

IN THE HIGH COURT OF SWAZILAND HELD

AT MBABANE

CIV. CASE NO. 842/08

In the matter between:

SAHI INVESTMENTS (PTY) LTD

Applicant

And

PAT BONGANI MAZIYA

Respondent

Date of hearing: 9 December 2009

**Date of judgment: 9 December
2009**

Mr. Attorney V.Z. Dlamini for the Applicant

Mr. Attorney B. Ngcamphalala for the Respondent

EX TEMPORE J U D G M E N T

MASUKU J.

[1] By application dated 6 March 2008, the applicant approached this court seeking the following relief;

1. Dispensing the rules relating to the time limits, manner of service and procedures applicable in the institution of proceedings.
2. Condoning the applicant's non-compliance with the said rules and hearing this matter as on of urgency.
3. That a rule nisi returnable on Friday 25 August 2008 do issue calling upon the respondent to show cause why an order in the following terms should not be made final.
4. that the Sheriff his lawful deputy for the Manzini district or other authorized person be authorized and empowered to seize and attach from the respondent or any other person in whom possession may be found to it a Toyota, self registered SD 239RN whose chasse No-L130-011229 engine no. 4y78600175 - color red.
5. That the motor vehicle described above be kept in the custody of the applicant pending the final determination of these proceedings.
6. That the agreement between the parties should not be cancelled and the possession of the motor vehicle be registered to the applicant in terms of the agreement.
7. That the court should not declare that the applicant is entitled to retain all the amounts already paid by respondent.

8. That the applicant be and is hereby ordered to dispose of the motor vehicle aforesaid either by public or private treaty.

9. That the respondent be ordered to pay cost of this application on attorney own client scale.

-Directing 3.1.operate with immediate effect pending return date of the application.

[2] This application was based on the affidavit of one Illitieu Ahmad. It contends that the parties herein being the applicant, who was represented by him and the respondent entered into agreement of sale which is annexed to the papers marked "A". In terms of that agreement the applicant sold the vehicle described herein above to the respondent on the following terms: that the purchase price was to be amount E42 000 payable in the following manner, first deposit of E10 000 on signature of agreement and balance E32 000 to be paid in monthly instalments of E2 500 with last instalment being on 30 October 2007.

[3] The basis for the applicant approaching the court was that contrary to the agreement, the respondent had failed to pay the amount of E32 000 as required and it therefore sought an order on an *ex parte* basis for the attachment of the vehicle with a return date and on which date the respondent would be required to show cause why the rest of the orders sought in the notice motion should not be granted.

[4] The matter served before Court and on 11 March 2008 this court granted an order as prayed in the notice of motion. The respondent filed its answering affidavit and it raised points of law in *limine* and further pleaded over on the merits.

[5] When the matter came up for argument this morning, Mr. Gumedze indicated that he was abandoning the points in *limine* and the matter was therefore dealt with on the merits. Stripped to its bare-bones, the question that has to be decided is: Whether the respondent who signed the agreement which it is common cause to was signed by the parties, can be allowed to depart from its contents. From the contents of the affidavits of the respondent, he claims that the vehicle which was sold was not functioning properly and that as a result he was misled by the applicant regarding the state of motor vehicle in question, its serviceability and its functioning processes.

[6] In order to answer this question one has to look at the contents of the agreement particularly paragraph 8 thereof. It reads as follows: "The purchaser hereby acknowledges that the vehicle is second hand, that he has inspected it and is satisfied that it is in good order and condition.

[7] The question as indicated is whether in the face of such a term of the agreement, the respondent should be allowed to depart from the effect thereof. I

have had occasion, in the case of *BUSAF Pty (Ltd) and Vusi Emanuel Khumalo trading as Zimeleni transport* Case No. 2839/08 to deal with the effect of documents/of agreements where the terms and conditions are reduced into writing. In particular at page 8, I relied on the works of Hoffman & Zeffert in their work entitled *The South African Law of evidence*, 2003 version. And this is what is recorded there at page 322;

"If however the parties decide to embody their final agreement in written form the execution of the document deprives all previous statements of their legal effect. The document becomes conclusive as to the terms of the transaction which, it was intended to record, as the parties previous statement on the subject can have no legal consequences. They are irrelevant and evidence to prove them is therefore inadmissible."

[8] I proceeded to quote another judgment of Botha J.A. in the case of *National Board Pretoria Pty (Ltd) vs Estate Swanepoel* 1975 (3) SA 16 (AD) at page 26, where the learned Judge quoted from the works of Wigmore on Evidence and the following is the quotation:

"This process of embodying the terms of a dual act in a single memorial may be termed the integration of the act i.e. its formation from scattered parts into an integral documentary unity. The practical consequences of this is that its scattered parts in their former and inchoate shape do not have any jural

effect. They are replaced by a single embodiment of the act.

In other words, and my emphasis is here when a dual act is embodied in a single memorial and other utterances of the parties of the topic are legally immaterial for the purpose of determining what are the terms of their acts."

[9] In the circumstances the respondent is to be bound to the terms of the agreement which he signed. He cannot as he has sought to do, seek to rely on other matters which controvert the terms of the agreement in question, in particular the provisions of clause 8 of the agreement. In the circumstances the application by the applicant is granted, and I confirm the order that was made by the Court.

[10] The order which I issue will be the following: Order granted with final effect in terms of prayers 3.1, 3.3, 3.4, 3.5 and by agreement costs are granted on ordinary scale.

**Messrs. V.Z. Dlamini Attorneys for the
Repondent Messrs. Z. Magagula Attorneys for**

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**T.S. MASUKU
JUDGE**

**DELIVERED IN OPEN COURT IN MBABANE ON
THIS 9th DAY OF DECEMBER 2009.**