

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

26/5/15

CASE NUMBER: 49090/2014

In the matter between:

BELLE LEMPE

DELIVERED WHEREVER IS NOT. THIS FILE	
(1) REPORTABLE: YES/NO.	APPLICANT
(2) IF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
26/5/2015 DATE	<i>Selhay</i> SIGNATURE

and

SAPS VEHICLE POUND (PRETORIA WEST VIS) FIRST RESPONDENT

STATION COMMANDER, BROOKLYN POLICE

STATION SECOND RESPONDENT

MINISTER OF POLICE THIRD RESPONDENT

SIZWE VIRGIL SIBEKO FOURTH RESPONDENT.

JUDGMENT

TLHAPI J

[1] On May 2014 I gave orders in respect of prayers two (2) and three(3) of the Notice of Motion and, reserved judgment in respect of costs.

MY REASONS FOR ORDERS TWO (2) AND THREE

[2] The applicant sought the following prayers:

- “2. *Directing the first to the third respondents to return or allow the applicant to collect vehicle with registration being BLR 23 FR GP, Vin no. 1C3APE9L64X013315, from the first respondent within 24 hours of this order,*
3. *That all the respondents be interdicted from removing the vehicle from the applicant without a court order.*
5. *That costs be paid by any party that opposes this application.”*

There was a later application to amend the notice of motion which was not opposed, to read:

“Costs to be paid by any of the parties opposing this application, jointly and severally, one paying the other to be absolved”

Furthermore at commencement of the hearing there was application for a postponement made on behalf of the fourth respondent.

BACKGROUND

[3] On 25 July 2014 the applicant’s vehicle which had been kept on his property was seized by the police attached to the Brooklyn Police Station on allegations that it

had been stolen from the fourth respondent. Despite the theft allegations he was not arrested and there was no pending case against him. This seizure was preceded by the issuing of an interdict by order of the above of the 23 September 2013 under case number 60552/2013 against the Sunnyside Police and the fourth respondent .A copy of the application was annexed to the papers and the application was not opposed. The applicant averred that after this order was obtained the fourth respondent changed ownership of the vehicle after fraudulently using a copy of his identity document.

[4] The applicant averred that the vehicle in question belonged to him and that he had given it to the fourth respondent for use, when the latter was still under his employ. Due to the many traffic fines accumulated by the fourth respondent, the applicant took possession of the vehicle. This had not been the first attempt by the fourth respondent to obtain possession of the vehicle through police intervention. Both parties were later consulted by one Warrant Officer Bonoko who informed them that their dispute was a civil one.

[5] Having failed to convince the Brooklyn Police the fourth respondent proceeded to the Honeydew Police Station. Warrant Officer Masisi ('Masisi') averred that the vehicle was reported stolen at the Spar parking in Fredenharry Street Strubenvally, while the fourth respondent had gone shopping and case 1153/10/2013 was opened. His investigation on information given by the fourth respondent led the police to the applicant. Masisi averred that he called the applicant to inform him about the report and applicant was not prepared to discuss the matter with him and instead referred him to his attorney. Masisi was later informed of the court order against the Sunnyside police.

[6] Masisi called the fourth respondent to inform him of possible perjury charges. The fourth respondent attended his office and produced vehicle registration documents to prove ownership and bank statements to prove that he had purchased the vehicle from the applicant for R150 000.00. He produced proof of payment to the applicant of two EFT transactions of R80 000.00 and R50 000.00 and alleged that the balance of R20 000.00 had been paid to applicant in cash. After this visit the fourth respondent informed him that he was going overseas on business and Masisi held the investigation in abeyance.

[7] On 25 June 2014 he was informed by Captain Mosipha ('Mosipha') of the Brooklyn Police that the fourth respondent had been to see him and that he was informed of the case reported to the Honeydew Police. Mosipha informed him that the fourth respondent knew where his vehicle was and the fourth respondent was accompanied to the applicant's residence and the vehicle was seized.

[8] In reply the applicant averred that the fourth respondent proceeded to Honeydew Police after failing to open a case against him in Brooklyn. He denied that Masisi called him. He made contact with Masisi after the Brooklyn Police had informed him of a case of vehicle theft, reported to the Honeydew Police. He called Masisi several times and he never kept promises to revert to the applicant. He contended that the vehicle ownership registration did not prove ownership and that the bank statements were fraudulent.

APPLICATION FOR POSTPONEMENT

[9] The head note in ***National Police Service Union v Minister of Safety and Security*** 2000 (4) SA 1110 (CC) reads:

“The postponement of a matter set down for hearing ..on a particular date cannot be claimed as of right. An application for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless the Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must show that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion, the Court will take into account a number of factors including (but not limited to): whether the application has been timeously made; whether the explanation given by the applicant for postponement is full and satisfactory; whether there is prejudice to any of the parties; and whether the application is opposed. All these factors will be weighed by the Court to determine whether it is in the interests of justice to grant the postponement.”

- [10] There was no formal application made for postponement, it was moved from the bar on the morning of the 13 May 2015. The purpose for the application was to have enabled the fourth respondent who was overseas to sign his opposing affidavit. Counsel for the fourth respondent was in possession of an unsigned document and wished to have the document admitted for purpose of argument. The document was not admitted and the application for postponement was refused for the following reasons:

1. The application was brought on urgency and on 9 July 2014 it was postponed *sine die* to allow applicant to file its replying affidavit. At this

stage only the first to the third respondent had filed answering papers.

2. The index to the papers was served on the fourth respondent's attorneys on 22 January 2015 and the notice setting down the matter to the opposed roll of 11 May 2015 was served on the fourth respondent's attorneys on 3 March 2015.
3. The main application was served on the fourth respondent's attorneys on 3 July 2014 and despite having had knowledge of the application no effort was made to have the affidavit signed. The fact that there was an unsigned copy meant that the fourth respondent was in contact with his attorneys to consult on the content and there is no explanation why it has taken almost ten (10) months to respondent and why a signed document was not served on the applicant and first to third respondents timeously to allow for their response.
4. The issue of prejudice to the applicant and even to the first to the third respondent was not dealt with. The applicant was deprived of possession of the vehicle in July 2014 and the vehicle has been stored at a police pound at great prejudice to the applicant. I mentioned also the first to the third respondent who have opposed a matter at great expense to public funds. The fourth respondent has not shown diligence in finalising a criminal matter which he set in motion, and which resulted in this application.

5. There is further no application for condonation from the fourth respondent for the late filing of the answering affidavit.

MANDAMENT VAN SPOLIE

[11] Firstly, although heads of argument were prepared for the matter, there was a concession made by Mr Nonyane for the first to the third respondent that in the absence of participation by the fourth respondent, the others did not have interest in the matter except that it was opposed to explain their involvement.

[12] Although the applicant claimed to be the owner of the vehicle, he was dispossessed of the vehicle by the police during a seizure initiated by the fourth respondent on 25 July 2014. There was no explanation in their answering affidavits whether the seizure was in compliance with the Criminal Procedure Act 51 of 1977, this despite the fact that it was alleged that a motor vehicle theft case was opened at Honeydew. Masisi had all the information to enable him to carry out proper investigations relating to the vehicle, that is, the ownership certificate, the bank statements handed over by the fourth respondent, information on a previous court order.

[13] A mere perusal of the bank statement should have raised questions regarding the fourth respondent. Masisi postponed further investigations due to the fourth respondent's absence in the country. Having held further investigations in abeyance, there is no explanation why the vehicle was seized at the mere say so of Mosipha or why it was necessary to seize the vehicle from the applicant thereby disturbing him in his undisturbed and lawful possession many months after first dealing with the

matter. There is no explanation from Mosipha. This application is not about confirming ownership of the vehicle, it is about placing the vehicle back into his undisturbed possession and this is fortified by the nature of the orders that are sought in prayers two and three.

JUDGEMENT ON COSTS

[14] The first to the third respondent deemed it necessary to oppose the matter without participation of the fourth respondent or without any explanation by the fourth respondent regarding all the allegations against him. The fact that the second and third respondents did not find it necessary to arrest the applicant despite criminal charges against him was warning enough that they could have been prudent enough to approach this matter by abiding the decision of the court. They opposed and the applicant was successful and they must pay the costs. I am however not of the view that punitive costs against them are deserved.

[15] In the result the following order is given.

The respondents are ordered to pay the costs jointly and severally, the one paying the other to be absolved.



TLHAPI V.V

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON

: 13 MAY 2015

JUDGMENT RESERVED ON : 13 MAY 2015
ATTORNEYS FOR THE APPLICATION : MKHIZE'S ATTORNEY
ATTORNEYS FOR THE 1ST RESPONDENTS : STATE ATTORNEYS
ATTORNEYS FOR THE 4TH RESPONDENTS : NDLOVU ATTORNEYS