



## SWAZILAND HIGH COURT

**Shongwe, Joseph Jazz**  
*Plaintiff*

**Lauer, Peter**  
*Respondent*

*Civ. Case No. 236/2000*

Coram

Sapire, CJ

For Plaintiff/Applicant  
For Defendant/Respondent

Mr. Dunseith

### **JUDGEMENT** *(4<sup>th</sup> July 2000)*

The Applicant sold the respondent a second hand motor vehicle.

The applicant came to court as a matter of urgency seeking the return of the vehicle in terms of an order authorising him to attach and hold it in safe custody pending the outcome of the application. The application was granted ex parte and as a matter of urgency .

The Respondent has replied thereto and set out various respects in which he alleges the applicant's original application was incomplete or irregular. According to the respondent a number of salient factors omitted from the original application, should have been made known to the court especially as the application was made ex parte. The respondent also questions the urgency of the matter and failure of the applicant to serve the papers.

It is not necessary for me to rule on these matters now, suffice to say that it would not be possible on these papers to come to any conclusion on the contending allegations. There is however one allegation which has been made by the respondent which determines the outcome of the application as far as the merits are concerned.

The respondent has alleged that he has elected to cancel the sale on the grounds of breaches of contract he alleges have been committed by the applicant. His remedy is then to claim damages. Whether he is correct or not becomes immaterial but having cancelled the contract he is not entitled to retain the motor car.

VROMOLIMNOS (PTY) LTD AND ANOTHER v WEICHBOLD AND ANOTHER<sup>1</sup> I therefore confirm the order that the motor car be returned to the applicant. The parties are free to take further action against each other as they may be advised to recover whatever amounts each considers he is entitled to claim from the other.

I do not think that an urgent application without notice was appropriate in this matter and I will presently make no order as to costs which may be claimed by either party in what ever litigation may follow. If no action is taken either party may set this matter down for argument as to costs.

  
SAPIRE, CJ

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<sup>1</sup> 1991 (2) SA 157 (C)