



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 223/2021

In the matter between:

SIBONSILE PHUMZILE MASUKU

Applicant

and

SICELO NDLOVU

Respondent

Neutral Citation: *Sibonsile Phumzile Masuku v Sicelo Ndlovu*
(223/21) [2021] SZHC ..(08 June 2021)

Coram : MABUZA - PJ
Heard : 25 May 2021
Delivered : 08 June 2021

SUMMARY

Civil Procedure: Applicant in the interim and seeks final return of her motor vehicle from the Respondent – Respondent raises point of law that matter fraught with disputes of fact – Point of law upheld and application dismissed with costs. Rule nisi accordingly discharged.

JUDGMENT

[1] The Applicant seeks an order in the following terms:

1. Dispensing with the normal and usual requirements relating to time limits, manner of service, form and procedure relating to enrolment, service and filing of papers (and hearing thereof) set out in the Rules of Court and hearing this matter as one of urgency in terms of Rule 6 (25) (a) and (b) of the High Court Rules.
2. Condoning any non-compliance with the Rules of the above Honourable Court.
3. That a *rule nisi* do hereby issue operating with interim and immediate effect calling upon the Respondent to show cause on a date to be decided by the Honourable Court why the following relief must not be granted and made final;
 - 3.1 Pending finalization of this application, the vehicle registered under the name of Applicant described as a Chevrolet Hatchback, white in colour, registered FSD 108 BH bearing Chassis Number KL1JJ6DE4CB071485 be attached, removed and be kept in safe custody by the Deputy Sherriff of Manzini named Mciniseli Zwane or any other duly authorized Deputy Sherriff;

- 3.2 That the vehicle described in 3.1 above be returned to the Applicant's possession, use and control after final determination of this application.
 4. That the rule nisi in 3.1 above is to operate as an interim order pending finalization of this application.
 5. Costs of this application at Attorney - Client Scale.
 6. Further and/or alternative relief.
-
2. The application is opposed by the Respondent.
 3. The Applicant is an adult female LiSwati of Ekudvwaleni area in the northern Hhohho district and she resides at Ngwane Park in Manzini and she is employed at Southern Star (Pty) Ltd at Matsapha Eswatini.
 4. The Respondent is Sicelo Ndlovu an adult male LiSwati of Manzini district and is employed by Eswatini Beverages limited at Matsapha.
 5. The Applicant and the Respondent were in a love relationship from 2016 until September 2020 when their relationship came to an end.

6. The Applicant is the legal and registered owner of a motor vehicle described as a Chevrolet sedan, white in colour registered FSD 108 BH bearing chassis number KL1JJ6DE4CB071485 and engine number F16D4314687KA.

7. The Applicant has deposed to the fact that she permitted the Respondent to use the Chevrolet sedan occasionally while they were attempting to sell it. In the meanwhile she purchased another motor vehicle, a BMW but because her money was not enough, the Respondent gave her a top up amount of E60 000-00 (Emalangeni Sixty Thousand) she says that this amount was a gift and he says that it was a loan.

- [8] She says that she requested the Respondent to park the Chevrolet sedan at his workplace parking lot to enable would be buyers to view it and he agreed.

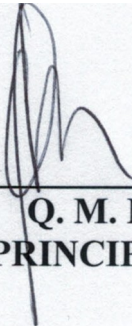
- [9] After the break-up the Respondent kept the Chevrolet sedan and used it. He refused to return it notwithstanding her demands that he do so.

[10] The Respondent in his Opposing Affidavit has pleaded a point of law of dispute of face as follows:

- (a) the amount of E60 000-00 which Applicant avers was a romantic gesture and gift from the Respondent whereas the Respondent's version is that the same was a loan to the Applicant;
- (b) the agreement relating to the surrender by the Applicant of the contentious vehicle as security and pledge for the loan and the attendant incidental salient features attendant thereto such as the right use of the pledged vehicle;
- (c) that oral evidence will be required to resolve these issues. As appears from the correspondence attached to the application, this was known to the Applicant at inception of these proceedings but she chose to institute by way of application for sole purpose of obtaining advantage over other litigants that have approached Court by way of action, which is precisely the route the Applicant should have followed.

[11] I agree with the Respondent that the matter is riddled in material factual disputes incapable of being resolved by motion proceedings.

[12] In the event, the application is dismissed with costs. The rule nisi granted in the 17/02/21 is hereby discharged.



BANE Crim. Case

Q. M. MABUZA
PRINCIPAL JUDGE

For the Applicant: Mr. S.M. Simelane

For the Respondent: Mr. M.T.M. Ndlovu