

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case Number: 8583/24

In the matter between:

NOMSITHELO GLADYS MVULA

Applicant

and

CITY OF CAPE TOWN

First Respondent

CITY OF CAPE TOWN TRAFFIC SERVICES

Second Respondent

**DEPARTMENT OF TRANSPORT AND PUBLIC
WORKS, WESTERN CAPE**

Third Respondent

JUDGMENT

MAGARDIE AJ:

1. This is an application for a mandatory interdict and related relief regarding a vehicle which the applicant alleges was owned by her late husband as part of his fleet of taxis and which after his demise, now forms part of his deceased estate.
2. The vehicle sought to be returned is alleged to be a white 2011 Toyota Quantum Sesfikile minibus with licence plate registration number C[...]. This vehicle

was impounded by officials of the City of Cape Town ('the City') on 12 January 2023 after it was found to be operating as a taxi without the necessary operating permit. The vehicle was then removed to the City's impoundment facility in Maitland, Cape Town.

3. On 23 February 2023, a white Toyota Quantum Sesfikile minibus with the same licence plate registration number [C[...]] as the vehicle impounded on 12 January 2023, was released by the City to the Deputy Sheriff, Cape Town East. The vehicle was released on the strength of a court order and warrant for delivery of goods which had been obtained by SA Taxi Development Finance (Pty) Ltd ('SADTF') for the repossession of a 2017 Toyota Quantum Sesfikile minibus owned by the SADTF.

4. I will refer to the vehicle which the City states was released to the Sheriff as '*the SADTF vehicle*' and to the vehicle which the applicant seeks to have returned, as '*the Mvula vehicle*.' This distinction between the vehicles is merely for reference purposes. As will become apparent later, the main question in this case is whether the SADTF vehicle and the Mvula vehicle, are in fact the same vehicle. According to the applicant, the Mvula vehicle and the SADTF vehicle are not the same vehicle. The applicant contends that the court order granted to the SADTF authorizing the repossession of the SADTF vehicle, was for a vehicle with a different engine number, a different VIN (vehicle identification number) and related to a vehicle of a different year model to the Mvula vehicle. The City on the other hand contends the opposite. According to the City, the Mvula vehicle and the SADTF vehicle are the same vehicle. The City states that that it is no longer in possession of the vehicle after having lawfully released same to the Sheriff on 23 February 2023.

5. The factual background set out below appears from the documentation attached to the parties' affidavits.

Background

6. On 10 October 2011 the City issued the late Mr. Mvula with a motor vehicle registration certificate in terms of the National Road Traffic Act 93 of 1996 ('the

NRTA'). The registration certificate was issued for a vehicle described in that certificate as a Toyota Quantum with engine number 2[...] and VIN number J[...]. The details of Mr. Mvula are recorded on the vehicle registration certificate under the heading '*title holder*' and '*owner*'. It is apparent from the registration certificate that the vehicle described therein was not a new vehicle at the time of issuing of the certificate. The certificate records the vehicle status as '*Built up*'. In addition, three licence numbers are recorded on the certificate under the heading '*Last 3 licence numbers*', with the most recent being C[...]. The date of liability for the first licensing of the vehicle is recorded as 19 March 2008. This indicates that at the time of issuing of the certificate of registration for the Mvula vehicle on 10 October 2011, the Mvula vehicle must have been at least three years old. The vehicle register number for the Mvula vehicle is recorded on the certificate as C[...].

7. Around 2017, some six years later, Mr. Ncedo Parterson Nqenqa ('Mr. Nqenqa') then enters the picture. According to a combined summons issued against Mr. Nqenqa by the SADTF in the Western Cape High Court during 2021, on 2 March 2017 and at Midrand, Mr. Nqenqa had entered into a written lease agreement with the SADTF, in terms of which he had leased a vehicle described as a '*...2017 Toyota Quantum Sesfikile 16 Seater – Petrol with engine number 2[...] and chassis number A[...]*.' The lease agreement contains the usual clauses for agreements of this nature, in particular that the SADTF would remain the owner of the vehicle until it was fully paid for. The lease agreement records that the year of registration of the SADTF vehicle was 2017.

8. It is apparent from the lease agreement that the vehicle leased by Mr. Nqenqa from the SADTF on 2 March 2017, was a new vehicle. This is confirmed by the motor vehicle registration certificate dated 3 March 2017 attached to the summons, which records the vehicle status as '*New*'. It is also clear that there are no entries under the heading '*Last 3 licence numbers*' on the certificate.

9. The fact that as at March 2017, the SADTF vehicle was a new and previously unregistered vehicle, is also apparent from the entry on the certificate under the heading '*Date of liability for first licensing*', which reads '*2017-02-28*'. The vehicle registration certificate records the SADTF as the title holder and the details of Mr.

Nqenqa under the heading 'Owner'. The registration certificate also records the VIN number of the SADTF vehicle as 'A[...]' and the chassis number as '2[...]'. The vehicle register number on the certificate is recorded as 'C[...]'.

10. To summarize at this stage, the registration certificates referred to above demonstrate two main differences between the Mvula vehicle which was registered in 2011 and the SADTF vehicle which was registered in 2017. The Mvula vehicle registration certificate which was issued in 2011 was for a vehicle which was a built - up vehicle, the vehicle was at least three years old in 2011 and it was a vehicle which had two previous licence plate registration numbers. The SADTF vehicle registration certificate issued in 2017 was for a new vehicle which had not been registered before or issued with licence plate registration numbers before. In addition, the registration certificates were issued for two vehicles with entirely different engine and VIN numbers. I shall address the significance of this later in this judgment.

11. On 9 July 2020 the SADTF issued summons in the Western Cape High Court against Mr. Nqenqa on the basis that as at 14 May 2020, he was in arrears for rental payments in terms of the lease agreement in the amount of R117 259.26. The summons sought cancellation of the lease agreement and return of the SADTF vehicle. The Registrar of the High Court granted a default judgment against Mr. Nqenqa on 9 March 2021. The default judgment order was granted for confirmation of termination of the agreement, return of the SADTF vehicle and attorney and client costs to be taxed. A warrant of delivery of goods was issued by the Registrar that same day. According to the warrant, the court had ordered the defendant to deliver to the plaintiff '*...a certain 2017 Toyota Quantum Sesfikile 16 Seater – Petrol with engine number 2[...] and chassis number A[...].*'

12. On 14 April 2021 the City issued Mr. Mvula with a motor vehicle licence, licence disc and roadworthy certificate in terms of the NRTA, which was valid until 31 March 2022. This document recorded the vehicle register number as C[...], the licence number as C[...], and the vehicle is described as a Toyota Quantum with engine number 2[...] and VIN number J[...]. These details correspond with the vehicle registration certificate which had been issued to Mr. Mvula on 11 October 2011.

13. Approximately two years later and on 12 January 2023, officials of the City impounded a motor vehicle described on the impoundment notice as a white Toyota Quantum Minibus with licence plate registration number C[...]. As stated above, it is common cause that the vehicle was impounded as it was being operated as a taxi without the necessary permit to do so.

14. The driver of the motor vehicle was issued with a Public Transport Impoundment Notice recording under the heading '*Payment Details*', that the impoundment fee was an amount of R7000.00 and the '*payment office*' was Gallows Hill traffic department, Greenpoint. A notice to appear in court was also issued to the driver in terms of section 56 of the Criminal Procedure Act 51 of 1977. The section 56 notice recorded the vehicle registration number, vehicle make, type and the vehicle colour set out above i.e. those of the Mvula vehicle. The impoundment notice did not however contain any details of the vehicle register number, engine number, VIN / chassis number and licence expiry date of the Mvula vehicle. The notice only records 'N/A' in this regard.

15. As stated earlier, on or about 23 February 2023, approximately six weeks after the impoundment of the vehicle which the applicant alleges to be the Mvula vehicle, the Deputy Sheriff of the High Court attended at the City's impoundment facility in Maitland. The Sheriff presented the court order and warrant of delivery of goods issued by the Western Cape High Court in respect of the default judgment granted against Mr. Nqenqa. It was on the basis of these documents that the City released the vehicle to the Sheriff.

16. The applicant relied extensively on the fact that the warrant of delivery presented by the Sheriff referred to a vehicle which was a different model and which had a different chassis and VIN number to that which the applicant claims to be the Mvula vehicle. To understand how it came about that the vehicle was released to the Sheriff, it is necessary to refer to the role of another *dramatis personae* in this matter, this being Mr. Theo Marais.

17. Mr. Marais is a risk mitigation officer contracted by the SADTF. He regularly attends at impoundment facilities to inspect vehicles and to identify vehicles which belong to the SADTF. According to the City and Mr. Marais who deposed to a confirmatory affidavit, prior to the release of the vehicle to the Sheriff on 23 February 2023, he had identified the vehicle in question as the SADTF vehicle.

18. He did so through an inspection of the vehicle's microdot. The City explains that microdot protection technology is a mechanism whereby tiny polymer discs 1mm or 0.55mm in diameter are inscribed with the vehicle's chassis / VIN number and sprayed onto a vehicle after being mixed in a special adhesive containing a UV trace. The microdots can only be viewed using a special magnifier, cannot be changed or replaced and can be fitted in more than 100 locations on the body of the vehicle. Microdot technology is aimed at assisting in the recovery of stolen vehicles and the perennial problem of the ease with which licence registration plates, engine numbers and chassis / VIN numbers of vehicles can easily be tampered with or changed. According to the City, licence plate registration numbers of a vehicle can be changed when the vehicle is sold or registered in a different province. Vehicle engine numbers can be changed by tampering with or scratching on the engine numbers itself or removing and replacing the vehicle engine itself. It was to address this problem that amendments to the Road Traffic Regulations were promulgated in 2012, requiring all new vehicles sold in South Africa to have microdot protection.¹ In essence, the microdot on a vehicle is the vehicle's unique DNA fingerprint.

19. According to Mr. Marais, he identified the vehicle in question as the SADTF vehicle by inspecting its microdot. A copy of the enlarged microdot was annexed to the City's answering affidavit. The microdot recorded that the chassis / VIN number on the microdot was A[...]. This is the same chassis / VIN number which appears on the court order and warrant of delivery of goods granted against Mr. Nqenqa.

20. Having so identified this vehicle as a vehicle belonging to the SADTF, Mr. Marais informed the Sheriff. The Sheriff then attended at the Maitland pound where

¹ Regulation 56 of the National Road Traffic Regulations, 2000 (as amended).

the keys and the vehicle were released to the Sheriff after he handed over the necessary documentation.

21. On 8 March 2024, just under a year after the release of the vehicle referred to above to the Sheriff on 23 February 2023, the applicant attended at the Gallows Hill traffic department. She paid an amount of R9000.00, being the impoundment fees, in respect of the vehicle which had been impounded on 12 January 2023. She states that the payment was accepted by the City officials after she provided inter-alia proof of ownership of the vehicle, the latter being the certificate of registration issued to Mr. Mvula on 10 October 2011 and the motor vehicle licence disc and roadworthy certificate issued by the City on 14 April 2021. A receipt was issued for the amounts paid as well as documents entitled '*Warrant Clearance Form-Taxi Release*' and '*Taxi Office Verification Form*'. The latter included a section headed '*Maitland Impound Verification*', which according to the City, had to be completed and verified at the Maitland pound before any vehicle could be released notwithstanding the payment of the necessary impoundment fees.

22. According to the applicant, she was informed by City officials that they were no longer in possession of the vehicle and that they refused to disclose the whereabouts of the vehicle or provide any information relating to the release of the vehicle.

23. The present application was then instituted on 25 April 2024 and set down for hearing on an urgent basis on 15 May 2024. The relief sought in the notice of motion is for inter-alia orders directing the respondents to release and return the vehicle impounded on 12 January 2023 with registration number C[...] and engine number 2[...], an order directing the respondents to disclose the location of the vehicle and for such persons in possession of the vehicle to release it in the event that it has become '*impractical or impossible*' for the respondents to release the vehicle. In addition, an order is sought directing the respondents to pay the applicant the retail value of the vehicle within 30 days in the event that the other relief for the release of the vehicle '*...no longer has any legal effect.*'

24. On 6 May 2024, the City's attorneys directed a letter to the applicant's attorneys inter-alia explaining the circumstances under which the vehicle had been released to the Sheriff on 23 February 2023. The letter took issue with the applicant's failure to attend at the Maitland pound and to correspond with the City before issuing the application and attached a copy of the court order and warrant of delivery of goods granted against Mr. Nqenqa. In relation to the vehicle that the City had released to the Sheriff, the letter stated that the order on the strength of which the vehicle had been released, '*...was granted against the previous owner of the vehicle, Mr. Ncedo Paterson Nqenqa whom your client's deceased husband had allegedly purchased the vehicle from.*' The letter concluded by noting that any claim which the applicant may have would be against the SADTF or Mr. Nqenqe, not the City. The letter requested the applicant to withdraw the urgent application failing which a punitive costs order would be sought against the applicant at the hearing of the matter.

25. The applicant's attorney responded on 8 May 2024 declining to withdraw the application. The response advised the City's attorneys that they appeared '*...to be talking about a different motor vehicle than the one which is the subject matter of the litigation.*' The reference in the City's attorneys' letter to the vehicle having allegedly been purchased from Mr. Nqenqa by Mr. Mvula was not addressed or disputed.

26. The City filed its answering affidavit on 10 May 2024 and the applicant filed a reply thereto on 14 May 2024.

Evaluation

27. Before dealing with the merits of the application, it is necessary to address two preliminary points taken by the City in its answering affidavit. Firstly, it was contended that the application was manifestly a case of self-created urgency and ought to be struck from the roll on that basis. Secondly, it was contended that the applicant was not the appointed executor of the deceased joint estate and that by virtue of section 13(1) of the Administration of Estates Act 66 of 1965, the applicant lacked locus standi to seek the relief set out in the application.

28. As to urgency, by the time the matter was argued the City had filed a comprehensive answering affidavit addressing the merits of the application in some detail. The City did not suggest that it had suffered any serious prejudice by the constrained time-periods set forth in the notice of motion for the filing of answering papers. The applicant provided an explanation, albeit lacking in some specificity, regarding what had transpired from 12 January 2023 to May 2024 when the application was brought. These included difficulties in the administration of the deceased's estate and the raising of funds for legal fees to bring this application. In my view, it would serve little purpose and be a wasteful use of judicial resources to strike the application for lack of urgency at this stage where the merits have been fully addressed in the papers, only to have it re-enrolled for hearing at a later stage. In the exercise of my discretion, I grant the applicant leave for the application to be heard as one of urgency in terms of Rule 6(12).

29. With regard to the City's second preliminary point, it is clear from the relief sought in the notice of motion that the present application does not relate to the liquidation or distribution of the deceased's estate. To that extent, the provisions of section 13(1) of the Administration of Estates Act 66 of 1965, which prohibit the liquidation and distribution of any deceased estate except under letters of executorship, do not in my view find application.

30. Nor in my judgment is the applicant's standing to seek the relief set out in her notice of motion, precluded by the provisions of the City's Traffic 2021 By-law. The latter in relevant part provides for the release of an impounded vehicle upon payment of fines and impoundment fees and on receipt of a certified copy of a death certificate from the estate administrator or executor. This provision may have been applicable had the vehicle in question still been in the City's impoundment facility. It is difficult however to see how the provision is of any relevance in circumstances where the City's stated position is that it is in fact no longer in possession of the vehicle which was impounded. The applicant, as the deceased's surviving spouse, has a direct and substantial interest in the recovery of assets which form part of the deceased's estate. The City's absence of locus standi point cannot be sustained.

Merits

31. This application in my view turns on a single determinative question, which is this: was the vehicle which was released to the Sheriff on 23 February 2023 the same vehicle as that claimed by the applicant to be the Mvula vehicle?

32. The evidence demonstrates that Mr. Marais had identified the vehicle released to the Sheriff as the SADTF vehicle through an inspection of its microdot. The microdot recorded thereon that the chassis/VIN number of the vehicle was 'A[...]' . It is undisputed that this is the same chassis/VIN number appearing on the court order and warrant under case no. 88850/20. The applicant in reply contended that Mr. Marais was '*not independent*' as he was a contractor for the SADTF, that the City officials were not present when the microdot verification was done and that the microdot verification report was only obtained after the institution of the litigation. The applicant's attempt to dispute the fact that the microdot on the vehicle released to the Sheriff recorded a chassis/VIN number consistent with the warrant and court order, is in vain.

33. None of the grounds advanced by the applicant relating to the alleged lack of independence of Mr. Marais detract from the fact that the microdot technology on the vehicle released to the Sheriff, recorded a chassis/VIN number consistent with the court order and warrant. Given that these are motion proceedings, Mr. Marais's version regarding his identification of the vehicle through an inspection of its microdot as being the same vehicle detailed in the court order and warrant, can only be rejected on the papers if it is clearly untenable or far-fetched. No basis has been sustainably advanced for this court to do so.

34. Once it is accepted that the vehicle which was released to the Sheriff on 23 February 2023 was fitted with microdot technology identifying it as the SADTF vehicle listed on the court order and warrant under case no.8850/20, the applicant's case is confronted by several insuperable difficulties. In my view, the version advanced by the applicant in her founding and replying affidavits, then begins to raise more questions than answers.

35. Firstly, the City, as an annexure to its answering affidavit placed before the court a report by Mr. Marais entitled '*Taximart Loss Adjuster Inspection Report*'. This report contained photographs of the vehicle released to the Sheriff on 23 February 2023. One of these photographs depicts a licence disc on the front windscreen of the vehicle recording a chassis/VIN number being 'J[...]'. This is the same chassis/VIN number referred to in the applicant's founding affidavit as being that of the deceased's vehicle.

36. Ms. Titus, who appeared for the City, submitted that the applicant had neither disputed this or explained same. The submission in my view raises a more difficult question for the applicant: why would a licence disc issued for a built-up vehicle registered in the name of Mr. Mvula in 2011 with chassis/VIN number J[...], be appearing on a vehicle which had been registered as a new vehicle for the first time in 2017 with chassis/VIN number A[...]? This discrepancy called for an answer from the applicant. None of any substance was forthcoming.

37. Secondly, the photographs of the vehicle released to the Sheriff on 23 February 2023 record that the SADTF vehicle was fitted with licence plate registration number C[...]. The SADTF vehicle had been issued with a certificate of registration for the first time in 2017 as a new vehicle. A certificate of registration recording licence plate registration number C[...] had however already been issued for the Mvula vehicle in 2011, some 6 years before. It is unclear why the SADTF vehicle, which was registered as a new vehicle in 2017, would be bearing the same existing licence plate registration number for the Mvula vehicle which had already been registered six years before for another vehicle, which in addition had a different chassis/VIN number.

38. The City has in my view demonstrated that the vehicle which it released to the Sheriff on 23 February 2023 was the same vehicle referred to in the court order and warrant. The release of the vehicle to the Sheriff was lawful and no sustainable basis has been advanced to justify concluding otherwise.

39. Nor in my view has it been established by the applicant, for the reasons outlined earlier, that the vehicle which was released to the Sheriff on 23 February

2023, is a different vehicle to that allegedly owned by the deceased's late husband. There is simply no factual basis to conclude that two different vehicles were in the possession of the City, with the deceased's vehicle for reasons unknown, somehow remaining secreted away by the City. The evidence shows that the licence disc and licence registration plates for the vehicle which the applicant claims to be the Mvula vehicle, appear on only one vehicle. That vehicle however has a unique microdot identifier which records an entirely different chassis/VIN number to that recorded on the licence disc of the vehicle, the latter having been issued to Mr. Mvula. This not only raises questions. It also puts paid to any suggestion by the applicant that two different vehicles were in the possession of the City. The vehicle which was lawfully released to the Sheriff was a 2017 vehicle owned by the SADTF and identified by its unique microdot. That this vehicle was fitted with a licence disc and licence plates for a vehicle registered with an entirely different engine and chassis / VIN number to that recorded on its microdot, far from establishing the applicant's case, in fact renders it improbable to say the least.

Order

40. The applicant's non-compliance with the Uniform Rules of Court is condoned and leave is granted for this application to be heard as one of urgency.

41. The application is dismissed with costs.

42. The applicant is to pay the first respondent's costs on scale C.

S G MAGARDIE
Acting Judge of the High Court
Western Cape Division

APPEARANCES:

For the Applicant: K Lingani

Instructed by: Lingani & Partners

For the Second and Third Respondents: Z Titus

Instructed by: Diale Mogashoa Attorneys

Date of hearing: 15 May 2024

Date of judgment: 16 August 2024