

IN THE HIGH COURT OF SWAZILAND

A. MIZAN TRADERS (PTY) LIMITED

Vs

SWAZI BUS SERVICE

CIV. CASE NO. 736/97

CORAM S.W. SAPIRE, CJ

FOR PLAINTIFF P. R. DUNSEITH

FOR DEFENDANT J. S. MAGAGULA

JUDGMENT

(23/02/99)

A L Mizan Traders (Pty) Ltd Juliet Mabuza Swazi Bus Service.

This is an interpleader application. The Sheriff for the district of Hhohho is the applicant. Pursuant to a judgment of this court in the case A L Mizan Traders (Pty) Ltd. V Swazi bus Service requiring the defendant to pay E25 481, 94 interest and costs to the plaintiff, the Applicant in execution of a warrant of execution attached a 1992 Nissan LDV Registered SD 852 WM in the hands of Themba Mabuza. The execution creditor has alleged that Themba Mabuza is the proprietor of the debtor firm. The evidence establishes that if this is not so, he is at least a partner thereof, and was in possession and control of the vehicle at all material times.

Prima facie execution may properly be levied on the vehicle to satisfy the judgment.

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The first claimant therefor is the judgment creditor. Juliet Mabuza, Themba Mabuza's wife, who claims ownership of the vehicle and seeks its release from attachment, is the second claimant. In an affidavit filed by her in support of her claim she baldly alleges that, as she is the registered owner of the vehicle and its owner. No mention is made as to how she came to be the owner.

It is common cause that Themba Mabuza acquired the vehicle from Tracar Ltd. He did so in terms of a written agreement with Union Bank of Swaziland, which apparently financed the transaction, and reserved ownership in the vehicle in itself pending payment of the price in full. The final payment was due in October 1995. Themba Mabuza was the registered owner from the time of acquisition until June 1996, when "transfer of ownership" to the second claimant was effected. Sine that time it is the Second Claimant who is recorded as the licensee of the vehicle

Unlike in the case of immovable property registration as licensee or owner of a motor vehicle is not proof of ownership. This case itself is an example where a purchaser on hire purchase of a motor vehicle may appear as the registered owner without in fact and in law being the owner.

Second claimant's explanation of this, given not in her affidavit, but in evidence was that he had been associated with her husband's late father. This business or perhaps her father in law had wanted to buy a vehicle for the business. Because there were perceived benefits if her husband featured as the purchaser her in order to take advantage of being known to the seller bought the vehicle in his own name. The original payment and subsequent installments were made from money provided by her late father in law. In due course after payment of the purchase price had been made in full, her husband transferred the vehicle to her.

This account was not supported by any tangible evidence and the books of account of the business, which were said to be available, were not produced. The probabilities in its favour are far outweighed

by its inherent improbability. It is

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convincingly contradicted by evidence give by the plaintiffs director that Themba was always to be seen in possession of the vehicle, filling it with fuel on the very credit account which was the basis of the judgment. Furthermore if it was indeed Thembas father who had paid for the vehicle there is no reason why he should have given it to the second claimant, his daughter in law. Her claim to the vehicle must be rejected

There was a third claimant to the vehicle. As there was no appearance on its behalf or any evidence in support of its claim, such must similarly be rejected.

I therefore order

1. First Claimants claim is upheld
2. Second and third claimant' claims are rejected
3. Second claimant is to pay the costs of all the other parties
4. Execution on the vehicle attached is to proceed

S. W. SAPIRE

CHIEF JUSTICE