



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO. 814/2021

In the matter between:

ESWATINI REVENUE AUTHORITY

Applicant

and

EXTREME CARS INVESTMENTS (PTY) LTD

1<sup>st</sup> Respondent

SAHI INVESTMENTS (PTY)

2<sup>nd</sup> Respondent

AFTAB MUHAMMAD

3<sup>rd</sup> Respondent

USWAN TARAR ALI

4<sup>th</sup> Respondent

HARLU IFTIK AHMAD

5<sup>th</sup> Respondent

TANVEER MUHAMMAD

6<sup>th</sup> Respondent

UMERZIYAD

7<sup>th</sup> Respondent

IMITIAZ AHMAD

8<sup>th</sup> Respondent

AHMED IMTIAZ RAAZA

9<sup>th</sup> Respondent

AHMED IFTIKHAR

10<sup>th</sup> Respondent

THE REGISTRAR OF DEEDS

11<sup>th</sup> Respondent

MINISTRY OF HOME AFFAIRS  
(IMMIGRATION DEPT)

12<sup>th</sup> Respondent

THE ATTORNEY GENERAL N.O.

13<sup>th</sup> Respondent

In re:

SAHI INVESTMENTS (PTY) LTD

Applicant

And

ESWATINI REVENUE AUTHORITY

1<sup>st</sup> Respondent

EXTREME CARS INVESTMENTS (PTY) LTD

2<sup>nd</sup> Respondent

*Neutral citation : Eswatini Revenue Authority v Extreme Cars Investments(Pty)Ltd  
& 13 Others (814/2021)[2021JSZHC 134 (2dh August 2021).*

Coram : MAPHANGA J

Date heard : 02 August 2021

Date delivered : 20<sup>th</sup> August

2021.

*Summary: Civil Law -Contempt of Court -Breach of Orders of the High Court of the 30 April 2021 incorporated by reference in a later Consent Order dated 11<sup>o</sup>, June 2021 - Terms of substantive injunctive order directed at and interdicting the respondents from removing certain movable assets impounded by the Revenue Authority pending Customs Investigations - movable assets comprising a fleet of motor vehicles imported into the Kingdom by respondents;*

*Civil Procedure - impounded motor vehicles that are subject to the order under the control of the respondents on account of being held under the seal of the Initiator's Detention Notice and Schedule on the business premises occupied and controlled by the respondents - prima facie breach of court order established;*

*Standard of Proof - Applicant in civil contempt bears the onus of proving the requisite elements of the offence beyond reasonable doubt-Contemnor bearing an evidentiary burden to rebut allegation that his non-compliance was wilful and ma/a fide on a balance of probabilities - Sufficient for alleged contemnor to prove the existence of reasonable doubt as to his or her culpability to escape liability;*

*Contempt Proceedings - Alleged contemnors' evidence falling short of discharging the requisite onus - Consequently Respondents h e/d in contempt of the relevant Court Order*

MAPHANGAJ

(1] This is an application brought under the urgent motion rules of this court wherein the applicant, the Eswatini Revenue Authority, seeks the enforcement of certain interlocutory orders of this court by way of civil contempt proceedings initiated

against the various respondents. The main protagonists in this matter being the

authority as the initiator and two companies registered and incorporated in the kingdom Extreme Cars Investments (Pty) Ltd and Sahi Investments (Pty) Ltd; cited as the first and second Respondents respectively. The rest of the respondents are directors of these entities ostensibly cited in that capacity as the directing minds and

will of the companies. It is common cause that the natural persons comprising the 3<sup>rd</sup> to the 6<sup>th</sup> respondents are directors of the first respondent with the 7<sup>th</sup> to the 10<sup>th</sup> being officers of the 2<sup>nd</sup> respondents respectively. It is common ground that all these persons are foreign nationals of Pakistani origin.

[2] From the affidavits filed that of the four directors of the second respondent, it emerged during the course of the proceedings that only the first two directors namely, Messrs Umer Ziyad and Imtiaz Ahmad, remain in residence in the Kingdom but that the 9<sup>th</sup> and 10<sup>th</sup> respondents - being Messrs Ahmed Imitiaz Raaza and Ahmad Iftikhar - are no longer resident in the Kingdom having returned to Pakistan at an unspecified time. This has been disclosed by the 2<sup>nd</sup> Respondent in its papers without disclosing further information regarding the departure of these persons<sup>1</sup>.

[3] The first and second respondents are both commercial entities that conduct business enterprises in the country. The nature of the 2<sup>nd</sup> Respondent's business is unclear. Nonetheless it is also common cause that at all times material hereto the first respondent carried on the business of a motor vehicle dealership entailing the importation of used motor vehicles from overseas for onsale in the kingdom. The dealership was run at the 2<sup>nd</sup> respondents premises described as Lot 846, situated in the Matsapha Industrial Sites in the greater Manzini area. It has since closed as the site has now been abandoned by the respondents and is currently occupied by new owners. I deal separately with the circumstances pertaining to the hand over of the site to the new occupants further in this judgment.

### *Background*

[4] The essential background facts leading up to this application pertain to previous application proceedings (also initiated under a certificate of urgency) by the second respondent against the revenue authority (the original application). The genesis of the matter and the underlying circumstances leading to that application are that on the 23<sup>rd</sup> April 2021 certain officers of the revenue authority proceeding acting on the basis of a detention notice issued by the Authority relating to certain Customs enforcement procedures, entered the premises of the second respondent and impounded 137 vehicles displayed on the first respondents yard. The relevant detention notice impounding the vehicles cited the first respondent as the importer of the vehicles and attached a schedule of the listed vehicles impounded pending investigation of the importation and declaration circumstances of the vehicles in

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<sup>1</sup> This is contained in the second respondent's supplementary affidavits; c.f, paragraphs 7 of the supplementary

**affidavit of the 8th Respondent and paragraph 4.1 of the 7th Respondents commnatory afndavlt thereto.**

question. The officers of the applicant proceeded to secure the premises by locking the gates to the site.

[5] Aggrieved by the actions of the Revenue Authority, the second respondent launched the original urgent application I refer to above at the High Court seeking an urgent interdict for the unsealing of the premises to regain access as owners of the site. In support of the restitution of possession and access motion, the second respondent alleged that they were the owners, co-occupants and also lessors of the premises to the first respondent whose car dealership yard and showroom was on a section of the said site. The Revenue authority initially sought to contest the application. However in due course the initial application would come before Her Ladyship Q.M. Mabuza J who entered a consent order on the 30<sup>th</sup> April 2021 in terms whereof an interlocutory injunction directing the Revenue Authority to unseal the premises and unlock the gates thereof pending the determination of that application. The Court also ordered the first and second respondents not to remove any of the listed detained motor vehicle under the detention notice and inspection list in the interim whilst making further directives for the filing of affidavits and as to the conduct of the proceedings.

[6] As matters unfolded the parties entered into negotiations with the result that on the 1<sup>st</sup> June 2021 the parties executed a settlement agreement pending the conduct of investigative procedures relating to the importation, declaration and entry of the said vehicles. The critical provisions of that settlement were set out as follows:

**"2. IT IS AGREED THAT:**

**2.1. The First Respondent has unlocked the gates at Applicant's premises situate on Plot No. 846 situate in Matsapha Township, Manzini District, Eswatini and will not lock same.**

**2.2 The Applicant and Second Respondent is interdicted and restrained or any third party to remove any of the items listed in the Detention Notice and the Inspection List attached herein for ease of reference at Plot No.846 situate in Matsapha Township, Manzini District, Eswatini pending the finalization of the investigations by First Respondent against the Second Respondent.**

**2.3 Each party is to pay its own costs.**

**2.4 Should any of the interdicted parties fail to comply with this order, and allow the removal of the listed items in any manner, they shall be held to be in contempt of Court.**

### 3. COURT ORDER

**The Parties agree that this agreement shall be binding inter partes."**

(Sic) Emphasis added))

[7] A point of significance is that in the aforesaid agreement, perhaps for the avoidance of any doubt, the parties deemed it essential to specifically reaffirm the proper designation of the parties to the settlement in line with the citation of the relevant parties in the said proceedings as follows:

**"1. DEFINITIONS**

**In this agreement, the following words shall have the meaning assigned to them hereunder, unless the context indicates otherwise.**

**1.1 Applicant - Sahi Investments**

**1.2 First Respondent - Eswatini Revenue Authority**

**1.3 Second Respondent - Extreme Card (Pty) Limited"**

(Sic)

[8] Again by consent of the Parties on the **11<sup>th</sup>** June 2021 the settlement agreement was entered as an order of Court per Q.M. Mabuza J. From these facts and in the express terms of the order it is apparent that the respondents, including and in particular the second respondent, were directly bound by the injunction in that the interdict was directed at and cited both first and second respondents explicitly. This is evident also from the circumstances because more than being parties to the settlement agreement and the incorporating court order but they resumed joint control and possession of the premises and the detention site of the vehicles in question. The site which is the subject matter of the order is also explicitly described. As part of the common cause facts it emerged that on the said **11<sup>th</sup>** June 2021 the Revenue Authority in the persons of its officers certain Mr. Mthokozisi Mdluli and Ms Samkelisiwe Dlamini urgently repaired to the premises of the respondents at about 14h00. This was on the afternoon of the very date the settlement was entered as an order of court and the purpose of the mission was to run a random inspection of the site and the impounded vehicles. Upon arrival at the first and second respondents' business premises the said officers discovered that all but one and shells of certain stripped units of the 137 impounded vehicles ( that were subject to the detention notice) had been removed from the site. All told a total of 105

motor vehicles had been spirited away from the premises. Another point of significance is that it is common cause that the officers of the applicant found the gates of the site or premises locked when they came to conduct the routine inspection at the time they got to the premises in the early afternoon of the 11<sup>th</sup> June 202. This was confirmed in the affidavits of Ms Samkelisiwe Dlamini and Mr Mthokozisi. As a result they were unable to gain entry into the premises. I take it to be the case that there were no persons on site on that afternoon.

In the wake of the discovery of the removal of the vehicles placed under injunction the Revenue Authority has brought the present application for the conduct of civil contempt proceedings against the respondents.

#### THIS APPLICATION

[9] In terms of the notice of application the Applicant has sought urgent relief in the following orders:

**"1. Dispensing with the usual forms and procedures relating to the institution of the proceedings and allowing the matter to be heard and enrolled as one of urgency.**

**2. The first to Eleventh Respondents be hereby directed to return to the Applicant and/or its agents the motor vehicles detained as appears on the Detention Notice and Inspection List marked 'ERA 1' within forty eight (48) hours.**

**2.1 That prayers 2, 4 and 5 operate with interim and immediate effect pending finalisation and determination of this matter.**

**3. Failure to comply with prayer 2 supra, the Third to Tenth Respondents be held to be in contempt of Court and be held in gaol until they comply with prayer 2 within forty eight (48) hours of service of the order as per prayer 2 supra.**

**4. The immigration Officers at all exit and entry border points including the airports be authorised to refuse the departure or exit from the Kingdom of Eswatini the First and Second Respondents' directors, namely:**

**4.1 Aftab Muhammaad, Identity number 9206036000812;**



**4.2 Uswan Tarar Ali, Identity number 8612296000676;**

- 4.3 **Harlu Iftik Ahmad;**
- 4.4 **Tanveer** **Muhammad,** **identity number**  
**7802056000542;**
- 4.5 **Umer Ziyad, identity number 8212236000660;**
- 4.6 **Imtiaz Ahmd, identity number 7502016000190;**
- 4.7 **Ahmed** **Imtiaz** **Raaza, identity number**  
**8606231000582;**
- 4.8 **Ahman Ifitkhar, identity number 8002176200416.**

5. ***That the Eleventh Respondent be interdicted to effect the transfer of immovable property of First Respondent to third parties, being to wit:-***

**Certain: Lot 846 situate in Matsapha Township,  
Manzini District, Eswatini**

**Held: Under Deed of Transfer No. 3812014**

**Measuring: 4275 (Four Two Seven Five) square metres.**

6. **Costs of suit at the attorney and own client scale.**
7. **Any further and/or alternative relief"**

[10] The Commissioner General has deposed to the founding affidavit to move the present application for the holding in contempt of the respondents. It was opposed from its onset by the second respondent who makes common cause with the 7<sup>th</sup> to 10<sup>th</sup> respondents. The 1<sup>st</sup> Respondent Mr, Imtiaz Ahmad has deposed to the 8<sup>th</sup> respondents' answering affidavit. No appearance was entered by the first respondent and its directors; being the 3<sup>rd</sup> to 6<sup>th</sup> Respondents. At the inception the parties were represented by Mr H. Mdladla for the applicant with Mr. S Magagula making appearance for the Respondents. On the 18<sup>th</sup> June 2021 when the matter first came before me and upon hearing preliminary submissions, I made an interim order interdicting the exit of the various persons being the foreign nationals cited as the directors of the respondents from exiting the Kingdom pending the finalisation of the matter in terms of the applicants prayer for the an order under prayer 4 of the

Notice of Motion and issued a *rule nisi* in regard to prayers 1, 2, 3, 4 and 6 of the

said Notice. A return date for the orders nisi was set for the 25<sup>th</sup> June 21. On the 25<sup>th</sup> June 2021 after service and filing by the respondents of their answering papers a further date was entered as the 29<sup>th</sup> June 2021 for the Applicants to file their replying affidavits, and heads of argument for the reception of the parties respective submissions. The rule was extended to the 1<sup>st</sup> July 2021 the date set for the hearing of the contempt application Due to intervening circumstances pertaining to the adverse security conditions to do with recent troubles and nationwide unrest situation at the time, the original date set for 1<sup>st</sup> July 2021 for the hearing of the matter lapsed as did the rules nisi obtaining at the time.

[11] On the 20<sup>th</sup> July 2021 the applicant sought the enrolment of the matter and at their instance the Court granted its application for the revival of the rule and its further extension to the 30<sup>th</sup> July 2021, a date set for hearing of the matter. During the proceedings of the 20<sup>th</sup> July 2021, the respondents sought and were granted leave to file a supplementary affidavit to address new factual matter emerging in the Applicant's Replying affidavit by the 23<sup>rd</sup> July 2021

[12] On the 30<sup>th</sup> July 2021 upon application by the applicant, I granted a final postponement of the matter on condition that an order for wasted costs sought by the respondents against the applicant occasioned by the postponement would be reserved until the hearing of the main application. In the fullness of time the matter came to be argued before me on the 2<sup>nd</sup> August 2021 whereupon I reserved judgment.

#### THE RESPONDENTS CASE

[13] In the answering affidavit deposed to by Mr Imtiaz Ahmad the respondents do not dispute the basic facts as pertains the circumstances of the removal of the vehicles subject to the consent order and settlement agreement nor do they deny that as at the 11<sup>h</sup> June 2021 the motor vehicles had been removed from the site contrary to the terms of the order. Instead Mr Imtiaz tenders a terse statement of defence on behalf of the respondents. He denies that the 2<sup>nd</sup> Defendant either removed the said vehicles or was complicit in that act or any attribution of the breach or non compliance of the court order to the 2<sup>nd</sup> respondent. It also denies any knowledge the circumstances regarding the removal of the vehicles concerned; with Mr Imtiaz pleading he was totally unaware of what transpired on the site. The substance of the respondents' answer to the allegation that they have flouted the court order is set out from paragraph 4.7 of his affidavit. In it he states the following in reference to the consent order and the subsequent events:

**'4.7 The applicant herein then proposed a settlement in terms of annexure ERA5 of the founding affidavit.**

**4.7.1. My understanding of this agreement in so far as 2<sup>nd</sup> Respondent is concerned is that 2<sup>nd</sup> Respondent should not remove any of the items listed in the Detention Notice and Inspection List from its premises.**

**4.7.2 Furthermore, I understand Clause 2.4 to mean that if 2<sup>nd</sup> Respondent if 2<sup>nd</sup> Respondent herein does remove the said items it would be guilty of contempt of Court.**

**4.7.3 In fact the 1<sup>st</sup> Respondent herein owed many months rental tot eh 2<sup>nd</sup> Respondent and had I been aware prior that the 1<sup>st</sup> Respondent intends to leave the premises I would have taken steps to secure my hypothec as landlord.**

**4.8 On Monday, 14<sup>th</sup> June 2021 when I came to the 2<sup>nd</sup> Respondent's premises, I noticed that the motor vehicles normally parked in the yard had been removed. I don't know who removed the motor vehicles and I do not know where they were taken to.**

**4.8.1. In fact the 1<sup>st</sup> Respondent herein owed many months rental to the 2<sup>nd</sup> Respondent and had I been aware prior that the 1<sup>st</sup> Respondent intends to leave the premises I would have taken steps to secure my hypthec as landlord.**

**4.9 also wish to state that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are completely separate and distinct companies and apart form the lease agreement between them no other point of connection exists.**

**4.9.1 The 2<sup>nd</sup> Respondent and its directors are thus not responsible for any of the 1<sup>st</sup> Respondent's actions."**

[14] In his answering affidavit Mr Imtiaz also discloses without elaboration that the 2<sup>nd</sup> respondent no longer owns or occupies the property on which the said vehicles subject to the interdict were held; that it no longer operates its business on the said premises having sold the said property to a third party. No details as to when the said property was either sold. From the undisputed facts it appears that when the revenue authority customs officer went on site as at the 11<sup>th</sup> June 2021 there was no one on the premises and the site had been abandoned by the respondents and their staff. I intend to return to this aspect of the facts and the relevance thereof to the matter at hand.

[15] At the hearing of this matter Mr Mdladla indicated to the court that the Applicant

was no longer pursuing the prayer for an interdict preventing the transfer of the property

or site referred to as Lot 846, 5<sup>th</sup> Street Matsapha alluding to the intervening events pertaining to the sale and transfer of the property whilst the matter of the court order and the contempt proceedings was pending. That prayer was accordingly abandoned by the Applicant.

### *The Law on Civil Contempt Proceedings*

[16] In simple terms civil contempt by its nature relates to conduct or omission in disobedience of court orders. Its primary purpose is the compulsion of a party or subject to the an order of court to comply with the order of court and in that sense it serves as an enforcement mechanism. Although civil in its object it carries a quasi criminal sanction in that it may entail the committal of the offender for breach or non compliance on the justification that where a person wilfully and with mala tides disregards or breaches a court order, in effect he or she undermines the authority of the courts and the integrity of the justice system. Indeed in this matter the sanction the applicant has sought is the committal of the respondents' directors.

[17] A leading case on the state of the law on civil contempt which has been applied as setting the applicable standard and statement of the law even in this jurisdiction is that of ***Fakie v CCI Systems (Pty) Ltd [2006] SCA 54 (RSA)***. In the majority judgment of the court Cameron JA after a review and exposition of the relevant case law and the trenchant principles pertaining to civil contempt proceedings summed up the applicable legal standards for the remedy as follows:

"[42] *To sum up:*

- (a) *The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.*
- (b) *The respondent in such proceedings is not an 'accused person', but is entitled to analogous protections as are appropriate to motion proceedings.*
- (c) *In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala tides) beyond reasonable doubt.*
- (d) *But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala tides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will*

*have been established beyond reasonable doubt.*

*(e) A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities."*

[18] In a recent case on civil contempt, **Swazi MTN Limited and Others v Swaziland Posts and Telecommunications Corporation and Another (58/2013) [2013] SZSC 46 (29 November 2013)**, the Court said:

***"[35] Insofar as the law of contempt of court is concerned it is trite that where the order of the court has been brought to the knowledge of the respondent, as here, and the respondent fails to comply with it, again as /Jere, wilfulness and mala fides will be inferred on the part of the respondent and the onus burdens such respondent to rebut this inference on a balance of probabilities. See, for example, Bah/e Sibandze v Petrus Jacobus Van Vuuren, Civil Appeal Case No. 2212006; Puleo Ltd v TV and Radio Guarantee Company (Pty) Ltd 1985 (4/ SA 809 (A))."***

[19] In my respectful view the Court may have somewhat overstated the position in these obiter remarks. It is my respectful opinion that a more accurate view and correct approach to the matter is that the *onus* remains on the applicant to prove contempt beyond reasonable doubt and as per the position in *Fakie*, it is no more than the evidential burden and a *prima facie* inference of wilful disobedience and mala fides that lies against the respondent. This arises once the applicant has proven the existence of an unequivocal order (*ad factum praestandum*), that the respondent has been made aware of it and also the respondent's non-compliance with or disobedience of that order. What remains at hand is a matter of applying these principles to the immediate facts and circumstances of the case.

[20] There is no doubt as to the circumstances of how the order came about and in this case. The critical facts are that the core and relevant elements of the consent order are:

1. That the order in terms of which the site of the impounded vehicles was placed under virtual seal and the ancillary interdict restraining the respondents from removing any of the impounded vehicles pending the finalisation of the SRA investigations was first issued as an interlocutory order on 30<sup>th</sup> April 2021 and as a final order on 11<sup>th</sup> June 2021 at the instance of the parties;



2. The respondents (including the 2<sup>nd</sup> Respondents and its directors) were aware of the order and the binding effect thereof on them as they were parties to the settlement agreement for whose benefit in part some of its terms were;
3. By virtue of the consent order (both interim and final) the first and second respondents attained access and resumed occupation and control of the premises at all times material to the matter.

[21] Equally there can be no basis for the 2<sup>nd</sup> respondent to cherry-pick the beneficial aspects of the settlement agreement and consent order and avoid any knowledge, responsibility and liability for the deliberate flouting of the orders attendant on the removal of the vehicles from the site. In terms of the undertakings made by the respondents, they expressly acknowledged their liability for contempt in the very agreement in the event they fail to comply with the order or allow the removal of the vehicles from the site. The respondents including the second respondents expressly submitted themselves to the binding effect of the contempt of court clause and order. The foremost question is whether the applicant has proven the wilful disobedience or breach of the court order by the respondents and in particular the 2<sup>nd</sup> Respondents?

[22] The applicants have set out the *prima facie* circumstantial facts on which it seeks the inference that the respondents were not only aware of the removal of the vehicles or complicit in that act but also that the facts points to their implication in the breach on account of their conduct and the surrounding circumstances. In that regard I discern and understand the applicant's case to imply an attribution of wilfulness and mala fides to the second respondent and its directors as an inescapable inference drawn from the facts. From these facts the applicants contend for the rebuttal of this adverse inference on the part of the 2<sup>nd</sup> Respondents.

[23] In considering the matter I am mindful that the range of affidavits and the factual matter canvassed therein goes beyond the standard set of affidavits to include, by leave of this court the admission of the second respondents supplementary affidavit. This was granted upon application by the respondents upon their submission that it was just that they be afforded an opportunity to deal with new factual matters arising in the applicants Replying affidavits which purported to supplement the factual circumstances for the contempt application. I appreciate that the injunctive orders for the as pertains the preservation of the detention of the motor vehicles albeit is an extraordinary measure not unlike the hot pursuit anti dessipation or preservation commercial remedies akin to the *Mareva* injunction. By their nature they are interlocutory and intended to freeze the status quo pending further action or investigation by the litigants. This is one case where it is common cause that the underlying circumstances giving rise to the detention notice were

fluid and still

subject to an ongoing investigation by the SRA in terms of its statutory mandate as pertains to custom related matters.

- [24] In the nature of things it is only reasonable, based on the facts set out in the Applicant's replying affidavit, that emergent facts pertaining to the matters under investigation were canvassed and brought to light in that affidavit. This is not unlike an act of chasing shadows. The target was elusive and the applicants as the initiators have, since the onset of events giving rise to this application, been in a virtual hot-pursuit of the disappeared motor vehicles. The Commissioner General alludes to these facts in his Replying affidavit. As a prelude to these averments he makes the following statement at paragraph 2 of the affidavit:

*"2. I state that I have read the Second Respondent's answering affidavit and before I respond thereto ad seriatim, I wish to raise these salient facts, to demonstrate that the First Respondent and Second Respondent have had knowledge of the Court order for non-removal of the motor vehicles and to defeat the ends of justice there was the intent to disobey the consent order to further their own interests to the detriment of the State. The Directors acting in concert pursuant to the present application:*

*2.1 I aver the Applicant has had to engage in an investigation and recovery exercise of the motor vehicles removed from the Second Respondent's premises and to-date a total of (6) motor vehicles have been recovered whilst the exercise is ongoing."*

- [25] In the averments that follow from the above, the Commissioner General discloses that pursuant to the removal of the vehicles and upon further investigation, the applicants officers recovered 6 of the pilfered motor vehicles at a residential block of apartments in the Matsapha town known as Magevini Flats. Amongst these vehicles specific mention is made of two sedan motor vehicles being a **black VW Jetta 2008 model with chassis number WVWZZZ1KZ7M026342** and a **Toyota Lexus grey coloured 2003 model sedan bearing chassis No. JHJHF31UX0009368.**

- [26] He goes on to detail out and describe further new emerging facts implicating the second respondent in the Importation and entry of these two vehicles which were part of the fleet impounded on the first respondents yard and on that basis suggests by implication that, contrary to the 2<sup>nd</sup> respondents protestations otherwise, there exists privity of interests between the first and second respondents. The key facts are that both these vehicles were found to have been imported and declared by the second respondents upon entry into the Kingdom. From these facts Mr Masilela suggests an inference that both the first and second respondents had knowledge of

these facts and sought to conceal the this information to evade custom duties. A schedule of the various vehicles including the importation and declaration identities in regard to the various vehicles was attached as 'ANNEXURE X1' to Mr Masilela's Replying Affidavit. It was also alleged by the second respondent that some of the vehicles in the impounded fleet included vehicles imported under a third company known as 100 Star Investments (Pty) Ltd in which Mr Imtiaz Ahmad (the chief deponent on behalf of the respondents and director of the second respondent) features as a director, This is the factual matrix on the basis of which the applicant seeks the finding of an inference that the respondents are bedfellows and that there exists some mutual interests in the detained vehicles,

- [27] A further and more serious factual allegation pertains to the disclosure by the Applicants that during their investigation they have come upon information to suggest that the second respondents are in the process of actively divesting themselves of various assets including the very premises on which the motor vehicles were impounded and placed under seal pending the investigation of their customs affairs. To that end he annexes a Deed of Transfer in terms whereof it emerges that whilst the litigation was ongoing and the matter was pending, the second respondents sold the property which is the site of the detained vehicles under seal, to a third party - one Arshad Mohammad, All indications on the annexed deed of sale is that the sale and registration of transfer transactions were executed prior to the conclusion of the settlement agreement and the consent order of the 11th June 2021. It is alleged by the Applicant that this is further evidence of the second respondent's efforts to evade any potential customs liability and evade payment of customs duties by hollowing out and dissipating their assets whilst the investigations by customs officials are ongoing,
- [28] In light of the fact that these factual allegations are highly pertinent to the matter and that their disclosure on affidavit obliges this court to not only take these into account but also afford the respondents an opportunity to deal and canvass the allegation in their answers, I determined that it was in the interests of justice that the respondents be granted leave to address the new matter in a supplementary affidavit.
- [29] These allegations are strenuously refuted by Mr Imtiaz Ahmad. Mr Ahman is keen to disavow any association between the second respondent and its directors and the 2<sup>nd</sup> Respondent together with its officers; persisting in the denial that the relationship between the two entities is anything more than that of landlord and tenant. He vehemently denies any collusion between them to spirit away the motor vehicles subject to the interdict or that it was in any way complicit. He persists in his denial in the answering affidavit and his claim that the only time he came to realise that the vehicles had been removed was on the 14<sup>th</sup> of June 2021 two days after the entering of the settlement as a consent order. This is against the common cause fact that in any event by the 1<sup>st</sup> of June when the consent order was made by the

Court the vehicles had already been removed from the site.

- [30] The respondents answering affidavit is largely constituted of a litany of denials. It is long on bald protestations of innocence and short of on facts. Confronted with the emergent new facts in the applicants replying affidavit they change tack in engaging with those facts to try to avoid the damning allegations either with further denials or pro/erring unconvincing explanations to the specific allegations. To the allegation that six of the vehicles originally Impounded were found concealed at Mageving Flats they deny residence of any of their directors at those flats and also deny knowledge of the placement of the vehicles at that location. Regarding the link between the two vehicles entered and declared at Customs by either Mr Ahmad or the second respondent they now acknowledge that fact and explain it away by claiming the vehicles were sold to the first defendant; again without taking the court into their confidence by giving details as to when after the entry of the goods the vehicles were sold to the first respondent whilst remaining on the premises.
- [31] As the alleged contemnors the respondents face the task of persuading the court on a balance of probabilities that their version of the facts is reasonably probable enough to create doubt in their favour that they did not disobey or actively thwart the court order or if they did that their failure to comply was neither wilful or mala fide. In the fact of a prima facie case they cannot succeed on bare denials. They are the only persons well placed to offer a reasonably credible explanation as to what happened or to demonstrate that they could not have been aware of the removal of the vehicles.
- [32] The courts have devised approaches to dealing with uncreditworthy denials or palpably false versions of facts on affidavit. Thus in motion proceedings the appropriate stance courts take a robust position in dealing with 'fictitious', far fetched and untenable averments by rejecting such matter as demonstrably and clearly unworthy of credence, So on the papers where the respondent does not raise genuine or bona fide material factual material to engage on the material facts the court would be justified in rejecting that version out of hand on motion. That is the effect of the expanded discretion of the Courts recognised in ***Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*** [2004] 2 All SA 366 (A) where the concept of 'uncreditworthy denials' was expanded to include allegations or denials that are far-fetched or clearly untenable. I think this approach ought to be included in the courts credibility testing toolkit in matters such as the instant case.
- [33] What is the Court to make of the stark facts of the matter and the respondents' version vis-a-vis those facts? The uncontroverted facts are that in a short interval between the 30<sup>th</sup> April 2021 from when this Court issued an interim interlocutory injunction to 'seal' the site; which order was made final and incorporated by reference in the settlement agreement between the parties and subsequently entered as a final order of the Court on 11<sup>th</sup> June 2021, the impounded vehicles were in fact removed from the second respondents yard in Matsapha. It is a fact

that

given the timeline of events, in all reasonable probabilities the vehicles were removed between the 30<sup>th</sup> April 2021 and the 11<sup>th</sup> June 2021. Evidently by the afternoon of the latter date, virtually all of the vehicles had been disappeared from the site. In the face of these facts the second respondent was at all times material hereto not only the registered owner but in occupation and control of the said premises; a fact consistent with the second respondent's self-proclaimed status as the landlord and the fact that it was operating a business on the same site. It was the second respondent that procured and was the beneficiary of the original restitution of possession order of the 30<sup>th</sup> April 2021.

[34] I discern from these facts that the site referred to in the relevant court order as Lot 846, 5<sup>th</sup> Street, Matsapha Industrial Site cited in the order was a specific object of the injunction as the site for holding the impounded vehicles under seal. A part of the uncontroverted facts include evidence to the effect that, regardless of the prevailing order sealing the yard and the fact that the impounded vehicles which were subject of that order were *in situ*, without so much as notification or due notice to the applicant, the second respondent hastily caused the premises to be sold and transferred to a third party. Pursuant to that sale, whilst the matter was pending and the order was in subsistence, the second respondent vacated and handed over the premises to the said third party. The **Deed of Tranter No. 482/2021 appearing as 'Annexure X4'** to the Applicants Replying Affidavit bears out these facts in that in it is recorded therein that the deed of sale in respect of the property was concluded on the 15<sup>th</sup> May 2021. On the 17 June 2021, barely a week after the settlement and the final order of court, ownership of the property had been transferred from the second respondent to the third party. Equally serious is an allegation by the Commissioner General that the disposal of the site of the impounded vehicles is indicative of nefarious and fraudulent dissipation of assets by the second respondent and gives rise to reasonable suspicion that the second respondent and its directors are fraudulently trying to evade import duties liability and render the efforts of the revenue authority to recover any duties that it might determine due nugatory and ineffectual. It is notable that the in terms of the same deed of transfer referred to above the second respondent has disposed of and transferred another (residential) property registered in its name situate in Tubungu Township described as Lot 103 to the same third party acquiring the industrial plot in the Matsapha industrial Sites described as Arshad Muhammad. Then there is closure of the respondents business premises in the premises which are the subject matter in these proceedings. All these facts on their facts do not augur well for the respondents and it is not unreasonable that these circumstances would give rise to a reasonable apprehension that the respondents are trying to abscond and flee their liabilities and a due reckoning with the law. The seconds flippant answer to these allegations is that there is nothing untoward turning on the second respondent's exercise of its constitutional rights to dispose of its properties. The respondents persisted in this submission even during the hearing of oral arguments when Mr Magagula appeared and urged their case before me. I do not think it advances their case or assists in



the rebuttal of the adverse inferences arising from the pallor of the evidence they have tendered.

[35] It is also significant that the second respondent disavows any association or collusion with the first respondents in the face of the uncontroverted fact that the importation records indicate it was the importer of at least two of the impounded vehicles which were subsequently removed; this indicating it had an abiding and direct interest in the matter. Notwithstanding all these curious facts and its direct control of the site as well as its established interest as an importer of the vehicles under investigation, the second respondent seeks to plead that it was genuinely unaware of the removal of the vehicles until the Monday the 14<sup>th</sup> June 2021. It begs the question how it is that as an occupant, owner and landlord in the said premises also running its own business on the same site, it would not have been aware of the removal of the vehicles. Further uncontroverted evidence is that the vehicles were already removed from the site on the Friday of the 11<sup>th</sup> June 2021 when the consent order was procured. The evidence of the initiator in these proceedings is that none of the directors of the first and second respondents or their staff were on site at the derelict premises when the officers of the applicant called in to inspect the impounded merchandise. This is not denied and there is no explanation as to where all the personnel had gone. Mr Ahmad is not forthcoming in either the answering or supplementary affidavits on facts as to the last time or date when he was on site prior to his proclaimed visit to the premises on the Monday of the 14<sup>th</sup> June 2021. In light of these facts it is inconceivable that the second respondent was acting in good faith, when it agreed to a settlement on the 8<sup>th</sup> June 2021 and caused that settlement agreement to be entered as an order of court on the 11<sup>th</sup> June 2021 thereby impliedly misrepresenting that the vehicles which were the object of the court order were still on the premises when they most probably had been removed by that time. I say this in light of the sequence of events and the common cause facts and because it is highly improbable that the vehicles would have been on site when the orders were entered then no sooner than the ink had dried, the vehicles had vanished into thin air. I think the second respondent's version is not only implausible but is a far-fetched fabrication or distortion of the relevant facts.

[36] All the indications are that the respondents colluded to evade and undermine the efficacy of the court order and that they engaged in a concerted effort to render the order ineffectual by not only facilitating and or actually removing the vehicles from the yard; in effect frustrating the efforts of the revenue services authority in the recovery of the said vehicles and in its investigation of the importation circumstances of the vehicles as well as their attention to the ancillary procedures pertaining to the recovery of customs duties on the imported merchandise. The haste and stealth with which the second respondent has recently gone about divesting itself of the very site on which the vehicles were impounded without proffering any reasonable explanation as to when these arrangements which directly impact on the matter were initiated and concluded all lend a singular

reasonable inference that it has sought to further undermine the integrity and efficacy of the court order. It has also sought to defeat the revenue authority's investigative procedures. It gives credence to the allegation that it is divesting itself of any meaningful assets to frustrate the recovery of any import duties by the Revenue Services. I do not think it serves as a defence that the second respondent is entitled to sell its properties in the open market when it is obvious that the site on which the vehicles were placed under seal and detention was the very property that the second respondent has stealthily disposed of and vacated.

[37] Another fact that has only emerged in the respondents' supplementary affidavits is that two of its directors have returned to Pakistan and are no longer resident in the Kingdom. These latter day disclosures by the Mr Imtiaz Ahmad and his only remaining colleague Mr Umer Ziyad leave a lot of unanswered questions as to when the said directors left the country. All these facts are not consistent with the second respondent protestations of innocence. The directors of the second respondent cannot escape liability for the breach of the Court order or their implication in the said breach. They have failed to discharge the burden which falls on them to raise reasonable doubt of their culpability in the flouting of the court order. It is my considered view that in these circumstances the respondents cannot avoid an adverse inference against them that their actions are consistent with wilful disobedience of the court order with the requisite *ma/a fides* to undermine the authority of the court. This court has a duty to vindicate its integrity and authority to ensure compliance with its orders at all times.

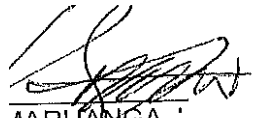
[38] In the result I make the following orders:

1. That the First to Eleven Respondents be and are hereby directed to return to the Applicant and/or its agents the motor vehicles detained as appears on the Applicant's Detention Notice and Inspection List (ERA 1) within 48 hours of this order; failing which
2. A rule *nisi* hereby issues calling upon the respondents to show cause before the High Court of Eswatini on 25<sup>th</sup> of August 2021 or on such extended return date as the Court may determine:-
  - (i) why the said respondents should not be declared to be in contempt of the said order of court;
  - (ii) why the respondents should not be sentenced, in the case of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> respondents to such a term of imprisonment as the court may determine and in the case of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to a fine or such other penalty as the court may deem appropriate;

(iii) as to why the immigration exit interdiction of various persons listed under Prayer 4 in the Applicant's Notice of Motion issued on the 18<sup>th</sup> June 2021 from the Kingdom should not be extended to such time or date as this court deems meet;

(iv) as to why the respondents should not pay the costs of these proceedings on a scale applicable as between attorney and client.

3. That the respondents pay the costs of this application.

  
MAPHANGA  
JUDGE OF THE HIGH COURT

Appearances :

For the Applicant :

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MBABANE

For the 2<sup>nd</sup>, 7<sup>u</sup>., 8<sup>th</sup>, 9<sup>u</sup>, and 10<sup>th</sup> Respondents:

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