IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 29653/19
DOH: 3 – 5 August 2022

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.
2 September 2022

In the matter of:

MIT MAK MOTORS CC 2005/028211/23	**PLAINTIFF**
and	
BONGEKILE GIFT ZITHA	**FIRST DEFENDANT**
TREASURE KEVIN MCHUNU	**SECOND DEFENDANT**
CAPITEC BANK HOLDINGS LTD	**THIRD DEFENDANT**

JUDGEMENT

THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE CIRCULATED TO THE PARTIES BY EMAIL. THE DATE AND TIME OF HAND DOWN IS DEEMED TO BE 02 SEPTEMBER 2022

BAM J

1. The plaintiff is suing the defendants for the amount of R105 000. The amount was paid pursuant to an oral agreement concluded by the parties in April 2019 for the sale of a motor vehicle. Right at the point of concluding their oral agreement, the defendants handed the plaintiff the vehicle's registration certificate and signed a seller's declaration. With the seller's declaration, the defendants warranted to the plaintiff that they were at liberty to deal with the vehicle as they pleased. The full amount of R105 000 was paid to the defendants on the same day.

2. Soon after purchasing the vehicle, the plaintiff suspected that its VIN[1] may have been tempered with. An inspection by members of the South African Police Service, SAPS, confirmed the plaintiff's suspicions. The vehicle was impounded on the evening of the day of the sale. Further in-depth inspection by SAPS confirmed that the vehicle had been stolen and cloned, using the identity of an original vehicle owned by one Mr Booysen. The plaintiff seeks an order declaring the agreement of sale null and void and authorising the third defendant to debit or withdraw the amount of R105 000 from both defendants' bank accounts and pay it over to the plaintiff. For their part, the defendants dispute that the vehicle was stolen and cloned or that its VIN had been tempered with. They say the vehicle had been verified with the police prior to the sale and they had

[1] Vehicle Identification Number.

obtained a police clearance certificate after the sale. The defendants say that the allegations made by the plaintiff are conjured up with the purpose of tarnishing their reputation and defrauding them. They want the plaintiff to be held to the agreement.

A. THE PARTIES

3. The plaintiff is Mit Mak Motors CC, (Mit Mak), a car dealership registered as a closed corporation and incorporated in terms of South African law, with its principal place of business at Gerrit Maritz Street, Pretoria North, Gauteng. The first defendant, Ms Bongekile Gift Zitha (Ms Zitha) is an adult female. Her full and further particulars are unknown to the plaintiff. The second defendant, Adv Treasure Kevin Mchunu, (Mr Mchunu) is a practicing advocate. His details were also unknown to the plaintiff at the time of issuing summons. The first and second defendants are married to one another in terms of South African Customary law. The third defendant is not a participant in these proceedings. I shall, as far as possible, refer to the parties by their names.

B. BACKGROUND

4. The facts are largely common cause with the exception of a few issues. They are: On the morning of 4 April 2019, the second defendant, Mr Mchunu, advertised a vehicle, a Toyota Etios 1.5, a 2017 Model with VIN [....] and registration number [....] (the vehicle), on an auction site known as *weelee.com*. At a meeting held on the same morning and attended by Mr Danie Venter (Venter), the plaintiff's representative, Mr Mchunu and Ms Zitha, the vehicle was made available to Venter for inspection. The parties parted ways after the defendants had received notification of payment into the first defendant's account.

5. On his way back to the plaintiff's premises, Venter received a call from his employer, a man by the name Borislav Dimitri Petkov, (Bobby), to inspect the VIN by looking at certain specific areas. The outcome of that inspection revealed some anomalies. In particular, Venter reported that the sticker inside the left panel between the front and back seats, was peeling. As soon as the vehicle arrived at the plaintiff's

premises, it was inspected by members of the SAPS. Acting on its own suspicion that it may have bought a stolen vehicle, Mit Mak placed an immediate stop to the payment of its funds, a portion of which had, by then, been transferred to Mr Mchunu's bank account. The plaintiff subsequently followed up with an urgent application out of the Stellenbosch Magistrates court for an order to freeze the funds in both defendants' bank accounts, pending finalisation of the present claim.

Procedural matters: The application for postponement

6. It is now time to digress briefly and deal with the second respondent's application for postponement. This case was set down for 3 to 5 August. On the first day of trial, counsel for both sides reported to me that the case had been settled. It was a matter of conducting an inspection of the Booysen vehicle. In the event, it was found that the Booysen vehicle had the VIN [....], that would be the end of their dispute. For, it was agreed by the parties, that there can only be one vehicle with a VIN ending with 3572. In the event, the defendants would tender costs as specified by the parties and that would be the end of the matter.

7. By agreement, the matter stood to 4 August 2022. At the start of day two, subsequent to the inspection and confirmation that the Booysen vehicle indeed had the VIN ending with numbers 3572, counsel for the defendants announced his withdrawal from the matter, indicating that the defendants were no longer prepared to honour the agreement and were intent on proceeding with the trial. On record, and on behalf of the first and second defendants, Mr Mchunu, now without legal representation, made an application for a postponement from the bar on the basis that there were some documents which came to his attention on the first day of the trial and, during the inspection of the Booysen vehicle, certain information came to light. There was also a submission about witnesses who could not attend court.

8. Mr De Villiers, for the plaintiff, resisted the application, stating, *inter alia*, that the case had been settled and the terms were read out aloud, in court, with Mchunu present. Counsel sought leave to read the terms of the settlement into the record[2]. Responding to the statements regarding the emergence of new information during the inspection, Mr De Villiers stated that the new information had to do with the fact that the Booysen vehicle came into existence only in 2020. Mr De Villers said there was factual evidence to be led in relation to that aspect. As to the documents that were exchanged on the morning of the first day of the trial, Mr De Villiers confirmed that both sides had agreed to exchange some documents from SAPS and there was nothing new in the documents. In response to the settlement agreement, Mr Mchunu denied that the matter was settled. He also denounced any instructions to the defence counsel, Mr Swanepoel, to settle the case.

9. The test whether an application for postponement should be granted is the interests of justice[3]. It is significant that the first defendant was not present in court throughout the duration of the trial and Mr Mchunu did not proffer a word about her absence. The submission regarding witnesses who could not attend court was not properly substantiated in that neither the identity, the number, nor the nature of evidence the witnesses were intending to give was disclosed, much less the arrangements made to secure their attendance or the reasons they could not come to court. In *Shilubana and Others* v *Nwamitwa,* the Constitutional Court said:

> 'In *Lekolwane and Another* v *Minister of Justice and Constitutional Development,* this Court added the following factors to be considered in

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[2] By agreement between the parties, the trial set down for 3, 4 and 5 August 2022 will stand down till 4 August 2022 for the parties to inspect the Toyota Etios with VIN number [....].
The parties will make a video of the original VIN number during the inspection and if it is found that the said Toyota has the VIN number in prayer 1 supra, then by agreement the following may be made an order of court:
The First and Second defendants, jointly and severally…will pay the taxed or agreement party and party costs on High Court scale for the trial set down on 3 to 5 August 2022 as well as the preparation and wasted costs of the trial set down on 4 and 5 March 2021.'

[3] *Psychological Society of South Africa v Qwelane and Others* [2016] ZACC 48, paragraphs 30 to 31*; Myburgh Transport v Botha t/a S A Truck Bodies* [1991] (3) SA 310 @ 314 F- J; *Magistrate M Pangarker v Botha* (446/13) [2014] ZASCA 78 (29 May 2014), paragraphs 23-27.

granting a postponement: (1) the broader public interest; and (2) the prospects of success on the merits. The following factors could non-exhaustively be added to the above: the reason for the lateness of the application if not timeously made; the conduct of counsel; the costs involved in the postponement; the potential prejudice to other interested parties; the consequences of not granting a postponement; and the scope of the issues that ultimately must be decided.'[4]

10. In assessing the application for postponement, I had regard to, *inter alia*, Mr Mchunu's conduct, specifically, the validity or otherwise of his claims that he had not agreed to the settlement. On this score, I could find no compelling reason why both counsel would announce that a case had been settled and thereafter attend an inspection in terms of that settlement agreement, with the defence counsel being accompanied by his client, who is also an advocate if, as Mr Mchunu claimed, counsel had indeed been on a frolic of his own. I took into account the late timing of the application and the absence of explanation for the lateness, the paucity of information regarding the witnesses who did not attend court, the nature of issues to be determined and the defendants' prospects of success. In my considered view, the application was not well thought nor was it properly motivated. In short, I concluded that it was not in the interests of justice to grant the postponement. On that basis, I ordered the trial to continue. The trial proceeded notwithstanding Mr Mchunu's complaints about the alleged violation of his constitutional rights to legal representation and access to justice. In *Shilubana*, the court cautioned:

'At the hearing counsel admitted that he was unprepared to present his client's case, should the application for postponement be denied. He appeared to presume that the application would be granted – a presumption one makes at the peril of one's client.'[5]

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[4] (CCT 3 of 2007) [2007] ZACC 14 (17 May 2007), at paragraph 11; *Myburgh Transport v Botha t/a S A Truck Bodies* [1991] (3) SA 310 (Nm) at page 314 F-J; *M Pangarker v Arnold Botha and Christina Magdelena Botha* (446/13) [2014] ZASCA 78 (29 May 2014) at paragraph 25-27.
[5] Note 5 *supra*, at paragraph 15.

11. The principle highlighted in the *Shilubana, Myburgh Transport, and Pangakar* cases[6] is that a postponement is not there for the asking. It must be motivated.

C. ISSUES

12. The main issue in this case is whether the vehicle sold by the defendants to the plaintiff had been stolen and or cloned. This is a factual enquiry.

13. There is a secondary issue of the declaration that the agreement of sale was null and void. This is a legal enquiry.

D. THE LAW

14. Mostert, Badenhorst & O, say this of ownership:

> 'Only an owner has the most complete and absolute entitlement to his property. This understanding is linked to the principle of '*nemo plus iuris ad alium transferre potest quam ipse habere*t', which means, no one can transfer more rights than he has. In other words, no one has more rights in relation to a thing than an owner and, when an owner is dispossessed and the property is put in the hands of a third party, ownership remains intact. The person who purports to transfer ownership or derivative rights to the third party is unable to do so without the co-operation of the owner.'[7]
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> 'An owner is entitled to dispose of her property by way of sale, donation, or abandonment. In each case, specific requirements govern the transfer or

[6] See note 4 *supra.*
[7] *The Law of Property in South Africa*, 2010 Edition, Oxford University Press Southern Africa (Pty) Ltd, pages 91.

termination of ownership. Transfer of ownership can only be effected by the owner or duly authorised agent.'[8]

15. The principle that only an owner or their authorised agent may transfer ownership is elegantly illustrated in the case of *Dreyer NO and Another* v *AXZS Industries (Pty) Ltd,* where the Supreme Court of Appeal had the following to say:

> 'On the respondent's version of the facts, the same difficulty arises with reference to the real agreement. The sale of the company's assets was always subject to confirmation by the provisional liquidators and Vermeulen [the auctioneer] had no authority to transfer company assets otherwise than in terms of the deed of sale. In consequence, the real agreement relied upon by the respondent lacks one of its essential requirements because the alleged agent had no authority to transfer ownership of the movable things on behalf of their owners. This is the death knell of the real agreement.[9]

E. MERITS

(i) Plaintiff's case

16. The plaintiff's case was led through the evidence of three witnesses. They are: Mr Venter, the employee who placed the bid on the auction website and subsequently went to meet the defendants to purchase the vehicle, and two SAPS members, namely, Warrant Officer Lesley Robert Kovacs, and Sergeant Karen Kaltwassen. It is not my intention to canvass the evidence of these witnesses in minute detail save to state that at no stage was the defendants' version put to any of the plaintiff's witnesses. Some questions were posed to all three witnesses during cross examination. The essence of their evidence however, simply went uncontroverted.

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[8] Note 7 *supra* at page 95.
[9] (250/2004) [2005] ZASCA 88; [2006] 3 All SA 219 (SCA) (26 September 2005) at paragraph 22.

17. Venter began his testimony by confirming the events of the first day of trial when the settlement was reached in the presence of all the parties, including Mr Mchunu. As to the events of 4 April 2019, Venter testified about placing the bid, acting on behalf of his employer, Mit Mak, and thereafter meeting Ms Zitha and Mr Mchunu. I interpose that Mr Mchunu denies that Venter is the man he and the first defendant met on the day of the sale of the vehicle.

18. The following however, arising from Venter's testimony, was not contested:

(i) The vehicle's identification details[10].

(ii) The inspection conducted by Venter at the meeting place. Venter testified that he only looked at the body of the vehicle for dents, scratches and paint work. He also inspected the service book. He testified he had never before purchased a suspected stolen vehicle.

(iii) The vehicle's registration certificate[11].

(iv) The completion of the Seller's Declaration[12] by Venter, in his own handwriting, and the signatures of the first and second defendants thereon.

(v) The telephone call from Bobby to Venter while Venter was on his way back to the plaintiff's premises and Bobby's instruction that he inspect the VIN in specified areas.

(vi) Venter's discovery that the sticker inside the left panel between the front and back seats, recording the VIN, peeled off when he tried to peel it.

[10] See paragraph 7 of this judgement.
[11] Caselines F4 marked RC 1.
[12] Caselines F12.

(vii) The inspection by members of SAPS at the plaintiff's premises and the subsequent impounding of the vehicle.

(viii) The letter from Old Mutual Insure, (OMI)[13] to SAPS, dated 9 April 2019. This letter confirms the original details of the vehicle sold to the plaintiff as: Registration [....], Engine No. [....], and VIN [....]. The letter further confirms that the vehicle was stolen and a case was opened in Brooklyn Police Station. The vehicle belongs to OMI, following the settlement of Steyn's claim. Steyn at the time was the client who had lodged a claim with OMI, following the theft of the vehicle.

(ix) The letter issued by SAPS to the Chief Licensing Office, (CLO) in Waltloo[14], dated 11 April 2019, describing the vehicle sold by the defendants to the plaintiff. The letter confirms that the vehicle was stolen and that its identification details, namely, its license plate, engine number, and VIN[15] were false and that the vehicle was impounded on 4 April 2019. The letter instructs the CLO to deregister the vehicle from the plaintiff's name.

(x) Finally, Venter testified with reference to the notice in terms of Rule 41 (1)[16] served upon the defendants. This notice confirms that the issue of costs of preparation for trial scheduled 3 and 4 March 2021 would be argued on the day of trial.

18. During cross examination, there were questions posed to Venter which did not detract from the substance of his testimony. For example, on the proposition that Venter was not the same man the defendants met on the day of the sale, Venter asserted that the handwriting on the Seller's Declaration was his and after completing it, he gave it to the defendants to sign. This aspect of his evidence was not challenged. This then brings

[13] Caselines F30.
[14] Caselines F31.
[15] VIN MBJM28BTX02043572.
[16] Caselines C203.

to the end the second defendant's challenge that Venter was not the man he met on the day of the sale. In my view, Venter testified candidly. He did not appear to be making up answers to prop up the plaintiff's case in any way.

19. The second witness for the plaintiff, Warrant Officer Lesley Robert Kovacs, (Mr Kovacs) worked at the Vehicle Identification Unit of SAPS in Pretoria West at the time. He testified that during or about April 2019, he was asked to inspect an impounded vehicle. His description of the vehicle matched the vehicle sold by the defendants to the plaintiff. Testifying with reference to photographs[17] he took in the process of inspecting the vehicle, Mr Kovacs mentioned that the VIN inside the left panel between the front and the back seats, on the beam under the driver's seat, and on the front shield of the vehicle, appeared to have been tempered with. It appeared that to have been filed off and another number imposed on top of the original number. He applied a chemical in a process known as etching. It was after the application of the chemical that the vehicle's original identity became clear. He made a statement under oath confirming his findings. He further recorded the vehicle's correct identification details. He confirmed that the same vehicle had been reported at Brooklyn police station as stolen. The essence of Mr Kovacs' testimony was not challenged in any way. He was precise and clear. At no point did I get the impression that he was constructing a story. I have no hesitation in accepting his testimony.

20. The final witness called by the plaintiff is Sergeant Karen Kaltwassen. Sgt Kaltwassen testified that she works for SAPS and is located in a unit that inspects original vehicles. During January 2020, she met a certain Mr Booysen who had been referred to SAPS by the licensing authority. Booysen was unable to renew his vehicle license because there were two vehicles on the system with the same identity. The case was assigned to Kaltwassen. She testified that the cloned vehicle with the same VIN as the Booysen vehicle was already booked into the pound. Upon examining the Booysen vehicle, she confirmed that its identity was original. There were questions raised during cross examination which did not affect the essence of this witness' testimony. For

[17] N12,13,14, and 15.

example, she was asked to explain how one identifies a cloned vehicle. She responded that she neither inspects nor works with cloned vehicles. She works only with original vehicles. Ms Kaltwassen's evidence went without controversy. I found Ms Kaltwassen to be a credible witness. This marked the end of the plaintiff's case.

(ii) The defendant's case

21. Mr Mchunu was the only witness to testify for the defendants. Before I deal with Mr Mchunu's evidence, it is appropriate to first deal with the defendants' special plea of non-joinder and lack of monetary jurisdiction. In respect of the point of non-joinder of OMI, OMI has no interest in the relief sought by the plaintiff against the defendants. The question of non-joinder then does not arise and the special plea must fail. The fact that the amount of this claim falls within the jurisdiction of the Magistrates Court is not a basis in law to conclude that this court has no jurisdiction. The High Court has concurrent jurisdiction[18]. This point too must fail.

22. I had mentioned early on in this judgment that the defendants' version was not at any stage put to any of the plaintiff's witnesses. Although it is not necessary to give a chapter and verse account of Mr Mchunu's evidence in chief that was not put to the plaintiffs 'witness, a few but striking examples will suffice:

(i) That the vehicle had been given to him by a friend, one Mr Letsoalo, for helping the latter complete a tender document, which tender proved to be successful. He registered the vehicle under Ms Zitha's name because he had several outstanding traffic tickets.

(ii) That Venter had inspected the vehicle in front of the defendants by looking under the driver's seat, on the left panel between the front and back seats, and

[18] *The Standard Bank of SA Ltd and Others v Thobejane and Others* (38/2019 & 47/2019) and *The Standard Bank of SA Ltd v Gqirana NO and Another* (999/2019) [2021] ZASCA 92 (25 June 2021).

the windshield and Venter's announcement to the defendants that he was satisfactied that the vehicle was original.

(iii) That he, Mr Mchunu, received a call from Bobby, on the day of the sale, asking for the details of the previous owner of the vehicle. During that conversation, Bobby confirmed that everything was satisfactory. In response to the question about the details of previous owners, Mr Mchunu informed Bobby that he did not have information about the vehicle's previous owners; 'He did not keep it to heart', he said. I shall return to this statement.

(iv) Mr Mchunu's call to Venter and to Bobby, on the day of the sale, after the defendants had become aware that the plaintiff had put a stop payment on the moneys it had paid to the defendants; and

(v) The fact that the plaintiff was aiming at scamming the defendants and was assisted by some members of the SAPS. I should add that this was never pleaded by the defendants.

F. ANALYSIS, CONCLUSION AND DISCUSSION ON COSTS

Whether the vehicle sold to the plaintiff had been stolen

23. Apart from the fact that Mr Mchunu was not an impressive witness, it appeared during the trial that the defendants' case was premised on four computer printouts[19], with which he purported to prove that: (i) the vehicle had been out-pounded a few days after it was impounded; (ii) that the vehicle had been cleared after the sale to the plaintiff; and (iii) that the vehicle was still registered under Mit Mak's name. Mr Mchunu testified that he had accessed the printouts by asking favours from people he knew within SAPS, adding that he had never filed a criminal case in connection with this matter, nor had it occurred to him to join Mr Letsoalo in the matter as a co-defendant.

[19] Caselines F63-F66.

24. More than a year ago, the plaintiffs placed the four computer printouts in dispute. Still, Mr Mchunu made numerous attempts during the trial to rely on these printouts, without laying a basis and without any witness to testify as to the authenticity thereof. Those attempts were met with the plaintiff's objection, which I upheld. I should add at this point that the minutes of the pre-trial conference confirm that the printouts are disputed by the plaintiff. Mr Mchunu however, denied ever attending the pre-trial conferences. The denial cannot assist the defendants' case, for it is a salutary principle of long standing that a party is bound by the undertakings and agreements reached during pre-trial conferences[20]. That principle exists for good reasons. In the end, all that remained against the plaintiff's evidence was an allegation by the defendants that the vehicle had not been stolen.

25. I had indicated that I would return to Mr Mchunu's response to Bobby on the question of the previous owners of the vehicle. Mr Mchunu testified that he told Bobby that he did not have information about the previous owners. He did not 'keep it to heart'. During cross examination when Mr Mchunu was pressed[21] to state where he got the vehicle, he said it was a gift from Mr Letsoalo. It is difficult to understand why Mr Mchunu could not simply be upfront with Bobby, in 2019, when the details were still fresh in his mind. Even if the information had slipped from his mind temporarily, it is not clear why he did not go back to Bobby once he had refreshed his mind and provide the information, especially given that, on the very same evening and by his own version, Mr Mchunu had been informed by Bobby that the VIN of the vehicle he sold to the plaintiff had been tampered with.

26. The parties held three pre-trial conferences plus a special pre-trial conference in terms of this division's directives. The minutes of all the pre-trial conferences demonstrate that the defendants reneged on various occasions on their own undertaking to provide the plaintiff with the details of the vehicle they sold to the plaintiff

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[20] *Rademeyer v Minister of Correctional Services* (05/15044) [2008] ZAGPHC 141 (30 April 2008), para 4; *MEC for Economic Affairs, Environment & Tourism v Kruizenga* (169/2009) [2010] ZASCA 58 (1 April 2010)

[21] Mr Mchunu had first testified that the origins of where he got the vehicle were confidential

and the details of the witnesses they intended to call during trial. In respect of the vehicle, they were asked to provide the engine number and license plate details. This is not all that the defendants refused to provide. They plainly refused to provide details of the defendants' residential addresses. They also refused when invited to confirm whether Mr Mchunu was a practicing or non-practicing attorney or advocate.

27. When one considers the conduct of the defendants in refusing to provide critical information such as the details of the vehicle, their failure to ultimately secure the witnesses whose details they had neglected to provide, the first defendant's failure to attend court, the attempts made to have the trial postponed, evidenced by the last-minute application, it is difficult to understand what defence, if any, the defendants had against the plaintiff's case. The case put before the defendants is that they sold a stolen vehicle. They denied that the vehicle was stolen but failed to lead evidence to sustain that defence. The defendants could not even lead evidence to support their claims that the matter was removed by notice from the trial roll of 3 and 4 March 2021. The upshot of all of this is that there was no evidence to displace the plaintiff's evidence that the vehicle had been stolen and cloned. I find that the vehicle sold to the plaintiff is the Steyn vehicle, which was stolen and cloned using the VIN of the Booysen vehicle. At the time of selling the vehicle to the plaintiff, it was owned by OMI.

28. This means, according to the principle espoused in *Dreyer NO*[22]*,* the purported real agreement to transfer of ownership is defective in that the defendants lacked authority to transfer ownership. The transfer of ownership could never be achieved without the consent of OMI. The defendants' claims that the vehicle had been verified before and cleared after it was sold all came to nought as the defendants failed to lead evidence to support those claims. The defendants could not transfer a right they did not have[23]. On this basis alone, the plaintiff is entitled to the return of its money.

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[22] See note 8 *supra.*
[23] *Knox v Mofokeng and Others* (2011/33437) [2012] ZAGPJHC 23; 2013 (4) SA 46 (GSJ) (30 January 2012) paragraph 4; *Carlswald & Another v Brews* (245/2016) [2017] ZASCA 68 (31 May 2017), at paragraph 13.

29. This now brings me to the secondary issue of the declaration of the agreement of sale null and void. Bearing in mind the finding I have just made that the vehicle had been stolen and cloned and that at the time of sale it belonged to OMI, it follows that in signing the Seller's Declaration declaring to the plaintiff that the vehicle belonged to the defendants and that they had the right to do as they pleased with it, the defendants were incorrect. I find that the declaration signed by the defendants, in so far as the defendants declared they had a right to dispose of the vehicle, was false, and so were the details of the vehicle. Making the case for the declaration of the agreement null and void and the return of the plaintiff's money, the plaintiff, in addition to the evidence led, cited section 36 of the General Law Amendment Act[24]; and section 265 of the Criminal Procedure Act[25] on possession of suspected stolen property. I am not persuaded that it is necessary to canvass these provisions in any detail given the findings I have made on the false details of the vehicle at the time it was sold to the plaintiff; the false declarations made by the defendants to the plaintiff; and on the question of the real agreement to transfer ownership, its defective nature. The plaintiff is entitled to the return of its money and the declaration of the agreement as null and void.

30. Finally, I must record my disappointment with the defendants' conduct in this matter. I am referring in this regard to Mr Mchunu's conduct in scuppering the settlement at the last minute, leading to the withdrawal of the defence counsel. The defendants must have appreciated the challenge they were up against, that the plaintiff sought to recover the money it had paid on the basis that, ultimately, it did not get what it had paid for. Thus, the conduct of amassing computer printouts informally, through contacts who could not come to court to testify, to make a foundation of the defendants' defence, was doomed from the start. I have already expressed my reservations on whether the defendants had any defence at all to this case and grounded those reservations in matters evidenced by the record. The plaintiff had asked for punitive costs. I am persuaded that this is an appropriate case to award costs on an attorney client scale.

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[24] Act 62 of 1955.
[25] Act 51 of 1977.

G. ORDER

31. The plaintiff's case is upheld.

1. The third defendant is hereby ordered to transfer or withdraw from the first and second defendants' bank account, the full amount of R105 000 and pay it to the plaintiff's attorneys' trust account.

2. The first and second defendants are hereby ordered to pay, jointly and severally, the one paying the other to be absolved:

(i) Interest on the amount of R105 000 at the rate of 10.5% per annum from 5 April 2019 to date 30 April 2022; Interest at the rate of 7.75% from 1 May 2022 to date of full payment;

(ii) The defendants shall pay the plaintiff's costs on a scale between attorney and client. This includes the costs of the urgent application launched out of the Western Cape Magistrates Court under case number 466/19.

(iii) The defendants must pay the wasted costs of 3 and 4 March 2021.

NN BAM
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

APPEARANCES

PLAINTIFF'S COUNSEL: **ADV DE VILLIERS**

Instructed by:	DENEYS ZEERDEBERG ATTORNEYS
DEFENDANTS' COUNSEL:	**ADV MCHUNU**
Instructed by:	NDUBANE ATTORNEYS
	PRETORIA