

DORBYLINHLE

IN THE HIGH COURT OF SWAZILAND

INHLE TRANSPORT (PTY) LTD

v

DORBYL VEHICLE TRADING & FINANCE CO. (PTY) LTD

Civil Case No. 945/98

Coram Sapiro, CJ

For Applicant L. Mamba

For Respondent Mr. Flynn

JUDGMENT

(26/08/98)

This is an application made following on a judgment given in this court in favour of the present respondent. The effect of the judgment was to order the return of a motorbus, which had been purchased by the applicant from the respondent on credit subject to reservation of ownership. The judgment also required the Applicant to make payment of the arrear installments owing.

The applicant seeks the stay of execution of the order made in terms of the judgment. The respondent had supplied the applicant with a motor vehicle in terms of a written contract and because of the applicant's default in making payment in terms of the contract, the respondent applied to court to repossess the vehicle and for payments of the real installments. The application was opposed and several points of a technical nature were raised but in a judgment delivered by me these points were rejected and in

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the end judgment was granted in the respondent's favour for the return of the vehicle and for payment of certain amounts of money.

As far as the execution of the judgment is concerned I am informed that the Sheriff has already removed the vehicle from the possession of the applicant and is about to deliver the same to the respondent who may in due course remove the vehicle from Swaziland. It is really this aspect of the matter, which the respondent who is the applicant seeks to avoid. The argument is that he may be prejudiced should the appeal be successful there would be no vehicle to be restored to him, if the respondent removed it out of Swaziland.

As far as the money is concerned there seems to be no reason why the execution should not be stayed and I was informed by counsel who appeared for the respondent that that was really not the issue.

As far as the vehicle itself is concerned it is difficult to see what prejudice the applicant is really going to suffer if the vehicle is returned to the applicant. If the applicant is successful in its appeal and then if the

respondent is unable to return the vehicle to the applicant, the applicant will surely have a claim for damages against the company which there is no reason to believe it would be unable to meet. I say this notwithstanding the fact that the company is a South African company, but the company does extensive business in Swaziland and should be able to meet any claim that the applicant may have following on a successful appeal and the failure of the respondent to return the vehicle.

The Applicant does not seek an order that possession of the vehicle be restored to him pending the outcome of the appeal, but only wishes to prevent the Deputy Sheriff from handing it over to the Respondent. It is difficult to see of what benefit this would be to the applicant. It would not afford him an opportunity of using the vehicle. It would only involve the Sheriff having to store the vehicle at considerable expense to the parties.

The question of the Applicant's prospects of success on appeal was not argued.

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The applicant does not enjoy any substantial prospect of success, and I do not envisage that my judgment will be reversed or altered on appeal.

In the result therefore I refuse the application in so far as the stay of the execution in respect of the return of the vehicle is concerned but as far as the payment of money is concerned the execution of the judgment would be stayed pending the appeal. The cost of this application would be cost of the appeal.

S.W. SAPIRE

CHIEF JUSTICE

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