



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2024-056339

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED.
06/09/2024	
DATE	SIGNATURE

In the matter between:

MSITHELI HOLDINGS (PTY) LTD

First Applicant

TREVOR MONGEZI DONGA

Second Applicant

And

TARISAI ASHLEY SHAMBAHWETA

First Respondent

SHERIFF POLOKWANE

Second Respondent

SHERIFF KRUGERSDORP

Third Respondent

JUDGMENT

MAHOMED AJ**FACTS**

- [1] The applicant seeks an order to stay a writ of execution, his vehicles and other moveable property have been attached. Judgment was granted by default and the applicant seeks a rescission of the judgment. The applicant approached the urgent court in that he was advised that his vehicle was to be sold on 2 September 2024, and in his view the judgment was erroneously granted and he therefore seeks a rescission of this judgment.
- [2] Advocate Matevula appeared for the applicant and argued that the matter is urgent and relied on the judgment in *Buthelezi Emergency Medical Services (Pty) Ltd and Another v Zeda Car Leasing (Pty) Ltd t/ Avis Fleet Services*¹, when submitted that this court can hear both the applications. Counsel submitted that the judgment was obtained from the Registrar in terms of Rule 31 (5) and it was erroneously granted, as the respondent claim is one for damages, it is an illiquid claim and can only be heard in open court, based on a damages inquiry or a damages affidavit.
- [3] Furthermore, it was contended that there is a misjoinder of the second applicant, in terms of the Companies Act.
- [4] Advocate Mokwena appeared for the respondent and informed the court that his attorney communicated with applicants the previous day, and advised that the respondent would not sell the vehicle. He learnt on the day that Standard Bank owned the vehicle. However, this was of no comfort to the applicant, as he wanted the vehicle to be returned to him. Mr Matevula submitted that the court can order the return of the vehicle and order an interdict prohibiting the applicant from doing anything with the vehicle. He argued that if the vehicle were left with the sheriff his client will suffer grave prejudice, as it will have incurred storage costs, which is likely to be substantial, if he

¹ (78303/19) [2020] ZAGPPHC 623 (22 October 2020) par 4

has to wait for a hearing in due course, alternatively the respondents must undertake to pay those expenses. Counsel submitted that his client will furthermore, be prejudiced in that he will have to continue to pay insurances and repayments of approximately R50 000 per month, without the use of his vehicle.

URGENCY

- [5] The inquiry is two pronged and interrelated, the applicant must state in clear terms why the matter urgent, and state why he/she will not obtain substantial redress at a hearing in due course. Why should the applicant be allowed to jump the queue ahead of other matters on the court roll.

- [6] Mr Matevula, proffers that his client's main concern is that the storage costs will add up over the period he is obliged to wait for a hearing in the normal course. Mr Mokwena correctly argued that the applicant cannot rely on his argument for prejudice, because he has to continue to pay for the car insurance and monthly instalments, this is a cost to be paid whether the vehicle is in his custody or that of the sheriff.

- [7] I am not persuaded that the matter is truly urgent, and that the applicant will not obtain substantial redress at a hearing in due course. There is no evidence before this court that the applicant suffers substantial prejudice in the circumstances. Counsel for the respondent correctly proffered that the urgency is no longer there, as his client has undertaken not to sell the vehicle.

- [8] Regarding costs, I noted the applicant's attorney's correspondence informing that the car will no longer be sold, this was done two days prior to the hearing of the matter. Mr Mokoena argued that the applicant has been vexatious, it has brought his client before this court unnecessarily, and their conduct warrants a punitive order for costs. I am of the view that the issue of costs would be best addressed at the hearing of the rescission application.

[9] Accordingly, I make the following order:

1. The application is struck for lack of urgency.
2. The costs are reserved.



S MAHOMED

ACTING JUDGE OF THE HIGH COURT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 06 September 2024.

Date of Hearing: 30 August 2024

Date of Judgment: 6 September 2024

Appearances:

For Applicant: Advocate Matevula

Instructed by Espag Magwai Attorneys

Email: lit3@espagmagwai.co.za

For Respondent: Advocate Mokoena

Instructed by: Faribridges Werheim Becker

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