

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)**

CASE NO:23523/2013

28/6/2013

DELETE WHICHEVER IS NOT APPLICABLE

1. REPORTABLE: YES/NO ☒ YES ☐ NO
2. OF IMPORTANCE TO OTHER JUDGES: ~~YES/NO~~
3. REVISED

28/6/2013

DATE

[Signature]

SIGNATURE

In the matter between:

WILLEM H VAN GREUNEN

Applicant

and

MAQHUINGANA (EDMS) BPK

Respondent

JUDGMENT ON LEAVE TO APPEAL AND APPLICATION FOR RULE 49(11)

LEGODI J,

- [1] Parties in these proceedings would be referred to as in the main application. Before me, two applications were argued. First, it is the application for leave to appeal the decision of my sister Pretorius J granted on the 10 May 2013 in terms whereof the respondent (the applicant in the application for leave to appeal) was ordered to deliver to the applicant a black male Impala specified and described in the notice of motion.
- [2] The second application is brought by the applicant in terms of Rule 49(11). He wants leave to have the order granted by my Sister Pretorius J on the 10 May 2013 be executed.
- [3] Regarding the leave to appeal, the real issue before me is, whether another court might find differently from the finding by Pretorius J. This application for leave to appeal was laid before me due to the fact that Pretorius J is on long leave and out of the country. I am dealing with this matter with her consent. Both counsels for the parties did not object to this seen in light of the apparent urgency of the matter.
- [4] Coming back to the leave to appeal, it is not my intention to seek to rewrite my Sister's judgment. In brief, she had made a finding that the applicant had paid to the respondent the full purchase price for the black male Impala in the sum of R220 000. Consequently, she found that the respondent was obliged to deliver the Impala in question.
- [5] The finding is criticized on the basis that another court might find that there is dispute of fact around the payment of the purchase price in full which could not

be resolved on the papers. Amongst others, it is contended that the applicant had materially contradicted himself when in his founding affidavit suggested that the full purchase price was paid by 26 February 2013, whilst in his replying affidavit he indicated that the outstanding balance of R60 000 cash was paid on the 2 March 2013.

- [6] However, the communication between the applicant and the respondent from the period 2 March 2013 up to the time the respondent deposed to his answering affidavit, never raised the issue of non-payment of the purchase price in full.
- [7] Instead, the communication or correspondence suggested that payment in full had taken place and that the applicant could remain to be the owner of the impala whilst on the property of the respondent until the respondent had found a replacement. The meantime, the respondent was to retain the Impala in question for breeding purposes in favour of the respondent.. Pretorius J dealt with these issues in her judgment and I do not think that another court might find differently. Therefore the application for leave to appeal ought to be dismissed.
- [8] This then brings me to deal with the merits of the application under Rule 49(11). Operation of an order or execution of judgment granted, is automatically suspended on the noting of an application for leave to appeal ,save where leave to execute is granted..
- [9] An exercise of discretion is required in deciding whether or not to order operation of the order or execution of judgment. In the present case, the Impala was purchased for the purpose of breeding. Any delay in the delivery of the Impala pending appeal process could have serious consequences for the applicant.

Process of appeal could take several months if not years before finalization. Secondly, on the respondent's version R160 000 has been paid. An amount of R60 000 is still outstanding. The respondent is not prepared to pay back the applicant the said amount of R160 000. On the other hand, the respondent is using the said Impala for breeding purposes something that the respondent alleges it is doing because it had not as yet found replacement for the Impala that he had sold to the applicant.

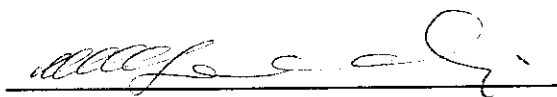
[10] Having regard to all of the above, balance of convenience favours the applicant. The applicant is likely to suffer more prejudice should the Impala not be delivered to him. I do not find it necessary to order the applicant to pay any security in addition to the R160 000 the respondent is retaining.

[11] Consequently, an order is hereby made as follows:

11.1 The application for leave to appeal is hereby dismissed with costs,

11.2 The applicant is hereby granted leave to execute the order granted by Pretorius J on 10 May 2013,

11.3 The respondent to pay the costs of the application in terms of Rule 49(11)



M F LEGODI

FOR THE APPLICANT

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