

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 2073/2006

MAKHOSAZANE DLAMINI

Applicant

And

THUMA INVESTMENTS (PTY) LIMITED

Respondent

Coram

S.B. MAPHALALA - J

For the Applicant

MR. J. HENWOOD

For the Respondent

MR. A. JUMA

JUDGMENT 19th
March 2009

[1] On the 17th April 2008, the Applicant filed an urgent application for the following relief:

1. Dispensing with the normal forms and time limits provided for in the Rules of the above Honourable Court and dealing with this matter as an urgent matter in terms of Rule 6 (25) of the Rules of the above Honourable Court.

2. Condoning any no-compliance with the said Rules in so far as applications are concerned.

3. Releasing the under mentioned motor vehicle to the Applicant to wit.

Make	Opel Astra
Model	2000
Engine No.	X18XE120M71186
Chassis No.	940650
Registration No.	SD 339 YG

[2] The Founding Affidavit of the Applicant is filed in support thereto where he relates all the material facts in the dispute. Relevant annexures are also filed. A confirmatory affidavit of one Kgololo Sipho is also attached.

[3] The Respondent opposes the application and an Answering Affidavit of the Respondent is filed thereto. The Respondent also has attached pertinent annexures including annexure "M1" being the agreement, annexure "M2" being an application for a certificate of roadworthiness, annexure "M3" being change of ownership of motor vehicle in terms of Section 23 and various letters of correspondence and a salary advice.

[4] The Applicant then filed a Replying Affidavit in accordance with the Rules of Court.

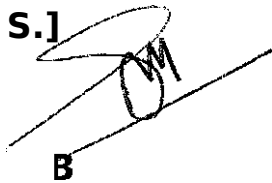
[5] On the 28th April 2008, the Respondent filed a Notice to strike out Applicant's replying affidavit on the basis that Applicant has not alleged that the facts deposed to are within his personal knowledge and are true and correct.

[6] The issue for determination by this court in this judgment were clearly outlined by the Respondent's Counsel in his Heads of Arguments at para 6 to 7. That Respondent being the Plaintiff on the main action has through the Deputy Sheriff attached the motor vehicle effecting a judgment issued by the court on the 11th August 2006. The Applicant is now claiming title of the said motor vehicle on the basis that the principal has sold it to him, and has filed a vindicatory application as opposed to an interpleader notice in terms of Rule 58 of the High Court Rules.

[7] The Applicant relied on the principle of law that there was no contract of sale between the parties as there was no delivery, (see *Gibson, South African Merchantile and Company Law, 6th edition page 127, Weeks and Another vs Amalgamated Agencies Ltd 1920 AD 230 and Commissioner of Customs and Excise vs Randies, Brothers and Hudson Ltd 1941 AD 398.*

[8] In my assessment of the facts and the arguments of Counsel I am inclined to agree with the Respondent's argument that in the present case the Respondent was deceived by the agent of the principal to the effect that the motor vehicle was transferred to her name and the principal was further deceived by his own agent that the motor vehicle was never sold. I also find the principle enunciated in the case of *Bold vs Cooper and Another* 1949 (1) SA 1195 (W) apposite.

S.1

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[9] In the result, this court upholds the attachment of the motor vehicle and the Applicant to pay costs of the application.

. MAPHALALA

PRINCIPAL JUDGE