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

Case No. 2024-077241

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO

05/09/2024

DATE

SIGNATURE

In the matter between:

LAYLA MOHAMED

Applicant

and

AHMAD SHIABNE

First Respondent

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to Court Online and by release to SAFLII. The date and time for hand- down is deemed to be 10h00 on September 2024.

JUDGMENT

BEYERS, AJ:

[1] This is an application, brought on an urgent basis, wherein the Applicant inter alia seeks the following relief against the Respondent:

“2. Pending the final outcome of the action instituted by the Applicant (as Plaintiff) against the Respondent (as Defendant) out of this Honourable Court under case number 2024-065602 for, inter alia, delivery of a motor vehicle to the Applicant, being a 2018 Maserati Levante Station Wagon, with Register No. Y[...], VIN No. Z[...], Engine No. M[...] and Registration No. H[...] (‘the Vehicle’) :-

2.1 The Respondent and/or any other person who is in possession of the Vehicle, or who obtained possession thereof through the Respondent or any other person howsoever, be ordered immediately to handover the Vehicle to a third party agreed upon by the parties for safekeeping and storage;

2.2 Alternatively, and failing agreement between the parties as envisaged in prayer 2.1, the Respondent and/or any person who is in possession of the Vehicle, or who obtained possession thereof through the Respondent or any other person, howsoever, be ordered immediately to hand over the Vehicle to the Sheriff of this Court for safekeeping and storage;

2.3 That in the event of the Respondent or any other person in possession of the Vehicle failing to comply with the order in subparagraph 2.1 or 2.2, then the Sheriff of this Court is hereby authorized and directed to attach and remove the Vehicle from the Respondent and/or any person who is in possession of the Vehicle, or who obtained possession thereof through the Respondent or any other person, howsoever, and to retain same for safekeeping;

3. The Respondent is directed to pay the costs of this application on the attorney and client scale, alternatively, that the costs be in the action.”

[2] The application is opposed by the Respondent.

[3] The factual background may be summarised as follows:

- a. The subject-matter of this application is a 2018 Maserati Levante Station Wagon with Registration No. H[...] and VIN No. Z[...] (*“the vehicle”*).¹
- b. A dispute exists between the parties as to the ownership of the vehicle, which dispute is the subject-matter of an action instituted by the Applicant against the Respondent on 13 June 2024 in the above Honourable Court under Case No. 2024-065602.²
- c. Correspondence was exchanged between the Applicant’s attorneys and the erstwhile attorneys of the Respondent during the period 20 May 2024 to 13 June 2024 in relation to the measures that had to be put in place to ensure the safety of the vehicle pending the final determination of the parties’ respective claims to the vehicle in the action.³
- d. Through the aforesaid correspondence a written undertaking was provided by the Respondent’s attorneys in paragraph 5 of their letter of 13 June 2024 as follows:
*“5. The vehicle is currently being stored in a safe premises/facility & is not being used/driven by our client. Should our client decide to make use & drive the vehicle we the [sic] undertake to take out insurance on the vehicle.”*⁴
- e. This undertaking was accepted by the Applicant.
- f. Despite this undertaking and requests from the Applicant’s attorneys on 14 June 2024 and 2 July 2024 the Respondent did not provide the Applicant with proof of insurance in respect of the vehicle.⁵
- g. The Respondent’s attorney did, allegedly, advise the Applicant’s attorney on 2 July 2024 that the Respondent *“would proceed to get comprehensive insurance for the vehicle as soon as possible.”*⁶ However, the Applicant denied that this letter was ever received by her or her attorney.⁷

¹ Founding Affidavit, par 8, Caselines 02-35/36 admitted in Answering Affidavit, par 10, Caselines 02-69.

² Founding Affidavit, par 24, Caselines 02-39; Answering Affidavit, par 24, Caselines 02-72; Notice of Motion, prayer 2, Caselines 02-45.

³ Founding Affidavit, paras 17-22, Caselines 02-37 to 02-39; Answering Affidavit, paras 20-23, Caselines 02-71 and 02-72.

⁴ Founding Affidavit, paras 22 and 23, Caselines 02-38 and 02-39; Answering Affidavit, par 23, Caselines 02-72.

⁵ Founding Affidavit, paras 25 and 27, Caselines 02-39; Answering Affidavit, par 25 and 27, Caselines 02-72 and 02-73.

⁶ Answering Affidavit, par 25, Caselines 02-72 and 02-73; **“AS6”**, Caselines 02-85 to 02-87.

⁷ Replying Affidavit, par 17.3, Caselines 02-149.

[4] The Applicant alleges that no confirmation was received from the Respondent that the vehicle had been comprehensively insured.

[5] The Applicant further avers that its attorney, Mr Shafique Sarlie, saw the vehicle being used on 5 July 2024 in Bedfordview.⁸ The Respondent's somewhat unsatisfactory response to this is to the effect that: "*The vehicle has in any event been comprehensively insured. I am not sure who the third party was who utilised my vehicle while I was on holiday.*"

[6] The Respondent alleges that the vehicle is presently comprehensively insured.⁹ Annexure "**AS3**", upon which the Respondent relies for this assertion evidences that the inception date of this policy was 16 July 2024.¹⁰

[7] It follows that, at the time when the vehicle was being used by a third party, the identity of whom is allegedly unknown to the Respondent, on 5 July 2024, the vehicle was uninsured. This represents a clear breach of the agreement concluded between the parties on 13 June 2024.

[8] The Applicant indicates that it inferred from the use of the vehicle by a third party that such third party had obtained possession of the vehicle from the Respondent, notwithstanding the written undertaking given by the Respondent.¹¹ The Applicant's attorneys thereupon wrote a letter to the Respondent's attorneys claiming that the only manner in which the vehicle could be preserved and the prejudice to Applicant be avoided was for the vehicle to be placed with an independent third party for safekeeping.¹²

⁸ Founding Affidavit, par 29, Caselines, 02-40.

⁹ Answering Affidavit, par 25, Caselines 02-72.

¹⁰ "**AS3**" at Caselines 02-82.

¹¹ Founding Affidavit, par 29, Caselines 02-40.

¹² Founding Affidavit, par 31, Caselines 02-40.

[9] Subsequent hereto, the applicant's attorneys were advised on 8 July 2024 by the Respondent's erstwhile attorneys that they no longer hold instructions in the matter.¹³

[10] The Applicant accordingly issued the instant application on or about 12 July 2024.

[11] In my view, as at 5 July 2024, the Respondent had breached the undertaking of 13 June 2024 by:

- a. Having failed to ensure that the vehicle was safely stored. This is readily apparent from the fact that a third party utilised the vehicle without the Respondent being able to identify who this party is.
- b. Having failed to take out comprehensive insurance in respect of the vehicle.

[12] The Applicant is entitled to the protection offered by the 13 June 2024 agreement whilst the action is pending.

[13] The relief sought by the Applicant in this application is, however, considerably wider than the ambit of the agreement of 13 June 2024, in that the Applicant now seeks an interim interdict to the effect that the vehicle is to be held by a third party pending the final outcome of the pending action. This would render the Respondent unable to use the vehicle at all whilst the action is pending, which might disentitle the Respondent from using the vehicle for a number of years whilst the final determination of the dispute in the action is awaited.

[14] The Respondent indicated during argument that the Respondent is prepared to consent to an order to the effect that:

- a. Pending the outcome of the action, instituted by the Applicant, under case number 2024-065602, High Court – Johannesburg:

¹³ Founding Affidavit, par 33, Caselines 02-41.

- i. The Respondent is ordered not to dispose of, alienate or burden the **2018 Maserati Levante Station Wagon** with **VIN: Z[...]** and **Engine No: M[...]** and **Reg No: H[...]**;
 - ii. The Respondent is ordered to keep the vehicle comprehensively insured.
- b. Costs shall be in the cause of the action under Case No. 2024-065602, High Court - Johannesburg.

[15] The Applicant was not prepared to accept an order in these terms, insisting that safekeeping of the vehicle by a third party was the only manner in which its rights would be protected.

[16] In considering the requirements for an interim interdict, the balance of convenience has to be assessed. In this regard, I am of the view that the balance of convenience does not favour the order sought. The terms of the 13 June 2024 agreement reflect what the parties considered appropriate as an interim measure pending the final determination of their respective claims in the action to the vehicle. The relief sought by the Applicant is unnecessarily burdensome.

[17] I am therefore inclined to issue an interim interdict which follows the terms of the parties' agreement of 13 June 2024.

[18] As far as costs are concerned, the Respondent was in breach of the terms of the parties' agreement at the time the Applicant launched the instant application. The Applicant was therefore justified in launching the instant application and, if an interim interdict is issued in accordance with the terms of the agreement of 13 June 2024, I consider that the Applicant was substantially successful even if it did not succeed in respect of the order sought.

[19] I accordingly make the following order:

- a. Pending the final determination of the action instituted by the Applicant under case number 2024-065602 in the above Honourable Court:

- i. The Respondent is ordered not to dispose of, alienate or in any way encumber the 2018 Maserati Levante Station Wagon with VIN: Z[...], Engine No: M[...] and Reg No: H[...];
 - ii. The Respondent is ordered to keep the vehicle comprehensively insured; and
- b. The Respondent is liable for the costs of this application on party and party scale A.

J BEYERS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 25 July 2024

Date of Judgment: 5 September 2024

APPEARANCES:

For the Applicant: Adv Jan Lubbe
Instructed by: Sarlie & Associates Inc

For the Respondents: Ms Yasmin Omar
Instructed by: Zehir Omar Attorneys