



**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: 943/2016

In the application between:

CHAMPION SEALERS CC

Applicant

and

B VAN HEERDEN

Respondent

JUDGMENT BY: C REINDERS, J

DELIVERED ON: 6 FEBRUARY 2017

- [1] The applicant is a close corporation named Champion Sealers t/a Roof Leak (Champion Sealers). The respondent is a 55 year old female, Bettie van Heerden (Ms van Heerden). Champion Sealers in its notice of motion seeks an order that Ms van Heerden be compelled to cause “the registration and retransfer” of two vehicles, to witt a JCB loader vehicle and a Nissan CM motor vehicle (“the vehicles”) into the name of Champion Sealers, with ancillary relief.

- [2] The deponent to the founding affidavit is Johanna Alida Prinsloo (Ms Prinsloo), a member of Champion Sealers. According to her Ms van Heerden and Champion Sealers during 2011 “decided to form a specific purpose vehicle and business entity, in order to do work for large mining companies. Because of problems related to the “*black listing*” with Harmony Gold Mine and Anglo American of some of the role players involved, personal and further registration was not possible.”
- [3] In her answering affidavit Ms van Heerden admits that she concluded an agreement in May 2012 with Mr Gary Prinsloo (Mr Prinsloo), the husband of the deponent, and became a member of a close corporation named Roovac CC. Mr Prinsloo informed her that he would affect the necessary to have her qualified as a vendor with Harmony Gold Mine (“Harmony”), which required having the equipment to perform the work. She was handed two sale agreements pertaining to her buying the said vehicles, which she signed on 1 October 2012. Mr Prinsloo indicated that the vehicles would be transferred in her name to comply with the requirements of Harmony. She never took possession of the vehicles and it remained in the possession and control of Champion Sealers and/or Mr Prinsloo. The vehicles were however transferred in Ms van Heerden’s name. During an assessment by Harmony the latter cancelled her vendondorship upon realising that the vehicles were those of the applicant.
- [4] Hereafter the applicant sought to effect registration of the vehicles in its name and various correspondences between the

parties' legal representatives were exchanged. For purposes hereof I do not intend to deal therewith, save for a letter dated 14 September 2015 by Ms van Heerden's attorney. The letter records that Ms van Heerden has suffered damages due to the applicant's breach of contract and requests a payment of the amount of R 50 000,00 to respondent where after she would assist the applicant in obtaining copies of the original registration documents. In addition she avers that she is not in possession of the originals.

- [5] From the papers it is abundantly clear that Ms van Heerden is not the owner of the vehicles. There is no legal reason why it should be registered or remain as such in her name. In the opposing affidavit the respondent states that GJP Service CC is the owner of the Nissan vehicle. In the applicant's replying affidavit Ms Prinsloo stated that she is the sole member of the said entity, the directing mind thereof and has no objection against the relief sought and/or the registration of the Nissan vehicle in the name of the applicant.
- [6] To my mind this objection by respondent should not on its own and in view of the common facts between the parties stand in the way of me granting relief to the applicant. The real defence forwarded by the respondent lies therein that the entire agreement concluded between applicant and respondent tantamount to fronting and that I should not order the reregistration of the vehicles since fronting is an offence and the purpose of registering the vehicles in her name was to defraud the mine (and possibly third parties). For purposes of this

judgment I am prima facie satisfied that the agreement between the applicant and respondent constituted fronting (contravening the provisions of the **Broad-Based Black Economic Empowerment Act 53 of 2003**).

[7] Mr Coetzer pressed hard upon me not to grant the relief sought by the applicant under these circumstances as it would amount to the court approving illegal and unlawful actions. I am not called upon to adjudicate the contract with Harmony and whether same constituted fronting but I will make an appropriate order in this regard by instructing the registrar to forward a copy of the papers and this judgment to the Director of Public Prosecutions, Free State for consideration.

[8] The applicant avers that the agreement in terms whereof the vehicles were inter alia transferred to the respondent was cancelled in 2013. The respondent avers that “die ooreenkoms het nooit van die grond af gekom nie”. Ownership of the vehicles never vested in the respondent. Sec 1 of the **National Road Traffic Act 93 of 1996** (the “Act”) defines an owner as follow:

“Owner”, in relation to a vehicle, means –

- (a) 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;
- (b) any person referred to in para (a) for any period during which such holder has failed to return that vehicle to the title owner in accordance with the contractual agreement referred to in para (a) ; or

(c) a motor dealer who is in possession of a vehicle for purposes of sale,

and who is licensed as such or obligated to be licensed in accordance with the Regulations under section 4, and “owned” or any like word has a corresponding meaning.”

[9] Mr Grobler on behalf of the applicant referred me to the following passage from King, AJ:

“Further, judicial notice does not go that far that this court cannot take cognisance of the fact that many vehicles today are in the possession of persons in terms of lease agreements or hire purchase agreements with reservation of ownership. **Thus, the true owner might not be in possession of a vehicle or the registered owner might not be the true owner.**” (my emphasis)

See: **Geoghegan v Pestana** 1977 (4) SA 31 (T).

To my mind it is still apposite today and the facts of this case is a good example thereof.

[10] In **AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (Corruption Watch and Another as amici curiae)** (No 2) 2014 (6) BCLR 641 (CC) [at footnote 47 thereof] it was held that the dissolution of a contract creates reciprocal obligations to ensure that neither contracting party unduly benefits from what has already been performed under a contract that no longer exists.

I am of the view that the applicant as owner of the vehicles in terms of the Act is entitled and compelled to have the vehicles registered in its name. The purpose of the Act is inter alia to inform the registration authorities who the owner of vehicle is, who the presumed driver of the vehicle is and who is liable for the payment of the licencing fees.

- [11] The respondent admits in her answering affidavit that the applicant is the owner of the vehicles and states “dit was nog te alle tye die Applikant se eiendom gewees”. I therefore can see no reason why the vehicles should not be registered in the applicant’s name. The applicant in correspondence dated 13 May 2014 demanded that the respondent should pay the costs of affecting the registration in the name of applicant, but I fail to see why she should do so. If applicant is the owner (as is common cause) the applicant is liable for those costs and has been liable throughout.
- [12] The status quo has the effect that Ms Van Heerden is represented to the registration authorities (and even third parties) as the registered owner of the vehicles, whilst that is not true. She herself declares that she is not the owner of the vehicles nor has any other legal interests therein. Had she suffered any damages, I need not decide that question on these papers.
- [13] Mr Grobler during argument submitted that should I be of the prima facie view that the conduct of the applicant constitutes fronting (which is denied by the applicant), I should not decline the

application but show my displeasure with an adverse cost order, which I intend to do.

[14] Accordingly I grant the following orders:

1. It is declared that the applicant is entitled to register into the name of the applicant and at the cost of the applicant the following moveable items (“the vehicles”):
 - 1.1 A JCB vehicle with registration number [D...], engine number SA3204034341999510 and Vin number JCB3CX04K02004107;
 - 1.2 A Nissan (CM Series) motor vehicle, registration number [B...], engine number MJ010125A080256X and VIN number CMF87F04494.
2. The respondent is ordered to sign all or any documentation within 7 (seven) days of being requested to do so in order to effect registration of the vehicles into applicant's name.
3. Should respondent fail to comply with prayer 2 of this order, the registrar of this court is ordered and authorised to sign all or any of the documents to have the vehicles registered in applicant's name.
4. The applicant is ordered to pay the cost of this application.

5. The registrar of the court is directed and authorised to dispatch a copy of these papers as well as this judgment to the Director of Public Prosecution, Free State for consideration. The registrar shall comply with this order within 20 (twenty) days hereof.

C. REINDERS, J

On behalf of the applicant: Adv. S. Grobler
Instructed by:
Juan Adendorff
c/o Peyper Attorneys
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On behalf of the respondents: Adv. J.C. Coetzer
Instructed by:
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