

THE HIGH COURT OF SWAZILAND

MOSES M. ZWANE

Applicant

And

SWAZILAND DEVELOPMENT AND SAVINGS BANK

Respondent

Civil Case No. 1260/2005

Coram

S.B. MAPHALALA - J

For the Applicant

MISS X. HLATSHWAYO

For the Respondent

IN ABSENTIA

JUDGMENT

(26th May 2006)

[1] On the 6 April 2005, Applicant filed an application under a Certificate of Urgency for an order directing the 2nd Respondent to forthwith return to him an Isuzu bakkie 1993 model registered SD 302 XM and costs on attorney-client scale. The application is supported by the Founding affidavit of the Applicant. The Applicant further annexed a Blue Book of the said motor vehicle entered as annexure "B" thereof. On the 13 April 2005, the 1^s and 2nd Respondent filed with the Registrar of this court a Notice of Intention to oppose the application. On the 28th April 2005 the Respondents filed an opposing affidavit of one Sdumo Valentine Mdladla who is the attorney for the Respondents in this matter. A further supporting

affidavit of the 2nd Respondent was also filed of record. On the 31st May 2005, the Applicant filed a replying affidavit confirmed by an affidavit of one Sikelela Moffat M. Tsabedze.

[2] On the 19th May 2006 when the matter was called for arguments in the contested motion there was appearance for the Applicant and no appearance for the Respondents despite a Notice of Set-down dated 15th May 2006, stating that the matter will be heard on 18th May 2006 at 2.00pm. In terms of the law as outlined in *Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4th Edition* at page 661 that if, when a trial is called, the Plaintiff appears and the Defendant does not appear, the Plaintiff may prove his claim to the extent that the burden of proof lies upon him and judgment must be given accordingly, in so far as he has discharged that burden. It is on the basis of these principles of the law that I allowed Counsel for the Applicant to address me on the merits of the matter, the Respondents having defaulted in appearing before court.

[3] The brief facts of the matter are that the 1st Respondent obtained judgment against the 3rd Respondent, in Case No. 3257/2004 of this court, which matter had nothing to do with the present matter. During December, 2004 the 3rd Respondent had in his possession the motor vehicle forming the subject-matter in these proceedings, and the 1st and 2nd Respondent (who is Deputy Sheriff) attached same in satisfaction of the judgment in Case No. 3257/2004. The 1st Respondent was alerted of the fact that the motor vehicle's owner was the Applicant, and not the 3rd Respondent, but refused to acknowledge same.

[4] It appears to me that on the strength of annexure "A" being the Blue Book in respect of the said motor vehicle that the Applicant has the right of ownership "enforceable against the entire world" (see *Silberberg & Schoeman, "The Law of Property " 3rd Edition*). An owner of any property can invoke the *rei vindicatio* which is a legal protection of his property. See also *Gondini Chrome (Pty) Ltd vs MCC Contracts (Pty) Ltd 1993 (1) S.A. 77 (A) 82, Graham vs Ridley 1931 TPD 476, Chetty vs Naidoo 1974 (3) S.A. 13 (A)* and that of *Jeena vs Minister of Lands 1955 (2) S.A. 380 (A)*.

[5] Further, I agree with the submission by Counsel for the Applicant when she cited the legal authority in *Hefer vs Van Greuning 1979 (4) S.A. 952 (A)* that no person has a right to retain possession of property belonging to another when the owner wants same i.e. withholding same against the will of the owner, unless that person has a vested right e.g. contractual and/or right of retention.

[6] In the result, for the afore-going reasons the application is granted in terms of prayer 2 and 3 of the Notice of Motion. In terms of prayer 3 thereof costs levied at the ordinary scale, and it is so ordered.

S.B. MAPHALALA

JUDGE