



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 1619/2013

In the matter between:

MARIA KHOZA

PLAINTIFF

AND

MANDLA GAMEDZE

1ST DEFENDANT

THE COMMISSIONER OF POLICE N.O.

2ND DEFENDANT

THE ATTORNEY GENERAL

3RD DEFENDANT

*Neutral citation: Maria Khoza v Mandla Gamedze & 2 Others
(1619/2013) [2014] SZHC 192 (8th August 2014)*

Coram : **MBUSO E. SIMELANE, AJ**

Heard : **30th June 2014**

Delivered : **8th August 2014**

Summary

Special plea - car registered in someone else's name - plaintiff contending that it belongs to her - car sold to someone else and transferred by the title holder thereof - affidavit of waiver by 3rd party to be joined - plaintiff failing to prove locus standii to sue for the merx - special plea and action dismissed with costs.

JUDGMENT
8th AUGUST 2014

[1] The Plaintiff through Combined Summons has applied for an Order in the following terms:

- a) *Ordering and directing the Simunye Police to surrender the motor vehicle to the Plaintiff;*
- b) *Ordering and directing the 1st Defendant to surrender the Blue Book of Plaintiff's motor vehicle to Plaintiff;*
- c) *Ordering and directing the 1st Defendant not to interfere with the Plaintiff in the use of her motor vehicle in whatever manner;*
- d) *Directing that the sum of E20 000.00 (Twenty thousand Emalangeni) that was paid by Defendant towards the purchase of the motor vehicle be retained by the plaintiff as security towards costs of these proceedings;*
- e) *Costs as between attorney and client scale.*

[2] When the matter appeared before me on the 30th of June 2014 for arguments I registered the following Consent Interim Order pending finalization of the matter:

1. *The motor vehicle which is the subject matter will be released by the Simunye Police to the Plaintiff for safe-keeping;*
2. *The Plaintiff shall before the release of the motor vehicle, deposit a sum of E20 000.00 (Twenty thousand Emalangeni) into the Trust Account of Xaba Attorneys and the said sum shall not be utilised for any fees or payment to the 1st Defendant or utilised in any manner;*
3. *The Plaintiff must not use the motor vehicle save for purposes of servicing it;*
4. *The Simunye Police had no Court Order to keep the motor vehicle, but this was a mutual consent of the parties to keep same at the Simunye Police Station.*

[3] The Defendants who are opposing the main matter filed a Special Plea on two grounds namely:

- a) *The Plaintiff lacks locus standii in judicio as the merx was not registered in her name but registered to SABELO ENOCK MPANZA an adult major male.*

b) Non joinder of the said SABELO ENOCK MPANZA who not only sold the car to 1st Defendant for E20 000.00 (Twenty thousand Emalangeni) but also transferred ownership to the latter.

[4] Upon reading the Particulars of Claim I have no doubt in my mind that I would have dismissed the action based on non joinder because I believe that the said SABELO ENOCK MPANZA is a necessary party who has a direct and substantial interest in the matter as the registered title holder of the car and someone who received the purchase price of E20 000.00 (Twenty thousand Emalangeni) (**Law Society of Swaziland v. Mpendulo Simelane N.O. & 3 Others (527/2014) [2014] SZHC 179**).

[5] In order to defeat the objection of non joinder the Plaintiff filed an **Affidavit of Waiver** by Sabelo Enos Mpanza who deposed as follows:

“
3.
I state that I am aware of the present proceedings which the Plaintiff has instituted against 1st Defendant and state further that I have no interest in these proceedings nor do I have any objection to any order

that the Court may issue either for or against me and I consent that same will be binding upon me.

4.

I confirm that although the motor vehicle referred to above is registered in my name, Plaintiff is the true and lawful owner of the motor vehicle being the subject matter of these proceedings, to wit:-

Model : Isuzu 2.8

Chasis No. : ADMER56HM81533

Engine No.: 422410

Colour : White with a blue stripe in the middle"

[6] In as much as the affidavit of waiver seems to be an afterthought our authorities countenance it. In ***Toekies Butchery (EDMS) an Andere v. Stassen 1974 (4) 771 (T) at 774 H***, Colam J held as follows:

"Joinder can only be dispensed with if the interested party has unequivocally waived his right to be joined and undertaken to be bound by any decision which the Court may make."

[7] Upon close scrutiny of the affidavit of waiver the said SABELO ENOCK MPANZA confirms that he is an adult male and biological son of the Plaintiff.

[8] He does not say anything about whether he had authority to sell the car and why he sold the same and what happened to the purchase money. He is awfully quite on the issue of misrepresentation.

LOCUS STANDII

[9] The outstanding point is the *locus standii* of the Plaintiff.

[10] In terms of **section 13(1) of the Road Traffic Act 6/2007** it is provided as follows:

“Every motor vehicle in Swaziland shall, subject to the provisions of section 14 and 15, whether or not is operated on a public road, be registered by the title holder thereof and in the manner prescribed and as payment of the prescribed fee.”

[11] A **'title holder'** according to **section 2** of the **ACT** is described as:

"a) the person to give permission for the alienation of that vehicle in terms of a contractual agreement with the owner of such vehicle.

b) the person who has the right to alienate that vehicle in terms of the common law and who is registered as such by virtue of this Act."

[12] From the foregoing I find that the Plaintiff is not such a person.

[13] The said SABELO ENOCK MPANZA has failed to state why the car was registered in his name, in effect no impediment has been pleaded by the Plaintiff why the car in question was not registered in her name.

[14] The purpose of Particulars of Claim is to inform the court what the Plaintiff's case is all about. That is described as the cause of action which is described as follows by ANNANDALE J in ***Minister of Natural Resources and***

**Energy v. Johannes Nkwanyane High Court Civil Case
No. 3952/05:**

“Every fact which it would be necessary for the Plaintiff to prove, if traversed in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact...but every fact which is necessary.”

[15] In **Swaziland Revenue Authority v. Pimeta KFC (Pty) Ltd (394/13 [2013] SZHC 157 para 5**, Justice Ota cited the dicta of **Evins v. Shield Insurance Co Ltd 1980 (2) SA 814 at 838** per Corbett JA where she held as follows:

“The proper legal meaning of the expression cause of action is the entire set of facts which give rise to an enforceable claim and includes every fact which is material to be proved to entitle a Plaintiff to succeed in his claim. It includes all facts a Plaintiff must set out in his declaration in order to disclose a cause of action.”

[16] Attached to the SPECIAL PLEA is a registration book (commonly known as a blue book) of the merx and the title holder thereof is SABELO ENOS MPANZA who transferred the car to 1st Defendant on 15th July 2013.

[17] The Plaintiff has therefore failed to establish her *locus standii* in terms of the enabling statute. The affidavit of Waiver cannot help resuscitate a hopeless case. Even the prayers do not mention the car in issue making an order to be granted vague and confusing.

[18] In the premise I uphold the Special Plea and hold as follows:

- a) The action brought by Plaintiff is dismissed with costs.
- b) The consent order granted on the 30th June 2014 is discharged and the Plaintiff is ordered to release the motor vehicle subject to this litigation to 1st Defendant forthwith.
- c) The 1st Defendant's attorney is to release the sum of E20 000.00 (Twenty thousand Emalangi) to Plaintiff subject to taxation of his costs.
- d) If the car is still kept at Simunye Police Station, the said police are ordered to release the motor vehicle to 1st Defendant forthwith.

MBUSO E. SIMELANE
ACTING JUDGE

For Plaintiff : **Professor Dlamini**
For Defendants : **B. Xaba**