



Republic of South Africa

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**CASE No: A 432/09**

In the matter of

**HEYDENRYCH CARS CC  
t/a Joe's Cars Sales**

**Appellant**

**and**

**THE PROVINCIAL COMMISSIONER, SOUTH AFRICAN  
POLICE SERVICES, WESTERN CAPE**

**First Respondent**

**THE STATION COMMANDER, SOUTH AFRICAN  
POLICE SERVICES, STIKLAND**

**Second Respondent**

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**JUDGMENT DELIVERED : 21 APRIL 2010**

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***MOOSA, J:***

**Introduction:**

[1] On 18 March 2008 **Allie J**, *inter alia*, made the following order:

*“Third Respondent shall allocate a new engine number and chassis number to the vehicle subject to due compliance with regulation 56 of the National Traffic Regulations, 2000.”*

[2] In pursuance to such order, Appellant brought an application for contempt of court against Third Respondent on the basis that he has failed to comply with such order. On 13 March 2009, **Matojane, AJ** dismissed the application on the ground that the appellants had failed to “to prove the requisites of contempt, more particularly wilfulness and *mala fides* beyond reasonable grounds”.

[3] The appellant comes on appeal to the full bench of this division against the judgment of **Matojane, AJ**. In the absence of **Matojane, AJ**, leave to appeal was granted by **Zondi, J** on 8 June 2009.

#### **The Contempt of Court:**

[4] At the commencement of the hearing before us, Adv **Möller**, who appeared for the appellant, indicated that the object of the contempt proceedings was essentially to obtain compliance with the order of **Allie, J**.

[5] It is common cause that Third Respondent has not complied with the court order of **Allie, J**. His justification was that the order was conditional upon Appellant complying with regulation 56 and that it had failed to comply therewith in that it had not established that it was the title holder of the vehicle as defined in the regulations.

[6] The Appellant, on the other hand, contended that, as a matter of law and fact, the order of **Allie, J** implies that it was the title holder because absent of such implication, **Allie, J** would not have made the order compelling Third Respondent to allocate a new engine and chassis number.

### Interpretation of the Court Order:

[7] The issue, therefore, revolves around the interpretation of the court order of **Allie, J.** It is common cause that **Allie, J.** did not make a formal finding that the Appellant was the title holder of the vehicle in question. However, the court *a quo* in finding in favour of the Third Respondent said the following:

*“In my view the mischief that the legislature sought to prevent in requiring a title holder to tender the vehicle in terms of Regulation 56(4) is to ensure that a thief after tampering with an engine and/or chassis number will not be able to tender the vehicle to the police for new numbers. It follows that Third Respondent is correct in insisting that the applicant must satisfy it by means of accurate records that it is the lawful title holder of the engine and/or chassis before it is issued with new numbers in terms of Regulation 56.”*

[8] It is clear from the above passage that the court *a quo* found favour with the interpretation placed by Third Appellant on the court order of **Allie, J.** That being so, can one say that the interpretation placed by Third Respondent is wrong, unreasonable or not *bona fide*? If that is the case, can Third Respondent be guilty of contempt of court?

### The Definition of Contempt of Court:

[9] Civil contempt has been defined as the wilful and *mala fide* refusal or failure to comply with an order of court (**Consolidated Fish Distributors (Pty) Ltd v Zive** 1968 (2) SA 517 (C); **Clement v Clement** 1961 (3) SA 861 (T) at 866 and **HoltZ v Douglas & Associates (OFS) CC** 1991 (2) SA 797 (O) at 802B. Consistent with such definition the

test for contempt of court has been set out in **Fakie N.O. v CC11 Systems (Pty) Ltd** 2006

(4) SA 326 (SCA) at para [9] as follows:

*“The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed ‘deliberately and mala fide’. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith.”* (Reference to authorities has been omitted.)

#### **The Onus of Proof:**

[10] The onus is on the applicant (and in this case on the Appellant) to establish the requisites of contempt, in particular the elements of wilfulness and *mala fides* beyond reasonable doubt. The applicant is assisted in that regard by the evidential burden which is placed on the respondent (and in this case on the Third Respondent) to show, on a balance of probabilities, that the refusal and/or failure to comply with the court order is not wilful or *mala fide* (**Fakie N.O. v CC// Systems (Pty) Ltd** (*supra*) at para [22] and **Clement v Clement** (*supra*) at 866A).

#### **The Finding:**

[11] In view of the different interpretations given to the import and effect of the court order of **Allie, J**, and Third Respondent having acted in pursuance to his particular interpretation by insisting that the Appellant furnish proof that it is the title holder of the

vehicle, I cannot conclude that Third Respondent's failure to comply with the court order of **Allie, J** was deliberate and *mala fide*. In my view the Appellant has not succeeded in showing, beyond reasonable doubt, that Third Respondent is guilty of contempt of court.

### **The Additional Relief:**

[12] However, that is not the end of the matter. The Appellant in its papers also asked for additional relief, namely:

*“(d) Dat die derde respondent beveel word om onverwyld, maar nie later as 15 Augustus 2008 ’n nuwe voertuigidentifikasienommer (VIN-nommer) en enjinnommer ten opsigte van die voertuig met voertuigregisternommer PCW 456A en registrasienommer CF70733, behorende aan die applikant, uit te reik.”*

[13] The relief sought by the Appellant in its papers was couched in the form of a rule *nisi* and in prayer 3, Appellant asked that the order in terms of prayer (d) be made an interim order pending the return date. It does not appear that the matter was handled on an interim basis. The order made appeared to have been final in form. It also appears that the relief sought in paragraph (d) got lost in the process. Although there is a nexus between the relief sought in prayer (d) and prayer (c), prayer (d) can also stand on its own because it was also coupled to an interim order. The relief sought in prayer (d) is in the form of an interdict.

[14] The court *a quo*, after dismissing prayers (a), (b) and (c), which essentially dealt with the relief in respect of the contempt proceedings, omitted to deal with the relief sought in prayer (d) in its final form. This court can either refer the matter back to the court *a quo* to deal with the matter or this court can deal with the matter. I think that this court is in as good a position as the court *a quo* to deal with the matter. All the facts upon which a decision has to be made are before us. Unnecessary delay will ensue should we refer the matter to the court *a quo*. In the circumstances, I am of the view that it would be appropriate and proper for this court to adjudicate upon the issue.

#### **Evaluation:**

[15] It appears that the issue of the title holder has reached an impasse between the Appellant and the Third Respondent. It is common cause that Appellant is the registered owner of the vehicle as evidenced by the registration certificate. The uncontested evidence is that the body shell of the vehicle was replaced as far back as 1995 and the chassis plate was transposed to the new body shell. The vehicle was sold and transferred onward to five different owners and eventually acquired by the Appellant in June 2006. The Appellant thereafter replaced the engine with another second hand engine.

[16] When the vehicle was taken to Third Respondent for police clearance, it was seized in terms of section 21 read with section 20 of the Criminal Procedure Act 51 of 1977. The matter was submitted to the Director of Public Prosecutions, who declined to prosecute the matter. The Appellant has placed whatever facts and information were available to it at the disposal of Third Respondent in order to substantiate that it is the

lawful owner of the vehicle. These facts and information have not been placed in dispute or gainsaid by evidence to the contrary.

[17] In my view it is only just and fair that an interdict be granted, in terms of prayer (d), in order to regularise the title-holdership of the vehicle and that Third Respondent be ordered to issue new chassis and engine numbers in respect of the vehicle with register number, PCW 456A and registration number CF 70733 belonging to the Appellant.

#### **The Order:**

[18] In the result the following order should be made:

“The appeal is upheld in part, and dismissed in part. The order of the Court *a quo* is set aside, and in its place is substituted the following order:

- (1) The relief sought by the Applicant in para’s 2(a), (b) and (c) of its Notice of Motion is refused;
- (2) The Third Respondent is ordered immediately to issue new chassis and engine numbers in respect of the Applicant’s motor vehicle with register number PCW 456A and registration number CF 70733;

- (3) The Respondents are ordered to bear the costs of the application jointly and severally, the one paying the others to be absolved.”

No order is made as to the costs of the appeal.

  
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**Thring, J: I agree and it is so ordered.**

  
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**Veldhuizen, J: I agree.**

  
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