

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 3394/2012

In the matter between:-

S W HADEBE

Applicant

and

C T HENDRIKZ

Respondent

In re:

In the application between:

C T HENDRIKZ

Applicant

and

S W HADEBE

First Respondent

FEEZAAD MOHAMMED

Second Respondent

JUDGMENT BY:

JORDAAN, J

DELIVERED ON:

30 MAY 2013

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- [1] The applicant seeks leave to appeal to the Full Court of this Division against a judgment and order granted by an Acting Judge in this Division.
- [2] Since the said trial judge is not available anymore, the matter has been placed before me for adjudication.
- [3] For the sake of clarity I will refer to the parties as in the main application so that the present applicant will be referred to as

the first respondent. The respondent in this application will be referred to as the applicant.

- [4] The applicant sold a certain VW vehicle to the second respondent in terms of a written agreement. The agreement, read as a whole, reserved ownership in the applicant until payment of the vehicle has been effected. That has never been done with the result that the applicant claimed return of the vehicle from the first respondent who appeared to have bought the vehicle from an entity called the Glen Volkswagen in Glen Eagles. It does not appear how the Glen Volkswagen came into possession of the vehicle, but it can be accepted that, for purposes of this application, they obtained the vehicle from the second respondent, who bought it from the applicant.
- [5] The second respondent did not oppose the application and it was only opposed by the first respondent, the present applicant. The opposition was based on two arguments, namely denial of the applicant's ownership, based on a certain clause of the agreement and secondly, a defence of estoppel.
- [6] As far as the ownership of the vehicle is concerned, it is clear from the agreement, read as a whole, that the applicant indeed retained ownership and that the vehicle has not been paid so that the applicant was entitled to recover the vehicle from whoever in terms of a vindicatory application. I am not convinced that any reasonable prospect of success on appeal has been shown as far as this defence is concerned.

- [7] The main contention of the first respondent is that the applicant is estopped from claiming back the vehicle since he created a position by which the public and specifically the first respondent was misled to believe that the second respondent was the owner and entitled to dispose of the vehicle. This contention is based on the facts that the applicant gave possession of the vehicle, including the keys thereof, to the second respondent and also placed the second respondent in possession of the so-called NATIS documentation or the registration papers relating to the vehicle.
- [8] The court *a quo* was not convinced that the necessary underlying facts, basing a successful defence of estoppel, has been proven and granted the order entitling the applicant to possession of the vehicle.
- [9] It is clear from the papers that the first respondent does not allege that he bought the vehicle or obtained the vehicle from the second respondent, but from some or other further entity. It is also uncontested that the applicant never signed any transfer papers entitling the transfer of ownership of the vehicle or the registration thereof to any other entity or even to the second respondent himself. It must be inferred that the vehicle was transferred to the Glen VW as a result of some or other fraudulent act committed by the second respondent, *inter alia* forging the signature of the applicant to enable transfer.

- [10] The mere delivery of the vehicle and the keys thereto does not, on its own, constitute a representation that the possessor of that vehicle is also the owner thereof and entitled to dispose thereof. The first respondent heavily relies on the fact that the NATIS registration documents has been placed into possession of the second respondent and that the representation that he was entitled to deal with the vehicle was thereby created negligently and to the detriment of the public and himself. I find that hard to accept. The NATIS documents would have shown that the applicant is the owner of the vehicle and the information thereon would indeed be contrary to any inference that the second respondent is the owner and entitled to dispose of the vehicle. The mere possession of the vehicle and the registration documents is insufficient to constitute a representation that the possessor thereof is entitled to dispose of the vehicle. It is common knowledge that a large part of vehicles in this country are financed in terms of instalment sale agreements in which cases the possessor of the vehicle is obviously not entitled to dispose thereof. What has been given to the second respondent by the applicant did not show that the second respondent is entitled to dispose of the vehicle and indeed did not in fact enable him to dispose of the vehicle lawfully. He could only have done so by some or other fraudulent means.
- [11] What is more, the first respondent relies on the representation by the applicant to the effect that the second respondent was entitled to dispose of the vehicle. However, the first respondent did not obtain the vehicle from the

second respondent, but from another entity. The representation as to the entitlement of the second respondent therefore did not play any role as far as the first respondent's knowledge was concerned. It is clear that it was the fraudulent act by the second respondent in transferring the vehicle to another entity, most probably the Glen VW, which caused the first respondent to be able to buy the vehicle from that entity. It was not caused by any representation made by the applicant, as alleged.

[12] In conclusion, I am not convinced that, firstly, there was any representation sufficiently proven to be negligent or entitling the second respondent to dispose of the vehicle and secondly, I am not convinced that it was shown that such representation, if any, was causally connected to the first respondent buying the vehicle. That was caused by the fraudulent act of the second respondent.

[13] In the result, I am not convinced that any reasonable prospect of success has been shown and the application for leave to appeal must therefore fail.

[14] **Leave to appeal is therefore refused and the application for leave to appeal dismissed with costs.**

A.F. JORDAAN, J

On behalf of applicant:

Adv H.J. Cilliers
Instructed by:
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BLOEMFONTEIN

On behalf of respondent:

Adv J.W. Kloek
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