

**IN THE HIGH COURT OF ESWATINI**

**HELD AT MBABANE**  
**1305/23**

**CIVIL APPEAL CASE NO.**

In the matter between:

**NWD AUTO CLINIC**  
**NHLANHLA DUBE**

1<sup>st</sup> Appellant  
2<sup>nd</sup> Appellant

and

**BETHUSILE WILSON DLAMINI**

Respondent

*Neutral citation:*

*New Auto Clinic and Another v Bethusile Wilson Dlamini  
(1305/2023) SZHC 316 (09 November 2023)*

**CORAM:**

**N.M. MASEKO – Judge**

**FOR THE APPELLANTS:**

**M.T.M. NDLOVU**

**FOR THE RESPONDENT:**

**S.G. DLAMINI**

**DATE OF HEARING:**

**14 JULY 2023**

**DATE OF DELIVERY:**

**09 NOVEMBER 2023**

**PREAMBLE:** Civil Law – Civil Procedure – Civil Appeal from the Magistrate’s Courts – Refusal by Appellant to comply with a Court Order issued by the Magistrate’s Court, and raised a point *in limine* that the Court has no jurisdiction to deal with the matter, and at the same time approaching the Court a quo and this Court with unclean hands – Doctrine of Unclean Hands discussed – Contempt of Court discussed.

Held: the Appeal is dismissed on account of the doctrine of unclean hands.

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## JUDGMENT

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### **MASEKO J**

[1] On the 11<sup>th</sup> January 2023, the Respondent launched urgent motion proceedings *ex parte* before the Court *a quo* for an interim order that pending finalization of this matter the Appellants be ordered and directed to forthwith return immediately to Respondents the motor vehicle to wit:

<b>Make:</b>	<b>Nissan Navara</b>
<b>Registration Number:</b>	<b>USD 9762158AM</b>
<b>Model:</b>	<b>2006</b>
<b>Colour:</b>	<b>Black</b>

[2] The Court *a quo* per His Worship S. Dlodlu issued a *rule nisi* and the aforesaid *rule nisi* operated with immediate and interim relief pending finalisation of the matter. The Messenger of the Court for the Manzini Region Mr. Bongani J. Zikalala was authorised by the Court to execute the interim Court Order. The return date of the *rule nisi* was the 23<sup>rd</sup> January 2023 calling upon the Appellants to show cause why the *rule nisi* should not be confirmed as a final order of the Court. It is common cause that the Appellants did not comply with the *rule nisi* which had

been issued by His Worship S. Dlodlu on the 11<sup>th</sup> January 2023.

- [3] Upon receipt of the rule nisi and the Notice of Motion, the Appellants duly filed their Notice to Oppose the proceedings and also proceeded to file an Opposing Affidavit on the 17<sup>th</sup> January 2023. In the Opposing Affidavit the Appellants also raised points *in limine* on the Court *a quo*'s lack of jurisdiction, duty of full disclosure of an applicant in *ex parte* urgent applications and lawful lien over the motor vehicle in question. The Respondent duly filed her Replying Affidavit and the matter was argued before His Worship Dlodlu who found in favour of the Respondent by confirming the rule nisi herein issued and further ordered the Appellant to pay costs at attorney and own client. The Appellants then launched an appeal before this Court.

### **HISTORY OF THE MATTER**

- [4] It appears that during the last quarter of the year 2022, the Respondent presented her motor vehicle to the Appellants for mechanical repairs. The 2<sup>nd</sup> Appellant duly diagnosed the motor vehicle and found that the turbo charger was faulty, and also at a later date informed the Respondent that the clutch kit was also faulty and both the turbo charger and clutch kit were to be replaced.

- [5] It appears that the Appellants quoted an amount of E17 000-00 to fix the car by fitting a new turbo charger as well as a new clutch kit. The 2<sup>nd</sup> Appellant attended to the car but when the Respondent sent his son to collect the car it developed overheating problems before the son could reach anywhere, apparently the Respondent discovered that the Appellant did not fit a new turbo charger as per his quote, and he also did not fit a new clutch kit. The 2<sup>nd</sup> Appellant attended to the car and again it was not properly fixed and at that time he demanded an additional fee of E13 500-00 for repairs over the E17 000-00 already paid by the Respondent.
- [6] At that stage the Respondent had developed distrust on the 2<sup>nd</sup> Appellant's inability to fix her motor vehicle despite his assurances that he was a specialist in these motor vehicles. The Respondent refused to make further payments over the E17 000-00 she had already paid for the alleged repairs yet the motor vehicle remains in a worse condition. She attempted to have the motor vehicle released to her by the Appellants with the assistance of the police, however, the 2<sup>nd</sup> Appellant refused to release the motor vehicle on the basis that they have a garage lien over the aforesaid motor vehicle. At that stage the Respondent then approached the Court *a quo* on urgency and *ex parte* and obtained the interim order which was however not complied with by the Appellants.

- [7] In his opposition to the Respondent's application, the Appellants raised the points *in limine* which were argued before His Worship Dlodlu, who dismissed them and consequently granted the application. The Appellants argued that the Court *a quo* had no jurisdiction to entertain the matter because the value of the car exceeded the monetary jurisdiction of the Court *a quo*, and that the parties did not consent to the jurisdiction of the Court *a quo*.
- [8] The Appellants further argued that the Respondent has not made a full disclosure of all the material facts as should be the case when instituting *ex parte* motion proceedings on urgency. The Appellants further argued that there is no urgency and that the Respondent failed to justify the urgency.
- [9] The Appellants further argued that they have a garage lien over the motor vehicle and therefore they could only release it after the mechanic's fees have been settled.
- [10] The Appellants argued further that when the motor vehicle was initially brought to him to fix it, he fixed the turbo charger, and however, the car thereafter became more powerful causing the water pipes to burst resulting in the car overheating instantly. He stated that he replaced the pipes and they again burst and eventually the motor vehicle

overheated and he had to strip the cylinder head to be attended to at an engineering workshop. He argued that this constituted a second agreement to fix the car hence he was entitled to a further E13 500-00 for his services.

[11] In her Replying Affidavit the Respondent stated that the Appellants were approaching the Court *a quo* with dirty hands because of their failure to comply with the interim order of the Court a quo. The Respondent argued that on the 12<sup>th</sup> January 2023, the Messenger of the Court accompanied by the Mafutseni Police Officers arrived at the Appellants' premises and the 2<sup>nd</sup> Applicant refused to surrender the motor vehicle, as a result the Messenger and the police sought the services of a breakdown to tow the motor vehicle away from the Appellants' garage at Hhelehhele. As a result of the 2<sup>nd</sup> Appellant's refusal to surrender the car and keys, the Respondent had to hire a tow truck and have duplicate car keys remanufactured by a locksmith.

### **THE POINTS IN LIMINE**

#### **Jurisdiction**

[12] The Appellants opposed the application and raised the issue of jurisdiction, that the Court did not have jurisdiction to deal with this matter because '**in its assertion**' the value of the motor vehicle in question exceed the jurisdiction of this Court.

- [13] I must state the motor vehicle in issue is a 2006 model whose book value has not been ascertained by the Appellants. On what basis is this Court requested to consider the issue of jurisdiction when the 2<sup>nd</sup> Appellant who is a specialist mechanic of those vehicles has made a bold allegation that the value of the motor vehicle exceed the jurisdiction of this Court.
- [14] It is my considered view that any litigant who alleges that the value of an item exceeds the jurisdiction of the Magistrate Court must prove that assertion unless of course the value of the item which is the subject matter is undoubtedly and *prima facie* of a high value which exceeds the jurisdiction of the Magistrate Court. For example, a new model motor vehicle.
- [15] *In casu* the motor vehicle is a 2006 model with a faulty clutch system, faulty overheated engine and a faulty turbo charger which causes the water or coolant pipes to burst resulting to extreme overheating of the said motor vehicle damaging the cylinder head and the engine.
- [16] The Appellants were paid E17 000-00 for the fitment of a new turbo charger and a new clutch system. However, the turbo charger caused water coolant pipes to burst and the clutching system was also not functioning efficiently. The Respondent

states that the 2<sup>nd</sup> Appellant did not fit a new turbo charger and new clutch kit, but fitted a reconditioned turbo charger as well as the clutch kit.

- [17] What complicates matters with regard to the point on jurisdiction is that the Appellants refused to comply with the Court Order when the Deputy Sheriff and the police attempted to execute the order. As a result a tow truck was hired to transport the motor vehicle to a locksmith at Moneni to remanufacture a duplicate key to enable the motor vehicle to be driven to eNkhaba. The Respondent states that the keys of the motor vehicle are still with the 2<sup>nd</sup> Appellant. He has not purged his contempt.
- [18] The position in law is that when a Court issues a Court Order, that Court Order must be respected and complied with by those who are affected by the order. *In casu* the Appellants raised points *in limine* which they expect the Court to consider whilst they have refused to respect and comply with the interim order already issued by the Court. A litigant has no right to refuse to comply with a Court Order lawfully issued by the Court no matter how much unhappy the litigant may be with the Court Order. All that the law requires is for the litigant to abide by and comply with a Court Order. A litigant who defies a Court Order and go on to seek for the Court's



assistance invites the Court's displeasure of his/her conduct, hence the legal idiom that '**he who comes to equity must come with clean hands**'.

[19] The Appellants have in my view failed to prove that the motor vehicle in question is worth above the jurisdiction of His Worship S. Dlodlu. The value of the aforesaid motor vehicle can never be left to speculation, and as I mentioned earlier in this judgment that the Appellant is or was under a legal duty to prove that on a balance of probabilities, because '**he who alleges must prove**', and this has not been done by the Appellant, and instead he has embarked on a journey of defiance of the interim order, and this is a very serious and disrespectful conduct which is always met with the displeasure of the Court.

[20] Authors **Herbstein and Van Winsen** in their book titled *THE CIVIL PRACTICE OF THE HIGH COURTS OF SOUTH AFRICA 5<sup>th</sup> Edition Juta 2012*, state as follows at page 1098 when dealing with the subject of litigants who refuse to comply with Court Orders:-

'Contempt of Court *ex facie curiae*, again broadly speaking, could be divided in two categories, firstly, contempt which solely relates to scandalizing of the Court such a words which tend, or are calculated, to bring the administration of justice into contempt or a statement or document which tends to prejudice or interfere with the administration of justice in a pending proceeding and secondly, contempt which relates to the failure to comply with an order of

Court. In **Fakie NO v CCII Systems (Pty) Ltd 2005 (4) SA 326 (SCA)** JA stated:-

“it is a crime unlawfully and intentionally to disobey a Court Order. This type of contempt of Court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the Court. The offence had, in general terms, received a constitutional stamp of approval since the rule of law – a founding value of the Constitution – requires that the dignity and authority of the Courts, as well as their capacity to carry out their functions, should always be maintained.”

- [21] In her Replying Affidavit, before the Court *a quo*, the Respondent also raised the point *in limine* on doctrine of unclean hands in that the Appellants refused to comply with a Court Order but at the same time wants the same Court to entertain their opposition to her application.
- [22] The doctrine of unclean hands is a legal principle in common law that states that a party seeking relief from a Court cannot have acted unethically or unjustly in relation to the matter at hand. In other words the party must come to Court with clean hands in order to receive a fair consideration of his/her matter. *In casu* the Appellants refused to comply with a Court Order by surrendering the aforesaid motor vehicle to its owner the Respondent pursuant to a Court Order, and instead the Appellants went on to attack the jurisdiction of the Court which had issued the Court Order.

[23] The Appellant's were under a legal duty to comply with the Court Order and then raise their defences to the Respondent's case. Instead the Appellants chose to intentionally and with impunity defy the Court Order issued by the Court *a quo* to return the motor vehicle to the Respondent pending finalisation of the proceedings because the Appellant was using the motor vehicle as if he is the owner.

[24] In the case of **Edmund Mazibuko NO and 5 Others v Total Swaziland (Pty) Ltd (448/2020 [2021 SZSC 32 (04/11/2021)** J.M. Currie AJA stated as follows at paragraphs 27-28:-

[27] The High Court in *Muzi P. Simelane v The Chief Justice of Eswatini and Two Others* recently approved the following principle:-

“----before a person seeks to establish his rights in a Court of law he must approach the Court with clean hands; where he himself, through his own conduct makes it possible for the process of the Court ---- to be given effect to, he cannot ask the Court to set its machinery in motion to protect his civil rights and interests.”

[28] In the *Siboniso Clement Dlamini v The Chief Justice of Swaziland and Two Others*, this Court stated the principle as follows:-


“----It is my considered view that the justice in this matter favours that the Applicant's application be declined. To grant him the right to audience in light of the doctrine of unclean hands would indirectly set aside the Supreme Court judgment which has reached its finality in that it had been adjudicated upon even on review ----. At any rate the directive to debar applicant by the 1<sup>st</sup> respondent was nothing else than

a confirmatory of the doctrine of unclean hands. Whether the directive to debar is there or not is immaterial as applicant will always be confronted by this doctrine in every Court he appears; until he purges his contempt.”

[25] This is the position *in casu* where the Appellants continues to seek for justice even before this Court when he intentionally, deliberately and with impunity defied the order of His Worship Magistrate S. Dlodlu by refusing to hand over the motor vehicle to the Deputy Sheriff who was accompanied by the police, and to date the Appellants have not purged the contempt.

[26] In the circumstances, I hereby hand down the following order:-

1. The Respondent's point *in limine* on the doctrine of unclean hands is upheld, and consequently;
2. The Appeal is dismissed with costs.

  
**N.M. MASEKO**  
**JUDGE**