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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 5514/2021

In the matter between:

SPRINGS CAR WHOLESALERS (PTY)LTD t/a
NO FINANCE CARS

Applicant

and

DR VUYO MAKHANYA

Respondent

CORAM: C NEKOSIE AJ

JUDGMENT BY: C NEKOSIE AJ

HEARD ON: 27 JANUARY 2021

DELIVERED ON: 28 JANUARY 2021

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- [1] This is a *rei vindication* application for the return of a 2014 Nissan NP300 Hardbody with VIN number ADNALGD22ZR067911 and registration number [...] (“the vehicle”) of which the applicant is the rightful owner which is in possession of the respondent and presumably stored at 11834 Lebina Street, Relebohile, Kroonstad.
- [2] This Court is called upon to decide whether the applicant is entitled to the return of the vehicle under *re vindication*.
- [3] The requirements for *rei vindication* are proof of ownership; (ii) of an existing and identifiable thing or object; (iii) which is in the control of the defendant at the time of instituting legal proceedings¹.
- [4] The applicant’s case is that it is a long term car rental company. It rented a vehicle to a Ms Nqubuka on 22 August 2020. On 3 November 2020 Ms Nqubuka was in an accident and informed the applicant of same. It appears from the accident report that the collision involved a vehicle of the respondent. The applicant instructed Max Towing to tow the vehicle to a safe location. On Max Towing’s arrival at the scene they were informed that the respondent gave instructions for the vehicle to be towed by another company to an unknown address.
- [5] After several attempts the applicant contacted the respondent on 28 November 2020. On 4 December 2020 the applicant sent Mr Maputle to the respondent. He met with the respondent and the person in charge of where the vehicle is stored. The respondent refused to permit the release of the vehicle and wanted storage costs. On 4 February 2021 Maputle returned to where the vehicle was and was informed that the respondent moved the vehicle to an unknown location.

¹ Chetty v Naidoo 1974(3) SA 13 (A) p20B-C

- [6] The respondent in essence denies that he was in possession of the vehicle on the date of commencement of the proceedings.
- [7] He states that he has a civil claim against Mr Moffert Manganye that is unrelated to the accident. He has no association with Ms Nqubuka or the occupants of the vehicle at the time of the accident.
- [8] The respondent admits knowledge of the whereabouts of the vehicle and the fact that storage costs is due but maintains that he is not in possession of the vehicle therefore the remedy sought cannot be brought against him.
- [9] I am satisfied the applicant proved ownership of the vehicle by production of the registration papers and the invoice for purchasing the vehicle. The only remaining issue is whether the respondent is in possession of the vehicle.
- [10] It appears from the respondent's papers that he denies possession simply because the vehicle is not physically with him.
- [11] The respondent on his own account and at the very least he acknowledges that he was involved in collision with the vehicle as per the accident report. He confirms that he knew the whereabouts of the vehicle through the correspondence of his attorney dated 22 September 2021. Both these aspects in support of the applicants case emanates from the respondent himself.
- [12] He conveniently remains silent on who instructed the removal of the vehicle from the accident scene and how he came to know of the whereabouts of the vehicle that enabled him via his attorney to asked storage costs. He denies that he refused to hand over the vehicle on 4 December 2020 claiming storage costs yet his attorneys correspondence to the applicant confirms that storage costs was due.

- [13] The respondent is extremely vague in his resistance of the application. He essentially provide the court with a bare denial in spite of the fact that even on his own evidence he took control over the vehicle from the accident scene and kept possession through his control over the movement or storage of the vehicle. The occupier of the initial residence where the vehicle was kept confirms his control in that he acted on instruction of the respondent.
- [14] I am satisfied that the respondent, though not necessarily physically, has control over the vehicle and thereby he is in possession of the vehicle². The question remains whether the respondent remained in possession when proceedings were instituted. Based on the fact that the respondent demanded storage costs as late as 22 September 2021 well after the vehicle was removed from the initial place of storage in March 2021, it is justified to conclude that the respondent remains in possession of the vehicle to date. He is therefore able to comply with an order for return of the vehicle.
- [15] In the notice of motion the applicant seeks compensation for damages in the event that the vehicle is not handed over to it. In using *rei vindicatio* the applicant is limited to the restoration of its possession of the vehicle. Damages suffered as a result of a failure to restore possession should be claimed by action proceedings in order that all the facts be properly ventilated in order that the court may come to an informed determination of the quantum of damages suffered.
- [16] I find that the application for the restoration of possession should succeed but the prayers relating to payment of damages cannot stand. Consequently the following order is made:

IT IS ORDERED THAT

² Underwater Construction and Salvage Co (Pty) Ltd v Bell 1968(4) SA 190 (C)

1. The respondent is ordered to hand over the applicant's vehicle, being a 2014 Nissan NP300 Hardbody with VIN number ADNALGD22ZR067911, engine number KA20131746X and with registration number [...] to the deputy Sheriff who is authorised and directed to deliver the vehicle to the applicant within 24 hours of this order.
2. The cost of this application shall be paid by the respondent.

CNEKOSIE, AJ

For the Plaintiff:

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