

REPUBLIC OF SOUTH AFRICA



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

CASE NO: 9920/2022

ACTING JUDGE BENSON 14 June 2023

4 June 2022 

DATE

SIGNATURE

IN THE MATTER BETWEEN

SA TAXI FINANCE SOLUTIONS (PTY) LIMITED

APPLICANT

and

JUDITH MALEFU MAGUBE

RESPONDENT

JUDGMENT

BENSON AJ*Introduction*

- [1] The applicant seeks summary judgment against the respondent in the form of an order
- (i) confirming the cancellation of the instalment sale agreement entered into between the parties;
 - (ii) returning the 2012 Toyota Quantum 2.7. Sesfikile 15S motor vehicle, being the subject matter of the instalment sale agreement.
- [2] It is common cause that the plaintiff and the defendant concluded a written lease agreement, dated the 28 July 2017 at De Deur. A copy of this agreement is annexed as Annexure C to the particulars of claim. It is further common cause that the defendant has failed to effect payment of the agreed instalments since approximately 2017 when she took delivery
- [3] At some point the plaintiff caused the vehicle to be impounded due to the arrears being substantial, and with no efforts on the part of the defendant to effect payment of the instalments due or the arrears. This seems to have been done in the absence of a court order justifying same. This practice by financial institutions is abhorrent, yet appears to have become commonplace. Nevertheless, this led to the defendant signing an addendum in September 2019, which is attached as Annexure E to the particulars of claim, in order that the vehicle could be returned to the defendant, and in terms of which the amount owed was recapitalised and the repayment period extended, to afford

the defendant an opportunity to commence payment of the instalments and the arrears.

- [4] Alas, this was to no avail and the defendant continued in her failure to effect payment to the plaintiff.
- [5] The respondent avers that section 63(1) of the National Transport Act No.5 of 2009 is of application, and that a license to operate the vehicle as a "taxi" can only be awarded to the registered owner of the vehicle. She states in this regard that because one "Duma" is the registered owner of the vehicle, that she has been rendered unable to operate the vehicle as a taxi, and claims that this constitutes a breach of the instalment sale agreement by the plaintiff, as she is not the registered owner. Accordingly, she contends, she is able to retain the vehicle *sans* payment to the plaintiff. No further particularity is given by the respondent as to the identity of "Duma" and his or her identity. No documentary evidence is annexed to the affidavit opposing summary judgment that demonstrates who such person is or any involvement by such person in relation to the vehicle in question.
- [6] The defendant further avers that the matter is *lis pendens*, as the plaintiff issued another action proceeding as against her. It is however common cause that same was withdrawn prior to the respondent deposing to the answering affidavit in this application. Given that the objection is academic in this regard, the point *in limine* must fail.
- [7] Initially the respondent further objected to the authority of the deponent to the affidavit in support of the application, but this point was abandoned during argument before this court and warrants no further discussion.

[8] Upon a reading of the National Land Transport Act No.5 of 2009, it is clear that section 63(1) finds no application to the defendant's purported dilemma in relation to obtaining an operating license.

[9] Section 64(1) however, provides as follows:

"An operating license may only be issued to and held by the person registered in terms of the National Road Traffic Act, as the owner or operator of the vehicle as defined in that Act, and specified in the operating license."

[10] In the National Road Traffic Act, No.93 of 1996, defines an "operator" as the person responsible for the use of a motor vehicle of any class contemplated in chapter VI, and who has been registered as the operator of such vehicle. "Owner" in relation to a vehicle is defined as *"the person who has the right to the use and enjoyment of a vehicle in terms of the common law or a contractual agreement with the title holder of such vehicle."*

[11] It is accordingly clear that neither Act contemplates that the operator must be the title holder of the vehicle. There accordingly appears to be no impediment to operating the vehicle for its intended purpose as alleged by the respondent.

[12] Be that as it may, and even if the legislation supported the defence of the respondent, section 2 of the instalment sale agreement makes it clear that ownership of the vehicle cannot pass to the respondent until the last instalment is paid, and a fee of R100.00 is paid for the vehicle to the applicant. There could have been no confusion on the part of the respondent in this regard. Certainly, nowhere is it stipulated that the applicant had any duty whatsoever to register the vehicle in the name of the respondent.

(13) In all of the circumstances, no bona fide defence is discernible on the papers before this Court, and the applicant is entitled to summary judgment.

(14) In the result I make the following order:

- 1.) The termination of the instalment sale agreement is confirmed.
- 2.) The respondent is to return the 2012 Toyota Quantum 2.7. SESFIKILE 15S with engine number 2TR8250218 and chassis number JTFSX22P806117758 to the applicant within 7 days of this order being granted.
- 3.) The respondent is ordered to pay the applicant's taxed costs on the attorney and client scale.



G.Y. BENSON
ACTING JUDGE OF THE HIGH COURT OF
SOUTH AFRICA,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

Appearances:

Date of hearing : 25 May 2023
Date of Judgment : 14 June 2023
Date Judgment Delivered : 14 June 2023

For the Applicant : Adv. R. Stevenson
Instructed by : Marie-Lou Bester Inc.

For the Respondent
Instructed by

Mr. Ngoepe
:
Ngoepe Attorneys Inc.