



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Case No: 1276/15

In the matter between:

LUCKY MAVUSO

APPLICANT

and

**NHLANHLA JACOB MAWELA
ROYAL SWAZILAND POLICE**

**1ST RESPONDENT
2ND RESPONDENT**

Neutral Citation : Lucky Mavuso vs. Nhlanhla J. Mawela and Royal
Swaziland Police (1276/15) [2016] SZHC 104 (30 JUNE
2016)

Coram : Q.M. MABUZA J

Heard : 29 APRIL 2016

Delivered : 30 JUNE 2016

SUMMARY

PRACTICE – PLEADINGS – SPOILIATION – APPLICANT NOT DESPOILED – APPLICATION DISMISSED – *RULE NISI* DISCHARGED.

JUDGMENT

MABUZA –J

[1] In this matter the Applicant sought the following prayers:

1. Dispensing with the procedures and manner of service pertaining to form and time limits prescribed by the Rules of the above Honourable Court and directing that the matter be heard as one of urgency.
2. Condoning the Applicant for non-compliance with the said Rules of Court.
3. Directing that *rule nisi* do hereby issue calling upon the 1st Respondent to show cause on a date to be determined by the above Honourable Court why the rule as follows should not be made final.

3.1 That possession of the motor vehicle being:

Make	:	Toyota Raum
Engine Number	:	BDS 703 CM
Chassis Number	:	EXZ100101583

Engine Number : SE2009737
Colour : Black

be restored to the Applicant.

3.2 That the 1st Respondent or whosoever may be in possession of the motor vehicle restores possession to the Applicant.

3.3 The ad hoc Messenger of Court is hereby ordered and directed:

a) Forthwith to serve the Notice of Motion and this Order upon the 1st Respondent and to explain the full nature and exigency thereof;

That prayer 3.1 and 3.2 above should operate with immediate interim effect pending finalization of this matter.

4. Costs.

[2] A *rule nisi* was granted by this Court on the 20th August, 2015 returnable on the 11th September 2015.

[3] When the rule was served on the 1st Respondent he filed his papers opposing the confirmation of the rule.

[4] On the 2nd April 2016 I heard arguments from the parties in respect of the matter.

[5] The background hereto is that the Applicant purchased the motor vehicle described as follows:

Make	:	Toyota Raum
Engine Number	:	BDS 703 CM
Chassis Number	:	EXZ100101583
Engine Number	:	SE2009737
Colour	:	Black

[6] He says that he purchased it at a sale in execution after it had been repossessed from the 1st Respondent.

[7] After he had purchased it, he lent it to one Mfanasibili Shongwe.

[8] On the 27th June 2015, the 1st Respondent dispossessed the said Mfanasibili Shongwe of the motor vehicle.

- [9] Mfanasibili Shongwe has deposed to an affidavit in which he confirms the story told by the Applicant. That indeed on the 27th June 2015, while he was driving the said motor vehicle the 1st Respondent dispossessed him of it.
- [10] The 1st Respondent in his affidavit raised certain points *in limine* which I shall deal with contemporaneously with the facts.
- [11] The 1st Respondent's side of the story is that on the 30th September 2014, he purchased the said motor vehicle from Toyohashi Motors at Manzini (hereinafter referred to the seller). An agreement of sale was entered into which is Annexure "A" herein.
- [12] The purchase price was E40,000.00 (Forty Thousand Emalangeni). The 1st Respondent paid a deposit of E22,000.00 (Twenty two thousand Emalangeni) leaving a balance of E18,000.00 (Eighteen thousand Emalangeni) which was payable in instalments. The 1st Respondent paid E3,000.00 (Three thousand Emalangeni) towards the balance leaving a balance of E15,000.00 (Fifteen thousand Emalangeni).

[13] The seller obtained a court order for attachment of the motor vehicle. While the motor vehicle was under attachment, the 1st Respondent approached the Applicant for financial assistance to get the motor vehicle released. The Applicant agreed and an agreement was reached with regard to payment with the lawyers of the seller.

[14] The agreement included the term that the Applicant would pay E10,000.00 to the aforesaid lawyers for the release of the motor vehicle. The said amount was paid. In return the Applicant was to take possession of the motor vehicle and use it in his car rental business until he had reimbursed himself of the E10,000.00 as well as to settle the outstanding instalments and thereafter return the motor vehicle to the 1st Respondent. The Applicant took possession of the motor vehicle on the 23rd December, 2014.

[15] The Applicant paid a total of E8,000.00 (Eight thousand Emalangeni) towards the balance agreed on leaving a balance of E2,400.00 (Two thousand four hundred Emalangeni) outstanding. The 1st Respondent ended paying this outstanding amount.

[16] The 1st Respondent says that the Applicant began avoiding him and failed to account for the proceeds from renting out the motor vehicle to enable the 1st Respondent to assess whether the money that he owed the Applicant had been fully paid.

[17] The 1st Respondent subsequently learned that the Applicant had given the motor vehicle to Mfanasibili Shongwe.

[18] To cut a long story short the matter was reported to the police. A new agreement was then reached between the Applicant and the 1st Respondent namely that the Applicant would pay the 1st Respondent the sum of E15,000.00. The Applicant failed to pay this amount. The 1st Respondent approached Mfanasibili Shongwe who had the possession of the motor vehicle for the return of the motor vehicle. Mfanasibili gave the 1st Respondent the motor vehicle voluntarily and during July 2015 proceeded to open a case against the Applicant at Matsapha police station.

[19] Upon recovering the motor vehicle the 1st Respondent says that he traded it in to Japanz International (Pty) Ltd for the sum of E30,000.00 (Thirty

thousand Emalangeneni) and purchased another motor vehicle to the value of E38,000.00 (Thirty eight thousand Emalangeneni).

[20] The 1st Respondent says that when the Applicant obtained the *rule nisi* from this Court on the 20th August 2015, the motor vehicle was attached by the deputy sheriff from Japanz International (Pty) Ltd.

[21] Indeed a confirmatory affidavit has been filed by Bhukari Syed an adult male and Managing Director of Japanz International (Pty) Ltd.

[22] In the affidavit Mr. Syed says that on the 17th July 2015, the 1st Respondent approached him and requested to trade in the motor vehicle under dispute for a Mitsubishi Colt whose sale price was E38,000.00.

[23] After inspecting the motor vehicle under dispute Mr. Syed agreed to a value of E30,000.00 which was used as a deposit for the Mitsubishi Cold. An agreement marked Annexure “E” was entered into.

[24] Mr. Syed says that on Wednesday the 9th September 2015 at around 4.30 p.m. the deputy sheriff came to Japanz International (Pty) Ltd business

premises and attached the motor vehicle under dispute. He surrendered the motor vehicle because the deputy sheriff exhibited a court order for its attachment.

[25] The 1st Respondent at paragraph 9.17 states:

“The Applicant kept on lying to Mfanabili and on the following day I approached Mfanabili and advised him to open a case with the Police and bring back my Vehicle. Mfanabili voluntarily gave me my vehicle and proceeded to open a case against the Applicant at Matsapha Police Station.”

[26] Both the 1st Respondent and Mr. Syed state that the disputed motor vehicle was at Japanz International (Pty) Ltd when it was attached by the deputy sheriff.

[27] It is significant that the Applicant failed to state the fact that the motor vehicle was at Japanz International (Pty) Ltd when it was attached. He further failed to file a return of service from the deputy sheriff or even to obtain and file an affidavit from the deputy sheriff as to where he found the motor vehicle when he attached it.

[28] In view of the above non-disclosures I am inclined to believe the 1st Respondent that Mfanasibili Shongwe surrendered the motor vehicle voluntarily and was not despoiled.

[29] The application for confirmation of the rule fails and I so hold.

[30] In the circumstances I make an order as follows:

- (a) The *rule nisi* herein granted on the 20th August 2015 is hereby discharged.
- (b) Each party to pay its own costs.

JUDGE Q.M. MABUZA
JUDGE OF THE HIGH COURT

For the Applicant : Ms. P. Dlamini
For the 1st Respondent : Mr. Piliso