



IN THE NORTH GAUTENG HIGH COURT, PRETORIA
[REPUBLIC OF SOUTH AFRICA]

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>02 / 04 / 2015</u> _____	
DATE	SIGNATURE

CASE NUMBER: 18077/2015

2/4/2015

In the matter between:

AUTO HAUS CAR HIRE AND TOURS (PVT) LTD

APPLICANT

And

THE COMMISSIONER

FIRST RESPONDENT

SOUTH AFRICAN REVENUE SERVICES

SECHABA TRUST (PTY) LTD

SECOND RESPONDENT

REASONS FOR THE ORDER GRANTED ON 11 MARCH 2015

MAVUNDLA J;

[1] The applicant approached this court on the 11 March 2015 for an order that:

1.1 The matter is heard on urgent basis and that the usual requirements with regard to form and service provided for in the rules be dispensed with in accordance with Uniform Rule 6 (12);

1.2 The first and or second respondent be ordered to stay the sale of the Rolls Royce Ghost motor (Chassis number: SCA664S08UH14637 and engine number 90154707) (hereinafter referred to as "the vehicle"), for which the tenders were scheduled to close by 12:00 on 11 March 2015;

1.3 The above interdict to be effective until adjudication of the issues raised by the applicant in its section 96 Notice to the first respondent, served on 10 March 2015;

1.4 costs of the application:

- (a) against the first respondent on attorney and client scale;
- (b) against the second respondent on attorney and client scale, only in the event that the second respondent refuses to undertake to stay the sale.
- (c) Alternatively that costs be reserved for determination in the main proceedings to be instituted by the applicant according to its s96 notice.

[2] The application was opposed by the first respondent. Second respondent did not file any papers at all. I dismissed the application with costs including the cost of 2 (two) counsels. I further indicated that reasons will follow in due course. I therefore proceed to tabulate the reasons for the said order.

- [3] The application was founded on the affidavit deposed to by the applicant's attorney, Mr. Engelbertus Leonard Grove of Nardus Grove Attorneys. It is not in dispute that the applicant is a company incorporated and registered according to the Laws of Zimbabwe. The applicant has its principal place of business at Stanford Crescent, Eastlea, and Harare, Zimbabwe. It is common cause that Mr Frank Buyanga Sadiiqi is the sole director of the applicant and assisting the applicant in his capacity as such.
- [4] The sale was scheduled to take place at 12:00 on 11 March 2015. This sale according to Mr Grove was brought to his attention by the first respondent on the 6 March 2015. At the time Buyanga was out of the Country in Zimbabwe and only returned on the weekend of 9 March 2015. Accepting Grove's version on urgency, it was only then that a meaningful consultation was possible and counsel was briefed to settle the papers. During the course of 10 March 2015 a s96 Notice was prepared and served on the first respondent. A copy of the relevant s96 Notice was attached as annexure "NG2". Indeed the founding affidavit was deposed to and commissioned on the 10 March 2015.
- [5] The respondent filed an unsigned and un-deposed to affidavit. In an urgent application, the court has discretion to condone deviation from rule 6(5) of the Uniform Court Rules. The applicant's affidavit was deposed to on Sunday the 10 March 2010. The first respondent was invited to attend court on 11 March 2011 at 10:00. The sale sought to be stayed was scheduled for 11 March 2011 at 12:00. In my view, the matter was indeed urgent and warranted that I condone both the applicant in not affording the first respondent sufficient notice as required in terms of Rule 6(5), and the first respondent in not filing a commissioned opposing affidavit, as required in terms of rule 6(5)(d). In my view, the application was indeed urgent and for that reason I heard the matter on urgent basis; *vide n Gallagher v Norman's Transport Lines (Pty) Ltd* 1992 (3) SA 500 at 502E-503D.
- [6] The applicant claimed ownership in respect of the relevant motor vehicle, which was imported from the UK via Durban, destined to Zimbabwe. It is common cause that the SAPS detained the said vehicle since 2010. The first respondent detained the

vehicle in terms of the provisions of s88 (1) (a) of the Customs and Excise Act 91 of 1964 on or about 25 March 2013.

- [7] The applicant contended in its papers that, despite allegations of fraud and syndicates, which was the reason the vehicle was pulled off the road during 2010, no charges were officially levelled against the applicant or Mr Frank Buyenga. The first respondent in its letter of 5 November 2014 communicated that it was still not satisfied with the evidence of ownership, and invited the applicant to make representations in terms of s93 of the Act. The applicant responded via an email on 14 November 2014. However since then the applicant was not provided with reasons regarding the representations. The applicant further addressed a letter on 26 January 2015 to which the respondent replied per letter of 3 February 2015 where it was alleged that albeit that a decision in terms of s93 was already taken, the applicant was entitled to written reasons. No such reasons were forthcoming. Only on the 6 March 2015 on further inquiry the first respondent provided the applicant with an advertisement for the sale of the vehicle scheduled for 11 March 2015. A s96 Notice was then prepared and served on the first respondent on 10 March 2015.
- [8] The applicant further averred that it has, if not a clear right, at least a *prima facie* right to the vehicle. For all the years no one has claimed ownership of the vehicle, and neither fraud charges preferred against the applicant or its representatives.
- [9] The applicant has a grounded apprehension of irreparable harm should the interim relief not be granted, because the applicant stand to lose the vehicle which it has purchased and paid for. The applicant doubts the independence of the public auction sale of the vehicle as the proceeds realised would not replace today's value of the vehicle.
- [10] The applicant further averred that the balance of convenience favours the granting of the interim relief because an opportunity in terms of PAJA would be afforded the applicant to address the issue of the first respondent's purported decision and or failure to provide reasons; The first respondent would not suffer any harm or real prejudice during the process of further representation in terms of PAJA.

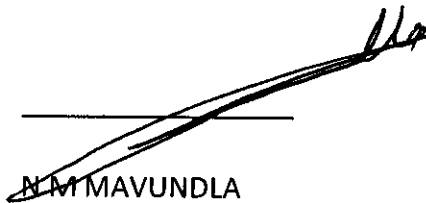
- [11] There are various other annexures attached to the applicant's papers, some of which I will in due course refer to.
- [12] The applicant sought an interim relief, pending the adjudication of the issues raised by the applicant in its s96 Notice to the first respondent served on the 10 March 2015. The granting of an interim interdict pending an action is an extraordinary remedy within the discretion of the Court. For an applicant to succeed on an interim relief, he must satisfy the court that: (a) he has a right which, 'prima facie established is open to some doubt';
- (b) has a well-grounded apprehension of irreparable injury;
- (c) there is absence of ordinary remedy;
- (d) the balance of convenience favours the grant of such relief; *vide Eriksen Motors (Welkom) Ltd v Warrenton and Another* 1973 (3) SA 685 (A) at 691C-G.
- [13] It is trite that a legal entity, such as the applicant, exists independently of its directors. It can own assets in its own capacity. A director of a legal entity cannot, in his own personal capacity own the assets of the legal entity. He remains an agent of the legal entity and can only act on behalf of the legal entity if so authorised.
- [14] S93 of the Customs and Excise Act accords the first respondent, on good cause shown by the owner, a discretion to release a seized items, in casu, the vehicle. The burden to prove ownership rest on the person claiming ownership. Where there are more than one person claiming ownership, ownership must be decided by the court, and only then can the first respondent on the court's order, release the seized vehicle.
- [15] The essence of the first respondent's opposition to the grant of the relief sought by the applicant was that the latter is not the owner of the vehicle but Mr Frank Buyenga Sadiiqi is. In this regard the first respondent relied on the letter of the 17 September 2013 from Witz Padayachee & Isakow ("M P I Attorneys"), wherein Mr Frank Buyenga professed to be the owner of the said vehicle. The first respondent further contended that Mr Sadiiqi in claiming to be owner of vehicle presented to it

false documents reflecting the purchase price of the vehicle to be USD80 000. 00. The first respondent subsequently on the evidence before it, found that the vehicle had been dealt with irregularly as contemplated by s87 (1) of the Act and on 4 July 2014 informed Mr Sadiiqi that his application in terms of s93 (1) was refused for insufficient proof that he was the owner of the vehicle, per letter 4 July 2014 (annexure 8).

- [16] In a letter dated 17 February 2011 from the applicant's attorneys Christelis Artemides, (annexure "G" paginated page 35) it is alleged that the applicant is the owner of the vehicle and paid £172, 000 therefor. Where false documentation has been used in respect of imported goods, such goods are liable to forfeiture in terms of ss 83, 84 and 87 of the Act. The first respondent advised the applicant's erstwhile attorneys DMS Attorneys per letter dated 10 October 2014 that the vehicle is forfeited. The applicant has also attached a letter of 28 October addressed to *Deca Motors International Ltd* in London instructing them to consign the vehicle to Ian Frank Properties Cc for £172, 000.
- [17] The purpose of Customs and Excise Act is, *inter alia*, to provide proper control on the levying and excise duties and surcharge on importation and exportation of goods into and from the Republic. This entails, *inter alia*, that those who import and export through our harbours, must transact with the first respondent with *uberrimae fides*, otherwise less revenue would be paid or collected the first respondent to the detriment of the country. Where, there seems to be lack of candour in making an accurate disclosure of the proper value of the relevant commodity involved, the court in the exercise of its discretion should be slow in coming to the rescue of such a litigant. *In casu*, it would seem that first and foremost, the true owner of the vehicle was not properly disclosed, and secondly the true value of the vehicle was questionable, either as £172, 000 or USD80 000. 00.
- [18] In my view, the decision of the first respondent that it was not proven who the owner of the vehicle was, cannot be assailed, regard being had to the conflicting evidence concerning ownership and the value of the vehicle. In my view, both the urgent application as well as the s96 notice stand to be dismissed, as I did.

[19] It is trite that the costs follow the event. The first respondent employed, rightly so in my view, the services of a senior counsel and junior counsel. The applicant must be mulcted with the costs inclusive the costs of two counsel.

[20] I therefore hand down the reasons for the order dismissing the application with costs of two counsel.



N M MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF HEARING : 11 / 03 / 2015

DATE OF JUDGMENT : 02 /04 /2015

APPLICANT'S ATT : NG ATTORNEYS

APPLICANT'S ADV : ADV D H WIJNBEEK SC

1ST RESPONDENT'S ATT : STATE ATTORNEY PRETORIA

RESPONDENT'S ADV : ADV J A MEYER SC with ADV H A MPSHE