

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

6 January 2025

Judge Dippenaar

CASE NO: 2023 - 008788

In the matter between:

MAMBA STRIKE FORCE CC

APPLICANT

AND

ANDRIES CHRISTIAAN PETZER

FIRST RESPONDENT

PHP ARMED RESPONSE (PTY) LTD

SECOND RESPONDENT

ALPHERA FINANCIAL SERVICES (PTY) LTD

THIRD RESPONDENT

**THE MOTOR FINANCE CORPORATION  
A DIVISION OF NEDBANK (PTY) LTD**

**FOURTH RESPONDENT**

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**JUDGMENT**

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**Delivered:** This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it onto the electronic platform. The date and time for hand-down is deemed to be 10h00 on the 06<sup>th</sup> of JANUARY 2025.

**DIPPENAAR J:**

[1] This is an opposed application in which the applicant sought the return of various motor vehicles in possession of the first and second respondents, together with ancillary relief.

[2] Shortly after service of the application on 8 February 2023, the vehicles were placed in the possession of the liquidators of Mamba PHP (Pty) Ltd by the first respondent on 22 February 2023. At that point the relief sought by the applicant in its original notice of motion became moot.

[3] The first and second respondents' attorneys proposed that the application be withdrawn, with each party to pay its own costs. The applicant's attorney, Mr Hood refused to do so and demanded that the first respondent deliver an answering affidavit.

[4] In due course an answering affidavit was delivered on 23 March 2023. In their opposing papers, the first and second respondents raised various grounds of opposition, including the non-joinder of the PH liquidators, the mootness of the application and the

existence of *bona fide* disputes of fact regarding ownership of the vehicles which were known before the application was launched. They expressly challenged the applicant's ownership of the vehicles in question.

[5] This resulted in an extensive replying affidavit being delivered on 17 April 2023. A notice of amendment of its notice of motion was served by the applicant on 5 April 2023, which was effected on 4 May 2023. In terms of the amendment, the applicant now sought a declaratory order that it was the owner of the vehicles.

[6] At the hearing, the applicant abandoned its substantive relief and effectively capitulated the application. It is thus not necessary to determine the various issues raised. Having belatedly jettisoned the relief, it follows that the application must fail. Ultimately the only issue requiring determination was costs.

[7] The applicant contended that each of the parties should be held liable for their own costs. The first and second respondents in turn, sought a punitive costs order on the basis that the application constituted an abuse of process and was persisted with for an ulterior motive. On the available evidence it is not possible to draw that conclusion as the most reasonable inference.

[8] However, the applicant should in my view be held liable for the costs. The suggestion of the respondent was a reasonable one and would have avoided substantial unnecessary costs being incurred. The fact that the amended substantive relief was only jettisoned at the hearing fortifies my view. Having read the papers, it is doubtful whether the applicant would have established its entitlement to the declaratory order sought, given that the majority of the vehicles were financed with the financial institution which retained ownership of the vehicles. In addition, there were substantial disputes of fact pertaining to the Hilux.

[9] Had the applicant adopted a reasonable approach, it should not have persisted in the application once the primary relief originally sought became moot. The decision to substantially amend the entire application and seek to make out a case in reply, was ill-conceived. It must be concluded that the continued persistence with the application by the applicant until the hearing was unreasonable and resulted in substantial unnecessary legal costs being incurred.

[10] Costs are essentially a question of fairness between the parties. The conduct of the applicant in relation to the matter renders it just to grant a punitive costs order to ensure that the first and second respondents are not left out of pocket in relation to the costs incurred in the application <sup>1</sup>.

[11] In the result I grant the following order:

The application is dismissed with costs on the scale as between attorney and client.




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**EF DIPPENAAR**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG PRETORIA**

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|------------------------------|------------------------|
| <b>DATE OF HEARING</b>       | : 11 NOVEMBER 2024     |
| <b>DATE OF JUDGMENT</b>      | : 06 JANUARY 2025      |
| <b>APPLICANTS' COUNSEL</b>   | : Adv. HJ Basson       |
| <b>APPLICANTS' ATTORNEYS</b> | : MJ Hood & Associates |

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<sup>1</sup> Nel v Waterberg Landbouwers Ko-op Vereeniging 1946 AD 597 at 607; Swartbooi v Brink and Another 2006 (1) SA 203 (CC) para 27.

Mr Hood

RESPONDENT'S COUNSEL

: Adv HA Van der Merwe

RESPONDENT'S ATTORNEYS

: Anderson Attorneys Inc  
Ms Manolios.