

REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 25060/2021

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

17/3/2022

In the matter between:

STANDARD BANK OF SA LIMITED

Applicant

And

OMANG TRADING AND LOGISTICS (PTY) LTD

First Respondent

BUNGANE MAWELISI WILFRED KAKAMA

Second Respondent

SIPHO WISEMAN MOFOKENG

Third Respondent

JUDGMENT

MAKUME, J:

[1] In this matter the Applicant seek an order confirming cancellation of an instalment sale agreement it entered into with the first Respondent during the year

2018 and for the return to it of a motor vehicle namely a 2018 Toyota Hilux XC 2.4 [...]with chasis number [...] Engine number [...].

[2] Ancillary thereto the Applicant seeks leave to approach this Court on the same papers supplemented for payment of the difference between the balance outstanding and the market value of the motor vehicle mentioned above.

[3] It is common cause that the Applicant and the first Respondent concluded a written instalment sale agreement on the 30th July 2018 in terms of which the Applicant advanced money to the first Respondent to enable the first Respondent to acquire the motor vehicle mentioned above.

[4] The first Respondent took possession and delivery of the motor vehicle and bound itself to liquidate the amount R306 840.53 plus interest by way of monthly instalment of R6 952.30.

[5] The first Respondent failed in breach of the agreement to make payment of the monthly instalments and notwithstanding written demand to remedy the breach the first Respondent failed to do so.

[6] On the 2nd February 2021 the Applicant as it was entitled to do cancelled the agreement and demanded possession of the motor vehicle. As on the 3 May 2021 the first Respondent was still indebted to the Applicant in the amount of R306 016.78.

[7] The second Respondent filed an answering affidavit on behalf of the first Respondent duly authorised in his capacity as a director of the first Respondent.

[8] In paragraph 3.2 of the answering affidavit the second Respondent says the following:

“The first Respondent does not deny its indebtedness towards the Applicant
I nevertheless wish to submit that it never refused to make payment to the

Applicant of the arrears. The reason for falling behind with the payment will be dealt with in what follows hereunder.”

[9] It is clear that the first Respondent admits that it has breached the agreement and blames that on the Covid pandemic. First Respondent says that its business like all others in the whole world was badly affected and hence was unable to keep up with its monthly instalment.

[10] In the final analysis the first Respondent requires that this matter be postponed indefinitely alternatively for a reasonable period to enable the first Respondent to recover financially as it says there are prospects in its mining business.

[11] The Respondent has no defence to the claim and should consent to the return of the motor vehicle which is the subject matter of this litigation to the Applicant until payment of the loan amount has been paid in full. In terms of clause 19.3.2 of the agreement the Applicant has the contractual right to claim repossession of the bakkie and will in due cause claim damages after such bakkie shall have been valued.

[12] As indicated the Respondent seeks a postponement or stay of the application to an indeterminable date in the future. It is not known even by the scientists and the medical profession when the Covid pandemic will come to an end. The presence of a pandemic and any other social ills whilst affecting economies and business should never be elevated to the status of a vis major otherwise this will bring business to a halt.

[13] The Respondent does not place in dispute the cancellation of the agreement and that being so the result of such cancellation is the return of the vehicle. It must be recalled that the bakkie is but one of the securities that the Applicant holds and if it is left in the possession of the Respondent it gets depleted by usage and the value thereof deteriorates.

[14] In the result I make the following order:

ORDER

(i) It is hereby confirmed that the instalment sale agreement concluded between the Applicant on the first Respondent on the 30th July 2018 in terms of which the Applicant sold to the first Respondent a 2018 Toyota Hilux XC 2.4 [...]with engine number [...] and chassis number [...] is hereby cancelled.

(ii) The Sheriff of the above honourable Court or his lawful deputy is hereby authorised, directed and empowered to attach, seize and hand over to the Applicant the following motor vehicle:

- a 2018 Toyota Hilux XC 2.4 [...]with engine number [...] and chassis number [...] engine number [...].

(iii) The Applicant is hereby granted leave to approach the above Honourable Court on the same papers duly supplemented if necessary for payment of the difference between the balance outstanding and the market value of the aforesaid asset at the date of cancellation together with any damages the Applicant may have suffered.

(iv) The first Respondent is ordered to pay taxed costs of this application on the scale as between attorney and client.

Dated at Johannesburg on this 17 day of March 2022.

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

DATE OF HEARING : 15 FEBRUARY 2022

DATE OF JUDGMENT : 17TH MARCH 2022

FOR APPLICANT : ADV M DE OLIVIERA

INSTRUCTED BY : MESSRS JASON MICHAEL SMITH INC ATT.

FOR RESPONDENT : ADV HERMAN GOOSEN

INSTRUCTED BY : MESSRS ARTHUR CHANNON INC.
ATTORNEYS