 SIGNATURE	

In the matter between:

**MARKS & LAMB CLASSIC CARS CC**

APPLICANT

and

**MBULELO KONA**

RESPONDENT

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JUDGMENT

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**YACOOB AJ:**

### Introduction

- 1 The applicant, Marks & Lamb Classic Cars CC, placed a 1977 Mercedes Benz 450 SL ("the vehicle") for sale on consignment with Hamptons Exclusive Cars ("Hamptons"). The terms of the agreement between the applicant and Hamptons have not been disclosed by the applicant.
- 2 The respondent purchased the vehicle from Hamptons, for R395 000. The parties submitted in argument that Hamptons is in liquidation, although that allegation is not on the papers. The respondent alleges that the applicant informed him that Hamptons has not paid over the purchase price of the vehicle to the applicant. Hamptons is not a party to these proceedings. The applicant now makes application for a *rei vindicatio*.
- 3 The applicant's counsel submitted at the hearing that the question to be answered is who should bear the burden of Hamptons having sold the car to the respondent without paying the purchase price over to the applicant. In light of the view I have taken of the matter this is an apt but unfortunate way of articulating the issue.

### The Applicant's Case

- 4 The applicant's case is that it is still the owner of the vehicle because it has retained the registration papers, that the respondent is in possession of the vehicle, and that the applicant, as owner, is entitled to regain possession of the vehicle.

### The Respondent's Case

- 5 The respondent's case is that it purchased the vehicle in good faith from Hamptons, and that the applicant is estopped from vindicating the vehicle because the applicant represented either that Hamptons was the owner or that Hamptons had the power to sell the vehicle by allowing the vehicle to be displayed for sale with no caveats on Hamptons' shop floor.
- 6 For obvious reasons the respondent was not able to plead the exact basis on and circumstances in which the vehicle was displayed for sale, as this was in the sole knowledge of the applicant and Hamptons.
- 7 The respondent admits that the applicant is still in possession of the registration papers.

### The Issues

- 8 The applicant takes the view, and has submitted to this court, that it has alleged and proved all that it needs to allege and prove in order to regain possession of the vehicle, that is, that it is the owner of the vehicle and that the respondent is in possession of it. It is, according to the applicant, for the respondent to prove otherwise.
- 9 The respondent submits that it has pleaded a clear enough case for the court to find that the applicant is estopped from claiming vindication of the vehicle.



- 10 The applicant, on the other hand, contends that the respondent has not, because the basis of the estoppel is unclear. That is, it is not clear whether the respondent's case is that the applicant represented that Hamptons was the owner of the vehicle, or whether the representation is that Hamptons had authority to sell the vehicle, or that Hamptons itself represented that it was the owner of the vehicle.
- 11 It is common cause that the vehicle is in the possession of the respondent. Assuming for the moment that the applicant has in fact proved that it is the owner of the vehicle, it is the applicant alone who has the knowledge of how the vehicle came to be displayed on the shop floor of Hamptons. The applicant's representatives are aware of this. They are also aware that the respondent could have had no knowledge at the time of the transaction of the basis on which the vehicle was displayed, unless Hamptons made him aware of that basis.
- 12 The applicant also does not share with the court the details of the consignment agreement between itself and Hamptons, contenting itself with simply picking holes in the respondent's case, which is based on facts many of which are solely within the applicant's knowledge.
- 13 In its replying affidavit the applicant states that Hamptons "clearly was in a position to sell the vehicle on behalf of the applicant as agent, but such a representation is not relied upon". This shows the applicant's lack of *bona fides* in coming to this court. It is aware that it placed the vehicle with

Hamptons for sale as an agent. It is aware that that is a valid defence. It is aware that the respondent could not know the exact basis of the agreement between Hamptons and the applicant. Yet, it relies on the respondent not having pleaded what he did not know in order to submit that the respondent has no defence.

14 This approach cannot be rewarded by the courts. The court must look at the case as a whole, and the conspectus of the evidence as a whole in making its decision. The facts which emerge from the applicant's own papers, if one reads the founding and replying affidavits together, are that Hamptons acted as the applicant's agent and sold the vehicle to the respondent.

15 However, before dealing with the merits of the respondent's defence, the question must be answered whether the applicant remains the owner of the vehicle.

16 The possession of the registration papers is *prima facie* proof of ownership. However, the possession of papers is not conclusive proof of ownership. A motor vehicle is not immovable property, the sale and transfer of which is governed by statute. There is no requirement that the change of ownership of a motor vehicle be registered for transfer to take place.

17 The only statutory requirement regarding motor vehicles is that they be registered and licenced, in terms of the National Road Traffic Act, 93 of 1996. This does not regulate the transfer of ownership of motor vehicles.

The definitions of "owner" and "title holder" in the National Road Traffic Act make this clear – both refer to rights in terms of contract and the common law.

18 The applicant asks the court to infer from the fact that it retained possession of the registration certificate that the terms of its agreement with Hamptons permitted it to retain ownership until the certificate was handed over. However, despite conceding that there was a consignment agreement with Hamptons, and stating that Hamptons was in a position to sell the vehicle on behalf of the applicant as agent, the applicant fails to place before the court the terms of its consignment or agency agreement with Hamptons. Again, that is something that is purely within the applicant's own knowledge.

19 Nor does the applicant confirm explicitly and under oath that Hamptons has not paid it, or that the purchase price is still due to it by Hamptons. Without knowledge of the details of the arrangement between the applicant and Hamptons, it is difficult to conclude that Hamptons in fact owes the purchase price to the applicant, and that Hamptons did not have the power to transfer ownership to the respondent.

20 The applicant has simply alleged, as a legal conclusion, that it is the owner of the vehicle because it is in possession of the registration certificate. That is insufficient, particularly in the circumstances of this case, where the fact that the vehicle is in the respondent's possession is not a result of events of



which the applicant was unaware. The key event which led to the respondent possessing the vehicle is the applicant placing the vehicle for sale with Hamptons, on terms known only to the applicant. The applicant's reticence in these circumstances does not support a conclusion that ownership did not pass. It is therefore apt that the applicant bears the burden of Hamptons actions.

21 The applicant must both allege and prove ownership in order to succeed in these proceedings. In my view it has not proved ownership. The question of the nature of the representations made to the respondent, in order for the respondent to rely on estoppel to avoid the *rei vindicatio*, therefore does not arise.

22 In the circumstances, I make the following order:

The application is dismissed with costs.



**S. YACOOB**

ACTING JUDGE OF THE HIGH COURT

**COUNSEL FOR APPLICANT:**

**WJ DE BRUYN**

**APPLICANT'S ATTORNEYS:**

**HAJIBHEY-BHYAT INC**

**COUNSEL FOR RESPONDENT:**

**M BOIKANYO**

**RESPONDENT'S ATTORNEYS:**

**GQWEDE ATTORNEYS**

**DATE OF HEARING  
DATE OF JUDGMENT**

**11 SEPTEMBER 2018  
16 JANUARY 2019**