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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: B3624/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

01/08/2023

In the matter between:

HONESTY OBAKA OMEZI

Applicant

and

KINGSLEY AZUBUIKE EDIKE

First Respondent

KGOSI SEKELE

Second Respondent

KGOSI SEKELE ATTORNEYS

Third Respondent

MOLOENA TSHOLOFELO

Fourth Respondent

DEPARTMENT OF TRANSPORT GAUTENG

Fifth Respondent

LANGLAAGTE TRAFFIC LICENSING AUTHORITY

Sixth Respondent

JUDGMENT

van der Westhuizen, J

- [1] The applicant approached this court by way of urgency for various relief. However, the crux of the relief sought related to the return of a vehicle pledged by the first respondent as security for repayment of an investment by the applicant. *In esse* the applicant sought an order for delivery of the pledge to complete the applicant's security.
- [2] The first respondent opposed the application. He raised two points *in limine*: lack of urgency; and lack of jurisdiction. In respect of the point *in limine* relating to lack of urgency, the first respondent alleged that this application for delivery of the pledge was premised upon an agreement entered into on or about 30 November 2021. It was further submitted that the allegation of urgency related to a perception that the vehicle would disappear or be stripped or be removed from the Republic on or about 15 July 2023.
- [3] The second point *in limine* related to alleged lack of jurisdiction in that the first and second respondents fall within the jurisdiction of the Gauteng Division, Johannesburg. There is no merit in that point *in limine*. It is trite that the courts in the two divisions have concurrent jurisdiction.
- [4] In respect of the allegation of lack of urgency, it is to be recorded that the applicant has prepared the papers in person. The allegations are ineloquently set out in the notice of motion and the founding affidavit. However, that does not distract from the essence that was pled. The relevant allegations were set out in the founding affidavit. It could be gleaned therefrom that the applicant held the perception that his security was under threat. There is no merit in the submission that whilst the agreement was concluded during 2021, no request was made for delivery of the pledge until now and that hence there existed no urgency. I ruled that the matter was urgent and heard argument on the merits.

- [5] It was common cause that the applicant and the first respondent entered into an agreement in respect of an investment. That agreement obliged the applicant to invest an amount of R250 000.00 with the first respondent. A vehicle, a white Mercedes Benz with registration number K[...] G[...], Engine Number 2[...] and Vin Number W[...], was pledged as security for the repayment of the investment amount. In addition, the first respondent handed the registration papers of the said vehicle to the applicant in support of the pledge of the vehicle as security for the repayment of the investment amount.
- [6] The opposition to this application is not so much directed at the enforcement of the applicant's rights in terms of the said agreement, but is mainly, if not exclusively, directed at the timing of the enforcement thereof.
- [7] The applicant alleged that he was granted possession of the vehicle, but that its use was required by the first respondent who then removed it. Thereafter, during April 2023, the vehicle was again returned to the applicant at the latter's request, only to be removed from his premises without his consent. That prompted the applicant to attempt to enforce his rights in terms of the agreement, but to no avail. The applicant was met with the threat that the vehicle will "disappear" and that a court order was required before the vehicle would be returned. Hence this application.
- [8] In view thereof that the applicant was entitled to receive the vehicle as pledged, the first respondent's refusal to do so, and in view of the perceived threat that the vehicle may "disappear" if no court order is produced ordering delivery thereof, the applicant is entitled to the relief sought. The first respondent has not made out a case why the vehicle as pledged should not be handed to the applicant. The issues raised by the first respondent in his answering affidavit have no merit.

I accordingly grant the following order:

1. The matter is heard as a matter of urgency;

2. The first respondent is directed to deliver the vehicle, the white Mercedes Benz with Registration Number K[...] G[...], Engine Number 2[...], Vin Number W[...], (the Vehicle) to the applicant;
3. In the event of the first respondent failing to comply with the order in 2 above, directing the first respondent to advise the applicant of the Vehicle's whereabouts if known to the first respondent, and if the whereabouts of the Vehicle is not known to the first respondent, to advise when he was last aware of the Vehicle's whereabouts and how it left his possession, and where it may be located;
4. The first respondent is directed to deliver all of the Vehicle's registration papers to the applicant;
5. The sheriff, for the appropriate area, is authorised and directed, with the support of the South African Police Services, to seize the Vehicle wherever it may be, and to deliver same to the applicant;
6. The second respondent is directed to advise the applicant of the whereabouts of the Vehicle if known to him, and if not so known, to advise when he was last so aware and how it left his possession, and if known where it can be found;
7. The fifth and sixth respondents are directed to not effect registration in the name of the person or entity applying for the registration of the said Vehicle;
8. The vehicle and the registration papers of the Vehicle are to be held as security for compliance by the first respondent of his obligations in terms of the agreement of 30 November 2021;

9. The orders in paragraphs 2 to 8 are to have immediate interim effect pending the institution and final resolution of proceedings to be instituted against the first respondent within 45 days of the grant of this order;
10. The first respondent is to pay the costs of this application.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

On behalf of Applicant: G Segal
Instructed by: G Segal Attorneys

On behalf of Respondent: K Sekele
Instructed by: Kgosi Sekele Attorneys

Judgment Reserved on: 19 July 2023

Judgment Handed down: 01 August 2023