

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

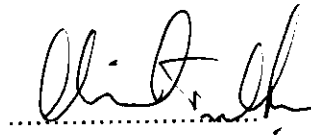
21/4/2015

**CASE NO: 75679/2014**

In the matter between:

**KEVIN RICHARDSON WILDLIFE SANCTUARY (PTY) LIMITED** Applicant

and

|     |                                     |                                                                                                 |
|-----|-------------------------------------|-------------------------------------------------------------------------------------------------|
| (1) | <u>REPORTABLE:</u>                  | <u>YES / NO</u>                                                                                 |
| (2) | <u>OF INTEREST TO OTHER JUDGES:</u> | <u>YES / NO</u>                                                                                 |
|     | 17/04/15.....<br>DATE               | <br>SIGNATURE |

**HARRY KAPLAN NO**

First Respondent

**MMATLOU HELLEN PHALENG NO**

Second Respondent

**ALLAN DESMOND FRIEDLAND**

Third Respondent

**SHERIFF FOR THE DISTRICT OF WONDERBOOM** Fourth Respondent

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**JUDGMENT**

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Tuchten J:

- 1 The first and second respondents (the liquidators) are the liquidators of The Kingdom Wildlife Sanctuary (Pty) Limited (KWS), which was placed under final winding-up order by this court on 30 May 2013 under case no. 23536/2013. The liquidators received their appointments on 30 January 2014.

- 2      KWS was the vehicle for a venture between the third respondent (Mr Friedland) and a Mr Richardson, both of whom held 50% of the issued shares in KWS. Messrs Friedland and Richardson were not on good terms by the time of the liquidation. Mr Friedland asserts that Mr Richardson and his wife, Mrs Richardson, committed numerous acts of fraud against KWS and Friedland and, indeed, hijacked the business of KWS both personally and through one or more corporate vehicles, including the applicant, controlled by the Richardsons.
- 3      The business of KWS, before it was wound up, was to operate a tourism venture which derived income from donations, demonstrations with animals, lectures, the creation of documentary films, movies, talk shows and the like. It was also intended that KWS would derive income from a lodge built on a neighbouring farm.
- 4      Mr Richardson is apparently something of a celebrity. He has a relationship with a pride of lions, with which, so it is said, he interacts physically. This interaction, it is claimed by Mr Friedland, was a brand of KWS. But the applicant operates a similar business although it does not have a lodge.

- 5     The lodge in question was erected, as I have said, on a neighbouring farm belonging to Sid Howell Investments (Pty) Ltd (SHI). Mr Sid Howell, who controls SHI, has allegedly sided with the Richardsons.
- 6     The business venture conducted through KWS, however, came to an end when Mr Friedland allegedly discovered the misfeasances of the Richardsons. SHI cancelled the agreement under which KWS operated the lodge.
- 7     The applicant was incorporated on 17 May 2013. Its sole director is Mrs Richardson. The shares in the applicant are held by a trust controlled by the Richardsons. Mr Friedland claims that the applicant was used by the Richardsons to receive business diverted from KWS.
- 8     The liquidators have brought an action against the Richardsons and others alleged to be Richardson vehicles or accomplices claiming , on the strength of several different, in some cases alternative, causes of action, wide ranging relief including damages and accountings. On 19 November 2013, Mr Friedland obtained an order for an enquiry into the affairs of KWS under s 417 of the Companies Act, 61 of 1973. Evidence was taken at the enquiry from 25 to 28 February, 12 May and 16 July 2014.

- 9 As a result of evidence so obtained and other information, the liquidators formed the view that certain property, books and documents were being concealed by, amongst others, Mr Richardson and the applicant. The liquidators approached the Pretoria North magistrate's court, held at Wonderboom, under s 69(3) of the Insolvency Act, 24 of 1936. Section 69(3) provides:

If it appears to a magistrate to whom such application is made, from a statement made upon oath, that there are reasonable grounds for suspecting that any property, book or document belonging to an insolvent estate is concealed upon any person, or at any place or upon or in any vehicle or vessel or receptacle of whatever nature, or is otherwise unlawfully withheld from the trustee concerned, within the area of the magistrate's jurisdiction, he may issue a warrant to search for and take possession of that property, book or document.

- 10 There were in fact two such approaches, both made *ex parte*. The first related to monies in certain bank accounts, one of which was operated by the applicant. In accordance with a curious practice regrettably prevalent in this Division, the liquidators sought and were granted a warrant contemplated in s 69(3), coupled with a direction pursuant to which those affected by the warrant were granted leave to show cause on a return date why what was quite erroneously styled an interim order should not be made final. The present applicant, Mr

Richardson and a Richardson vehicle called Kingdom Films (Pty) Ltd all appeared on the return date to show such cause.

- 11 In a written judgment dated 11 August 2014, the magistrate concluded, on the facts, that the *ex parte* procedure had been justified and in effect upheld the warrant.
- 12 No doubt fortified by this success, on 17 July 2014 the liquidators brought a further *ex parte* proceeding under s 69(3) in the same magistrate's court, this time asking for the attachment of certain vehicles, including a Toyota RAV and a Mahindra Bolero. A warrant in the terms sought was granted and served on Mr Richardson. Pursuant to its terms the RAV was attached on 25 September 2014 but, curiously, the Mahindra was not. The Mahindra remains in the possession of Mr Richardson, who uses it, quite openly, for the transport of carcasses on which the lions feed and for other agricultural purposes related to the husbandry of the lions.
- 13 Aggrieved by the issue and execution of this latter warrant in relation to the RAV and the Mahindra, the applicant brought the present application, claiming to be the owner of the two vehicles, for orders directed at staying the warrant in relation to the RAV and the Mahindra, pending an action for the enforcement of the applicant's

alleged rights of ownership. The applicant came urgently, under a notice of motion dated 14 October 2014. But the application was held not to be urgent and was struck from the roll. The applicant persisted with the application in the normal course and it is now before me. The fourth respondent abides and the first to third respondents are represented by the same counsel. References in what follows to the respondents are to the first to third respondents.

- 14 The applicant seeks in the present application that the attachment of the RAV and the warrant authorising the attachment of the Mahindra be suspended pending the adjudication of an action to determine the ownership of the vehicles. In argument, counsel for the applicant described the applicant's cause of action as the inherent power of the High Court to supervise proceedings in a lower court and to suspend the orders of a lower court to prevent injustice.
- 15 There can be no doubt that this court does indeed have the power, on good cause shown, to supervise the proceedings in lower courts in the sense described. In my view this is a power that should be exercised with great caution. The facts of this case demonstrate why this is so: the magistrate made an order within the jurisdiction conferred upon him by statute. It cannot, in my view, be doubted that there existed good grounds for the suspicion entertained by the liquidators that the

vehicles belonged to KWS and was unlawfully being withheld from the liquidators. The case made by the applicant is not that such a reasonable suspicion did not exist but that the applicant was in fact the owner of the vehicles. The allegations relied upon by the applicant for this contention demonstrate financial dealings which are at least, on the papers, murky. Because these are proceedings for interim relief, it would not be appropriate for me to give full reasons for this conclusion. I shall approach the case on the footing that the applicant has put up enough to justify a conclusion, *prima facie*, that it might prove ownership in a trial in due course.

- 16 The case then turns on what in the context of interim interdicts would be described as balance of convenience. As to the RAV, there can in my view be no doubt that the balance of convenience favours the liquidators. The applicant's case, a rather flimsy one, is that it is bound by contract to supply Mrs Richardson with a vehicle not for the purposes of the applicant's business but for Mrs Richardson's domestic purposes. At present, the RAV, under attachment at the behest of the liquidators, is not being used. The applicant wants the RAV for Mrs Richardson so that she may use it. This will expose the RAV to the risks of deterioration and damage. Mrs Richardson has acknowledged that she is conducting her domestic affairs with another vehicle.

- 17 The Mahindra is on a different footing. It has been used, regularly and without any attempt by the liquidators to take the Mahindra into attachment. The invoice of Atlantis Motors dated 28 May 2013 shows that the Mahindra, a 2013 model, was invoiced and delivered to “Kevin Richardson Wildlife” for a total purchase price, inclusive of VAT, of R133 561,71. The use to which the Mahindra is being put must have subjected it to considerable wear and tear. Its correct value was said in argument to be some R60 000.
- 18 The present relief is directed at restraining the liquidators, temporarily, from exercising their statutory powers to take control of things reasonably believed to be the property of the company which they are winding up. This relief can only be granted where the applicant puts up a strong case. *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 6 SA 223 CC para 44. In assessing the strength of cases for the purposes of interim interdicts, the prospects of ultimate success together with the balance of convenience must be evaluated. Strong prospects with a weak case on the balance of convenience might in a proper case carry the day; similarly, weak prospects together with a strong balance of convenience might do so.



19 I think that this case, in relation to the Mahindra, falls into the latter category. I have referred to the relatively low value that must probably attach to the Mahindra today. The costs of storing the vehicle will probably not be much lower than the anticipated depreciation while it continues to be used as before. Decisively, in my view, the liquidators have not considered the Mahindra to be worth the trouble and expense of pursuing with any diligence. They were content to leave it not only with Mr Richardson but to allow him without even so much as a warning letter to continue to use it for the robust purposes Mrs Richardson described in the founding affidavit. I think therefore that a strong balance of convenience in favour of the applicant has been established. Although the lions are said to belong to Mr Richardson, they are used, according to what is presently before me, for the business of the applicant. The cost to the applicant of procuring a replacement vehicle will far outweigh the prejudice to the liquidators *pendente lite*.

20 Counsel for the applicant asked that if I came to this conclusion I should direct not as foreshadowed in the notice of motion that the applicant be directed to institute proceedings but that the applicant be allowed to raise the issue in a counterclaim to the action already instituted by the liquidators, which I mentioned above. I do not think that would be convenient. The value of the Mahindra puts this dispute

well within the jurisdiction of the magistrate's court. Although there might be some overlapping of issues, I see no good reason further to complicate at this stage what looks like being a complex commercial case by adding the dispute about the Mahindra to the mix. Although it seems that the liquidators instituted their action in 2014, no pleas have yet been delivered. There is no reason to delay the progress of the present dispute. If convenience is shown, the present dispute could in due course be consolidated with the liquidators' action.

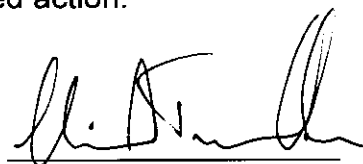
21 Counsel for the applicant asked for costs but I do not think that a costs order would at this stage be appropriate. I intend to reserve the costs for determination after the merits of the dispute regarding ownership of the Mahindra have been resolved.

22 I make the following order:

1 The warrant obtained in the magistrate's court for the district of Pretoria North held at Wonderboom under case no. 4268/14 by the first and second respondents in their capacities as liquidators of The Kingdom Wildlife Sanctuary (Pty) Limited (the liquidators), insofar as such warrant pertains to a Mahindra Bolero bakkie with engine number BKD4B91263, is hereby suspended pending the final determination of an action to be

instituted by the applicant for *inter alia* a declaration that the applicant is the owner of the Mahindra.

- 2 The applicant must issue summons in such action out of a competent court within two weeks of the date upon which this order is handed down and thereafter promptly serve its summons upon the liquidators and any other defendants cited in such summons.
- 3 If summons is not so issued as prescribed in 2 above, this order will lapse.
- 4 The costs of this application are reserved for consideration after judgment is given in the proposed action.

A handwritten signature in black ink, appearing to read 'NB Tuchten', is written over a horizontal line.

NB Tuchten  
Judge of the High Court  
17 April 2015