



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 113/24

In the matter between:

CHRISTOPHER MATSEBULA

APPLICANT

And

BONGANI LENTOOR

1ST RESPONDENT

KINGS OF CARS

2ND RESPONDENT

NATIONAL COMMISSIONER OF POLICE

3RD RESPONDENT

THE ATTORNEY GENERAL

4TH RESPONDENT

NEUTRAL CITATION:

**CHRISTOPHER MATSEBULA V
BONGANI LENTOOR AND 3 OTHERS
(113/24) [2024] SZHC - 50 (27/03/2024)**

CORAM:

B.W. MAGAGULA J.

DATE HEARD:

22/02/2024

DATE DELIVERED

27/03/2024

Summary: *Civil Law – Application to attach ad confirmandum jurisdictionem in respect of a motor vehicle – 2nd Respondent opposes the application on the basis that the Applicant does not have a beneficial interest in the motor vehicle to justify the attachment to confirm the jurisdiction of this court.*

Held: *The registration document of the motor vehicle reflects that the owner is the 2nd Respondent. Ex facie the registration certificate appear to be authentic – It is not for the court to pronounce on the procedures that are followed prior to the registration document being issued. If there was any irregularity as alleged, then it was incumbent on the affected party to take the necessary active steps to the registration certificate set aside. In the circumstances, if the motor vehicle changed hands from the 1st Respondent to the 2nd Respondent, the 1st Respondent does not have a beneficial interest*

which can be attached to secure the interest of the Applicant against the anticipated civil claim against the 1st Respondent. The Applicant ought to fail. It is accordingly dismissed with costs.

JUDGMENT

BW MAGAGULA J

- [1] The Applicant seeks the following order; *directing and ordering the 3rd Respondent "to release to the Deputy Sheriff of the Hhohho and/or Manzini District to attach and keep in his possession the motor vehicle to wit the Mercedes Benz, V Class JV99 VX GP, chassis number WDF 44781323222850 and engine no. 65195033731963 to attach ad confirmando jurisdictionem of the above Honourable Court, pending the outcome of the action proceedings to be instituted by the Applicant against the 1st Respondent."*

[2] I pause to note that the relief sought by the Applicant, being an order to attach *ad confirmadum jurisdictionem*, is premised upon an alleged verbal lease agreement entered into between the Applicant and the 1st Respondent with regard to the motor vehicle. The Applicant alleges he intends to institute action proceedings as against the 1st Respondent.

[3] The 2nd Respondent is a motor car dealership situated at 23B North Rand Road, Bartlett, Boksburg, South Africa.

[4] According to the papers filed before court¹, in December 2023, the 1st Respondent approached the 2nd Respondent with a view of purchasing the motor vehicle. This was preceded by an approach by an apparent associate of the 1st Respondent Mr Thabang Pooe, who provided the 2nd Respondent with a copy of the 1st Respondent's South African identity document, driver's licence, proof of residence together with bank statements and salary payslips.

¹ Through the answering affidavit of the 2nd Respondent deposed to by Ricardo Esteves Gomes at paragraph 18.

- [5] It appears the 2nd Respondent was previously the registered owner of the motor vehicle. A copy of the certificate of registration issued by the relevant government authority, dated 7th August 2023, marked annexure “AA3”, and has been attached to the Applicant’s application.
- [6] It has also been alleged that unbeknown to the 2nd Respondent the 1st Respondent had simultaneously applied to ABSA Bank Limited for finance. This time it was for the purchase of another motor vehicle.² ABSA Bank Limited conditionally approved an application by the 1st Respondent, for the purchase of the second motor vehicle in terms of a finance agreement.
- [7] Pursuant to the approval by ABSA Bank of the 1st Respondent’s application for finance to purchase the motor vehicle, the 2nd Respondent then on-sold the motor vehicle to ABSA Bank Limited. A tax invoice with number 1764, dated 13th December 2023, issued by the 2nd Respondent to ABSA Bank Limited to the 2nd Respondent for the motor vehicle, is annexed on the 2nd Respondent’s answering affidavit together with a copy of the certificate of registration issued

² A 2023 Ford Ranger XLT motor vehicle

by the relevant government authority confirming transfer of ownership of the motor vehicle (from the 2nd Respondent) to ABSA Bank Limited, dated 23rd November 2023.

[8] It appears ABSA Bank Limited duly paid the full purchase price of the motor vehicle to the 2nd Respondent who in turn delivered the motor vehicle to ABSA Bank Limited by *constitutum possessorium* whereby the 2nd Respondent retained physical control over the motor vehicle.

[9] ABSA Bank Limited thereafter sold the motor vehicle to the 1st Respondent in terms of a written instalment sale quotation and agreement dated 13th December 2023, a copy of which is also attached to the 2nd Respondent's answering affidavit.

The Applicant's Basis for the Application Sought

[10] The Applicant seeks the attachment of the said vehicle to confirm the jurisdiction of this court on the basis that, the motor vehicle is registered in the name of the 1st Respondent. Applicant has a claim against the 1st Respondent in the sum of E185 000. The claim arise from a lease agreement pertaining to the same motor vehicle, pursuant

to which the Applicant paid a sum of E185 000. A proof of payment has been annexed. Although on the face of it, the payment does not appear to have been

The First Respondent Case

- [11] During the hearing of the matter, Mr Fakudze, counsel for the 1st Respondent, expressed the awkward position the 1st Respondent found himself in, with regard to this matter. On one hand, his client has been cited as a 1st Respondent, when infact the Applicant and the 1st Respondent are largely or to a great extent aligned.
- [12] On the reading of the 1st Respondent answering affidavit, it appears that the Applicant is substantially in agreement with the Applicant's version. He actually disputes the version of the 2nd and 3rd Respondents.
- [13] The 1st Respondent contends that he does not understand how the police decided to involve themselves in what he terms as a private transaction between the 1st Respondent and the applicant. Counsel also submitted that he suspects foul play, as to how the motor vehicle got

to be registered in the name of the 2nd Respondent, when during the entire period, it was physically situated in Eswatini.

[14] The bank³ paid the 2nd Respondent the full purchase price of the motor vehicle. The first respondent has attached the proof of payment to that effect. Subsequently, 1st Respondent entered into an installment sale agreement with Absa Bank in Johannesburg, which is the agreement that enabled him to take physical possession of the vehicle. The motor vehicle was then changed into his name, and he took ownership of it on the 18th of December 2023. The title holder of the motor vehicle then changed from the second respondent to Absa Bank, and the owner also changed from King's Cars to his name. The 1st Respondent actually confirmed in his answering affidavit, that he subsequently leased the motor vehicle to the Applicant. A written lease agreement was apparently signed between the parties on the 26th of December 2023 in Johannesburg, with both parties representing themselves. The 1st Respondent therefore contends that he does not understand why the police applied for a detention order of the motor vehicle, as he has never reported it stolen. The police apparently seized the motor

³ ABSA Bank of South Africa.

vehicle whilst registered in the name of the 1st Respondent, although in the possession of the Applicant. The 1st Respondent therefore contends that he has not yet breached his installment sale agreement with Absa Bank, as the 2nd Respondent was paid in full. There is no reason therefore, for the motor vehicle to have been attached or seized from the Applicant.

[15] Ownership of the motor vehicle remains with ABSA Bank Limited until the 1st Respondent has paid all of the installments in terms of the agreement⁴

[16] ABSA Bank Limited is the registered as the titleholder of the motor vehicle whereas the 1st Respondent is the registered as the owner. When the 1st Respondent has paid all of the instalments in terms of the agreement, ABSA Bank will release the registration documents to the 1st Respondent to be updated as titleholder of the motor vehicle.

⁴ Ibid

- [17] Throughout the period of the sale agreement the 1st Respondent will not take the motor vehicle out of South Africa without the prior written permission of ABSA Bank Limited⁵
- [18] Throughout the period of the sale agreement the 1st Respondent will not transfer the asset to any other person without the prior written permission of ABSA Bank Limited.
- [19] Throughout the period of the sale agreement the 1st Respondent will inform ABSA Bank Limited in writing of any change of address where the motor vehicle is usually kept and the name and address of any person who has use of the motor vehicle.
- [20] Throughout the period of the sale agreement the 1st Respondent will not allow the motor vehicle to be used to transport people or goods as part of a business or commercial enterprise.
- [21] Throughout the period of the sale agreement, the 1st Respondent will make sure that no other person obtains any rights over the motor

⁵ This is in terms of clause 5 of the agreement.

vehicle and that the motor vehicle is not attached through a Court order and that the 1st Respondent will immediately notify ABSA Bank Limited if such circumstances arise and will notify the person seeking rights or officer of the Court that the 1st Respondent is not the owner of the motor vehicle and that the motor vehicle is owned by ABSA Bank Limited.

[22] The 1st Respondent then took delivery of the motor vehicle on 13 December 2023 from the 2nd Respondent. A copy of the certificate of registration issued by the relevant government authority depicting ABSA Bank Limited as the titleholder of the motor vehicle and the 1st Respondent as the owner of the motor vehicle, marked annexure “AA3” is attached to the answering affidavit of the 2nd Respondent. The 2nd Respondent further contends that in terms of the sale agreement between the 1st Respondent and ABSA Bank Limited, ownership of the motor vehicle remained vested in ABSA Bank Limited and would only pass to the 1st Respondent when the full purchase price, including all installments, had been paid for the motor vehicle.

[23] It has been contended on the papers before court that it later became apparent that the 1st Respondent neither settled the other deal between him and ABSA Bank Limited nor did he cancel that deal. The 2nd Respondent contends therefore that it follows *ex lege* that the condition of settlement of the sale agreement, ie, the resolute condition, was not complied with by the 1st Respondent. As a result of which, the sale agreement between the 1st Respondent and ABSA Bank Limited lapsed and is no longer valid nor enforceable.

[24] On or about 27 December 2023, Mr Mack Mothemela from ABSA Bank Limited informed the 2nd Respondent that the 1st Respondent had neither settled nor cancelled the other deal and further informed the 2nd Respondent that ABSA Bank Limited had elected, as it was entitled to do, to resile from the aforementioned sale agreement entered into between it and the 1st Respondent in regard to the motor vehicle.

[25] On 27 December 2023 the 2nd Respondent's sales supervisor Sanele Buthelezi is alleged to have contacted the 1st Respondent to enquire about the "other deal" with ABSA Bank. It is then that the 1st

Respondent is alleged to have confessed that he had indeed taken delivery of a 2023 Ford Ranger XLT motor vehicle in terms of the other deal, thereby reaffirming the right of ABSA Bank Limited to resile from the agreement as a result of the non-fulfillment of the resolutive condition of the sale agreement between it and the 1st Respondent.

[26] Despite repeated attempts by Buthelezi to get hold of the 1st Respondent, the 1st Respondent is alleged to have informed Buthelezi on 8 January 2024 that he wished to cancel the current sale agreement with ABSA Bank Limited. The 2nd Respondent further contends that the 1st Respondent's intention to cancel the sale agreement with ABSA Bank Limited is of no moment in that ABSA Bank Limited had already elected to resile from the sale agreement with the 1st Respondent. The 1st Respondent is further alleged to have declined to disclose the location of the motor vehicle to Buthelezi save to state that the vehicle was in the possession of his friend and that it was collected by the Sheriff on 22 December 2023.

[27] The 2nd Respondent also asserts that 12 January 2024 the 2nd Respondent reimbursed ABSA Bank Limited the full amount previously paid by ABSA Bank Limited to the 2nd Respondent for the purchase of the motor vehicle from the 2nd Respondent. In support of this contention, copy of the ABSA dealer remittance advice and tax invoice dated 14 December 2023 together with a settlement quotation marked 11 January 2024 and proof of payment marked annexure "AA9". "AA10", AA11" and "AA12" are annexed to the answering affidavit of the 2nd Respondent.

[28] It is also contended that ABSA Bank Limited then resiled from the sale agreement with the 1st Respondent, which apparently it was entitled to do. The Court has been urged to consider the provisions of clause 6 and 7 of the agreement between the 2nd Respondent and ABSA Bank Limited, which forms part of the tax invoice issued by the 2nd Respondent to ABSA Bank Limited to return the motor vehicle to the 2nd Respondent and to cancel the agreement between it and the 2nd Respondent and to demand repayment of the amount which it had paid to the 2nd Respondent.

[29] It is therefore argued by the 2nd Respondent that as a result of the termination of the sale agreement between the 2nd Respondent and ABSA Bank Limited, and the repayment of the full amount in regard thereto by the 2nd Respondent to ABSA Bank Limited, ownership of the motor vehicle returned from ABSA Bank Limited back to the 2nd Respondent. A copy of the certificate of registration issued by the relevant government authority marked annexure “AA13”, and dated 18 January 2024, is attached to the answering affidavit of the 2nd Respondent and it has been argued confirms the 2nd Respondent as both the titleholder and owner of the motor vehicle. The Court was further referred to an email addressed by ABSA Bank Limited to the 2nd Respondent on 11 January 2024 reaffirming the cancellation of the agreement between ABSA Bank Limited and the 2nd Respondent. The email is marked annexure “AA14”, to the answering affidavit of the 2nd Respondent.

[30] It appears that the motor vehicle was subsequently traced to Eswatini via a tracking device installed by Cartrack and was then seized by the police on 12 January 2024, which in turn gave rise to the granting of

the order by the Magistrate's Court for the District of Lubombo on 15 January 2024.

[31] The 2nd Respondent further asserts that ownership of the motor vehicle initially vested in the 2nd Respondent on 7 August 2023 and was transferred to ABSA Bank Limited on 23 November 2023 and subsequently returned to the 2nd Respondent on 18 January 2024. The registration of the motor vehicle in the name of the 1st Respondent on 18 December 2023 did not clothe 1st Respondent with ownership thereof, so the 2nd Respondent argues.

The Third Respondent's Case

[32] The National Commissioner of Police is also opposed to the relief sought by the Applicant.

[33] The 3rd Respondent has raised a point of law with regard to the jurisdiction of this court to deliberate on this matter, whilst it is being simultaneously heard by at the Magistrate's court.

[34] Jurisdiction means the power or competence of a court to hear and determine an issue between parties.⁶

[35] The relief sought before this court is one to attach the motor vehicle for purposes of confirming the jurisdiction, in light of the fact that the 1st Respondent is a *peregrinus* of this court. Whilst the matter pending at the Siteki Magistrates court is one to detain the motor vehicle in question, it is clearly not the same relief. The value of the motor vehicle falls within the jurisdiction of this court. Without further ado, the court will dismiss this point of law. It is unmeritorious.

The 3rd Respondent's basis for opposing the Application

[36] I will proceed to capture the 3rd Respondent's grounds of opposing the relief sought on the merits.

[37] In essence the police state that they received information that there was a motor vehicle with no registration numbers and licence disk and the informant suspected the motor vehicle to have been stolen. They

⁶ See the judgment given by Watermeyer CJ in Graat – Reinet Municipality Pollak; The South African Law on jurisdiction also defines it as "a lawful power to decide something on a case and give effect to the judgment.

proceeded to the Applicant's place of residence, where they found the motor vehicle. The Applicant could not produce the registration documents of the motor vehicle.

[38] The Applicant was apparently ordered to drive the motor vehicle to the police station after it had been located at his homestead. Upon reaching the police station, the Applicant was requested to produce the documents, but he failed to do so.

[39] It appears that the police subsequently detained the motor vehicle, and obtained a detention order from the magistrate court of Lubombo. The detention order is also annexed to the 3rd Respondent's answering affidavit marked **AG1**.

[40] It appears that in the statement which the Applicant recorded at the police station, reflects that he told the police that he came to be in possession of the motor vehicle subsequent to an agreement that he entered into with one Mike Mamba. In terms of that agreement, he swapped his own motor vehicle a SS Lumina for the motor vehicle in question being the Mercedes Benz Viano. On top of that, he paid a

top up of E150 000-00 (**One Hundred and Fifty Thousand Emalangeni**) and he also gave Mamba his truck a Renault which was worth E400 000-00 (**Four Hundred Thousand Emalangeni**). He stated the value of his motor vehicle an SS Lumina registered MSD 858 BM to be E600 000-00 (**Six Hundred Thousand Emalangeni**). According to the statement made by the Applicant to the police, Mr Mike Mamba had initially cost the Mercedes Viano to be E1 300 000.00 (**One Million Three Hundred Thousand Emalangeni**). That is explanation that Applicant gave to the police on how he became in possession of the Mercedes Benz Viano.

ANALYSIS AND CONCLUSION

[41] The court will not delve into the propriety of how ownership was transferred from the 1st Respondent to the 2nd Respondent. The evidence presented shows that as of August 7, 2023, the motor vehicle was owned by the 2nd Respondent. Neither the Applicant nor the first respondent has demonstrated before the court that the change of ownership was irregularly executed.

[42] If that is their contention, perhaps the applicant and the 1st Respondent should have approached the necessary courts in South Africa to challenge the registration of the motor vehicle. They should have produced proof before the court that the registration of the motor vehicle to the 2nd Respondent was conducted outside the established procedures in South Africa for registering motor vehicles, especially considering that the vehicle must be physically situated in South Africa. The court is not privy to those regulations.

[43] The 1st Respondent has also referred the court to the South African case of **Standard Bank SA Ltd vs Andile Doctor Mbane, 58/2015**, which deals with remedies available to a bank for breach of contract. While the legal position stated in that case is correct, its application to the facts of the matter at hand in light of the relief sought is uncertain. The relief sought is to confirm the jurisdiction of this Court. Certain requirements, must be satisfied before a litigant can benefit from such a relief. It has nothing to do with a bank's breach of contract, which is a separate issue. The Applicant must meet the requirements of attachment *ad confirmandum jurisdictionem*.

[44] I now address the contents of the 3rd Respondent's affidavit and the statement attached therein. It has not been disputed that it was recorded by the Applicant at the Tshaneni Police Station. The 3rd Respondent has submitted to the Court the affidavit disposed of by Police Officer 8074, Detective Constable Sibongiseni Simelane. The officer stated before the court that on January 12, 2024, the Applicant provided a statement to the police at the station regarding how he obtained possession of the motor vehicle.

[45] The applicant informed the court that he came into possession of the motor vehicle after swapping his own vehicle, a Chevrolet SS Lumina, with one Mike Mamba. Notably, in the initial application before the Court, the Applicant did not mention that he had recorded a statement with the police or disclosed that he acquired the vehicle through a swap deal with Mr. Mike Mamba, along with a monetary transaction.

[46] Furthermore, the concerning statement made by the Applicant at the police station was not replied by the Applicant, rendering it uncontroverted. This statement casts a lot of doubt on the Applicant's

credibility. Particularly, regarding how he obtained possession of the motor vehicle. Moreover, the document attached by the Applicant, purported to be an agreement, is actually a statement made at a South African police station. Notably, the Applicant did not sign it, further negating how can the Applicant be a party to an agreement or statement that he did not append his signature on.

[47] In paragraph 7.2 of his founding affidavit, the Applicant asserts that he entered into an agreement with the 1st Respondent, described as a lease agreement in the form of an affidavit. However, this assertion is puzzling. It is widely understood that an agreement requires signatures from all contracting parties, whereas an affidavit is a sworn statement made under oath by a deponent. The concept of a lease agreement in the form of an affidavit appears contradictory.

[48] Upon careful examination of the affidavit in question, it appears to be a sworn statement made solely by the 1st Respondent at a South

African police station. It has no mention of the Applicant as a party to the document. This raises doubts about the Applicant's assertions and further undermines the credibility of his version of events.

[49] The relief sought is to attach a property to confirm the jurisdiction of the Court. The requirements, as correctly outlined in all the heads of arguments filed by the respective parties, are that the Applicant must be a local, and the Respondent must be a foreigner. It is crucial to focus on what a cause of action entails, as stated by the Applicant in these arguments, quoting legal writers Hepstein and van Vinsen in their work titled "**The Practice of the Supreme Court of South Africa**," 4th edition, 1997. Regarding the *prima facie* cause of action, the author elaborates that the Applicant must present evidence that, if accepted, will establish a cause of action.

[50] In support of his application, the Applicant relies on a payment of 185,000. He claims to have paid this amount upfront, as mentioned in paragraphs 7.3 and 7.4 of his founding affidavit. He further explains that he instructed his cousin, Malerato Tsele, to make the payment to the specified account and annexed proof of payment to support his

claim. Upon scrutinizing the proof of payment, it appears to have been made from Ms. Malerato Tsele's account, but the recipient is listed as G.A. Maselela. There is no explanation in the affidavit as to why the money was deposited into this account instead of the 1st Respondent's account.

[51] It's important to note that one of the requirements for the relief sought, is to establish a *prima facie* cause of action against the Defendant. Surprisingly, there is no confirmatory affidavit from the said G.A. Maselela explaining why the money was deposited into her account if it was intended for the 1st Respondent. Therefore, even on a *prima facie* basis, the documentary evidence presented does not demonstrate conclusively that the Applicant paid E185, 000 or that it was for the benefit of the 1st Respondent. The evidence fails to support the assertion made in the founding affidavit regarding the payment. Without further evidence, the Court cannot ascertain whether the E185, 000 was indeed paid by the Applicant and for the intended recipient's benefit.

[52] I revert to the contents of the 3rd Respondent's affidavit and the statement attached therein, which was recorded by the Applicant at the Tshaneni Police Station. The 3rd Respondent has submitted to the Court the affidavit deposed to by Police Officer 8074, Detective Constable Sibongiseni Simelane. The officer stated before the Court that on January 12, 2024, the Applicant provided a statement to the police at the station regarding how he obtained possession of the motor vehicle.

[53] The applicant informed the Court that he came into possession of the motor vehicle after swapping his own vehicle, a Chevrolet SS Lumina, with one Mike Mamba. Notably, in the initial application before the Court, the Applicant did not mention that he had recorded a statement with the police or disclosed that he acquired the vehicle through a swap deal with Mr. Mike Mamba, along with a monetary transaction.

[54] In light of the foregoing, the court is inclined to conclude that the 1st Respondent therefore does not have a beneficial interest in the motor vehicle, which may entitle this Honourable Court to grant an order for

the attachment thereof, so as to confirm its jurisdiction over the 1st Respondent in the proposed action.

[55] It has been contended on behalf of the 1st Respondent that ABSA bank never canceled the agreement, nor communicated such to the 1st Respondent. It was also argued that the sale agreement between the bank and the 1st Respondent is a bilateral agreement. The 2nd Respondent is not a party to it; hence, it is not a tripartite agreement. Unfortunately, the evidence attached before the court, even on a *prima facie* basis, contradicts this argument.

[56] Annexure AA3 reflects that the motor vehicle in question belongs to the 2nd Respondent, as King of Cars Northrand (Pty) Ltd is listed as the title holder. It is well established that King of Cars Northrand (Pty) Ltd is the 2nd Respondent. This evidence therefore reflects that the Applicant has fallen short of satisfying one of the requirements of attachment to *ad confirmandum jurisdictionem*, as the first respondent is not listed as an owner of the motor vehicle sought to be attached.

[57] It is against the backdrop of the foregoing that the Court is disinclined to grant the order sought by the Applicant. The Application is accordingly dismissed. Costs to follow the event.



BW MAGAGULA J

THE HIGH COURT OF ESWATINI

| | |
|--|--------------------------------------|
| For the Applicant: | M.V Dlamini (M.V. Dlamini Attorneys) |
| For the 1 st Respondent: | T. Fakudze |
| For the 2 nd Respondent: | L. Howe (Howe Masuku Attorneys) |
| For the 3 rd &4 th Respondent: | S.O. Dlamini |