



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 3228/2008

JACQUELINE KATEMO

Applicant

And

LIVE MOTORS (PTY) LTD AND TWO OTHERS Respondent

Coram
For the Applicant
For the Respondent

S.B. MAPHALALA - J
MR. B. J. SIMELANE
MR. N. PILISO

JUDGMENT
19th March 2009

[1] The application before court is for the return of money that the Applicant paid to Respondent's in the purchase of a motor vehicle SD 425 SN, being a Nissan Sunny. It is common cause between the parties that 1st Respondent is a company involved in the sale of motor vehicles. It is further common cause that 2nd and 3rd Respondents are directors and shareholders of 1st Respondent.

[2] 1st Respondent sold to Applicant the motor vehicle on 1st September 2005 for the purchase price of E36, 000-00 but Applicant was only able to pay E24, 625, 00 in total. Applicant was able to pay further instalments on the motor vehicle and 1st Respondent applied to court for the attachment and seizure of the motor vehicle.

[3] After the court granted the application 1st Respondent kept the motor vehicle. 2nd Respondent informed Applicant that he has sold the motor vehicle which indeed is no longer at 1st Respondent's premises.

[4] The Applicant contends that in the premises Respondents are placed in a position where they have the benefit of Applicant's money in the sum of E24, 625-00 and the motor vehicle or its purchase price of E24, 000-00. It is Applicant's contention that the Respondents have both the items.

[5] It appears to me after assessing the affidavits of the parties and

the arguments of Counsel that the Respondents are correct that Applicant's claim is an illiquid claim for damages rendering motion proceedings not permissible.

[6] Applicant's claim is obviously for an illiquid claim for damages in that it arises out of a contract of sale. I also find the *dictum* in the case of *Room Hire Co. (Pty) Ltd vs Jeppe Street Mansions (Pty) Ltd* apposite.

[7] In the result, for the afore-going reasons the application is dismissed with costs.

S.B. MAPHALALA
PRINCIPAL JUDGE