

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 30374/2020

DATE: 16-05-2023

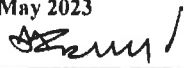
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(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 16 May 2023

SIGNATURE 

In the matter between

POTPALE INVESTMENTS

Applicant

and

MARY MANTHUDI MOKONYANA

Respondent

J U D G M E N T

CRUTCHFIELD, J: The applicant, POTPALE INVESTMENTS PROPRIETY LIMITED, seeks summary judgement against the respondent, Ms Mary Manthudi Mokonyana, in the following terms;

1. Confirmation of termination of the agreement concluded between the parties;

2. The return of a 2017 Mercedes-Benz Sprinter 515CDI F/CP/V with engine number 65195534170065 and

chassis number WDB9066552P505635 to the plaintiff forth with; and

3. Attorney and client costs to be taxed.

This matter came before the unopposed motion court during October 2022 when the respondent, Ms Mokonyana, was advised to obtain legal assistance. Ms Mokonyana declined to do so and appeared before me in person.

The respondent uploaded an answering affidavit in respect of the claim for summary judgement in which she sought a postponement pending the appointment of a legal representative by the Legal Aid Board.

The respondent's supporting affidavit, as the opposing affidavit was termed, was dated November 2021. As stated by me above, subsequent thereto and during October 2022, the respondent was advised by the court before which the parties appeared to obtain legal assistance. The respondent declined to do so.

The supporting affidavit, the respondent's opposing affidavit in the summary judgement application, did not set out a defence in law. The applicant's counsel, to her and the applicant's credit, declined to take technical points in respect of the respondent's papers and referred to the respondent's plea in the action in respect of the respondent's defence.

The respondent's defence to the claim for summary judgment was that as a result of the "hard lockdown" caused

by the Covid pandemic, she was unable to comply with her obligations under the agreement concluded between herself and the applicant.

In effect, the respondent's defence was one of force majeure, that she was prevented because of the 'hard lockdown', from complying with her obligations. The applicant's counsel referred me to the applicant's affidavit in which the applicant set out the mileage travelled by the vehicle in question during the "hard lockdown" and subsequent thereto over a period of time.

The applicant set out the mileage travelled by the vehicle during the relevant time, being that in June 2021, the vehicle travelled 5389.43 kilometres. During April 2020, the first month of the hard lockdown, the vehicle covered 1688.88 kilometres and during May 2020, the vehicle did 1772.72 kilometres.

With effect from the month of July 2020, the vehicle travelled in excess of 4500 kilometres per month other than during January 2021, when the vehicle covered 1606.72 kilometres. Accordingly, the schedule set out by the applicant reflecting the vehicle's mileage over the two year period demonstrated that the respondent felt the effect of the hard lockdown adversely for a period of two months and thereafter the mileage on the vehicle increased and recovered.

Whilst the respondent experienced financial difficulties as a result of the hard lockdown, it is apparent that she was able to recover from the adverse effects thereof shortly thereafter. Thus, the respondent failed to demonstrate that it was impossible for her to comply with her obligations under the agreement as required for a defence of force majeure.

In the circumstances, there is no basis to find that it was an absolute impossibility for the respondent to comply with her obligations under the agreement.

The reliance placed by the respondent upon the alleged force majeure, being the "hard lockdown," did not sustain a triable defence in the face of the mileage travelled by the vehicle over the relevant period.

As a result, the respondent's plea did not furnish a defence sufficient at the summary judgement stage for the purposes of awarding the respondent leave to defend. Accordingly, I am not persuaded that there is a defence in respect of which I may grant leave to defend.

Insofar as the respondent requested that she be allowed a period of time in which to make payment to the applicant of the amount of the claim, the applicant issued summons during October 2020, on which date an amount in excess of R 700 000 was outstanding on the vehicle. Interest will have accrued on the arrear amount in the interim.

In the circumstances, there exists no practical way of the respondent making good on the debt outstanding on the vehicle.

Furthermore, the applicant was not inclined to allow the respondent a further period of time in which to attempt to liquidate the arrears.

Accordingly, the respondent did not set out a basis for an order permitting her leave to defend.

By virtue of the aforementioned, I grant the following order:

1, Summary judgement is granted in favour of the applicant against the respondent as follows:

1.1. The termination of the agreement is confirmed;

1.2. The respondent is ordered to return the 2017 Mercedes-Benz sprinter 515CDI F/CP/V with engine number 65195534170065 and chassis number WDB9066552P505635 to the applicant forthwith;

1.3. Costs on the attorney and client scale to be taxed.

I hand down the judgement.

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CRUTCHFIELD, J

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JUDGMENT


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CRUTCHFIELD, J

JUDGE OF THE HIGH COURT

DATE: 16 May 2023.