

THE HIGH COURT OF SWAZILAND

KENNETH MBINGO

Plaintiff

And

EPHRAEM MUZI ZWANE

Defendant

Civil Case No. 2197/2006

Coram: S.B. MAPHALALA - J

For the Plaintiff: MR. T. MLANGENI

For the Defendant: NO APPEARANCE

JUDGMENT

(29th November 2006)

[1] This matter appeared before me in the uncontested motion of the 24' *instant* where *Mr. Mlangeni* moved for an order by default as outlined in the combined summons filed of record. On the 21st July 2006, the Plaintiff was granted leave to file an affidavit in proof damages by Mabuza AJ.

[2] Plaintiff in his Particulars of Claim avers that sometime in the year 2001 he by verbal agreement purchased from the Defendant a motor vehicle being Registration No. SD 688 XH an Isuzu KB 260 with Engine No. 222524 and Chassis No. AAPY0279720099997. The purchase price was E35, 000-00. Plaintiff has paid the purchase price in full. It was an implied term of the agreement that upon accepting delivery of the motor vehicle and paying the purchase price, the Plaintiff was guaranteed *vacua possessio* of the motor vehicle.

[3] On the 4th May 2005, the said motor vehicle was seized by police at a roadblock and detained on suspicion that it was a stolen vehicle. It was seized while being driven by one Sibusiso Mbingo who was so driving it with the authority of the Plaintiff. An application in court to have the motor vehicle released was unsuccessful. The Defendant has in the circumstances breached the duty to guarantee *vacua possessio*. The loss of the vehicle has occasioned damages to the Plaintiff in an amount of E35, 000-00 that being the purchase price that was paid by the Plaintiff to the Defendant.

[4] In the affidavit mentioned in paragraph [1] above the Plaintiff states the following:

3. As stated in the particulars of claim, in the year 2002 I purchased from the Defendant the motor vehicle more fully described in paragraph 4 of the particulars at a price of E35, 000-00. The price was paid in full.

4. On the 4th may 2005 the motor vehicle was seized by police on suspicion that it is a stolen vehicle. Attempts to have it released have failed.

5. The loss of the vehicle has occasioned damages to me.

6. However, taking into account the fact that I had use of the vehicle between 2001 and 2005, I am willing to settle for compensation in an amount lesser than the purchase price of E35, 000-00

7. I hereby pray for compensation in the amount of e25, 000-00 plus ancillary relief.

[5] In the result, on the basis of the above averments default judgment is granted in terms of prayers (a), (b) and (c) of the Particulars of Claim.

S.B. MAPHALALA
JUDGE