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

CASE NO: B4469/2023

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

6 January 2025

Judge Dippenaar

In the matter between:

ZEDA CAR LEASING (PTY) LTD T/A AVIS FLEET

APPLICANT

AND

LIFEMED EMERGENCY SERVICES (PTY)LTD

RESPONDENT

JUDGMENT

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

DIPPENAAR J:

[1] The applicant sought relief based on the *rei vindicatio* for the return of five motor vehicles ('the vehicles') leased by it to the respondent, pending the determination of action proceedings to be instituted against the respondent, together with ancillary relief. The *rei vindicatio* is available to an owner who has been deprived of his property without consent and who wishes to recover it from someone else who retains possession thereof.¹

[2] At a hearing on 27 May 2024, a consent order was granted authorising the respondent to deliver a supplementary answering affidavit. It did not do so, but instead delivered a notice in terms of r 6(5)(b)(iii) in which it was contended that the applicant failed to meet the requirements of the *rei vindicatio* in its founding papers. Pursuant thereto, the applicant delivered a supplementary affidavit, dealing with the contents of the notice.

[3] In sum, the applicant's case was that the parties had concluded a full maintenance lease agreement during February 2011, pursuant to which the respondent leased various vehicles from the applicant. The respondent was given possession of the vehicles in issue. The respondent breached the agreement by failing to pay the monthly payments due and failing to keep the vehicles comprehensively insured. On 19 July 2023, the applicant, via its attorneys delivered a letter to the respondent, cancelling the agreement and demanding the return of the vehicles. In terms of that letter, the respondent was notified of the applicant's election to cancel the agreement as the respondent was in arrears with its monthly charges in an amount of R756 132,67. The agreement was forthwith terminated and return of the vehicles was demanded as the respondent no longer had any right to remain in possession of the vehicles. The proposed action to be instituted by the applicant would be to recover amounts due by the respondent under the agreement.

¹ Unimark Distributors (Pty) Ltd v Erf 94 Silvertondale (Pty) Ltd 1999 (2) SA 986 (T) at 995I; Vulcan rubber Works (Pty) Ltd v South African Railways and Harbours 1958 (3) SA 285 (A) at 297E.

[4] The respondent raised various grounds of opposition in its answering papers. They were, in sum, the following: First; the contention that the applicant's deponent was not authorised to depose to the affidavit and act on its behalf. Second; that the termination of the agreement was premature as the cancellation letter was not served on the respondent's *domicilium citandi et execuandi* as agreed upon in the agreement and it thus was not afforded the opportunity to rectify the breach. Third, reliance was placed the grounds advanced in its notice in terms of r 6(5)(b)(iii) that the applicant failed to meet the requisites for the *rei vindicatio* in its founding papers. I deal with them in turn.

[5] It is trite that a challenge to the authority of a deponent to an affidavit is to raise such challenge under r 7². The rule provides a remedy to a person who wishes to challenge the authority of a person allegedly acting on behalf of a proposed applicant.

[6] The respondent raised no such challenge, but challenged the authority in its answering papers. In reply, the applicant produced a resolution confirming that the launching of the proceedings by the deponent was authorised.³ It is not impermissible for the applicant to meet the respondent's challenge in reply.

[7] The respondent's reliance on *Selma Daude Da Cunha (Pty) Ltd v First Rand Bank Ltd t/a Wesbank*⁴ does not avail it, given that the resolution in the present instance expressly authorised the institution of the proceedings and authorised the applicant's deponent to do so. The respondent's submission therefore lacks merit.

[8] The respondent further contended that the application was premature and that the notice of termination was defective as it was not given in accordance with the provisions of clause 20.1 and 20.2 of the agreement. In terms of the agreement, the

² *Eskom v Soweto City Council* 1992 (2) SA 199 (SCA); *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA).

³ *Ganes v Telkom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624I-625A

⁴ (1562/2022) [2023] ZAMPMHC 35 (11 November 2024)

respondent's chosen domicilium address was 770 Michael Brink Street, Villieria, Pretoria. The registered address of the respondent at which the cancellation notice was served was 54A Swallow Street, Doornpoort Pretoria. That was also the address of the respondent's members. The application papers were also served at the same address on during August 2023. The respondent opposed the application and thus received notice thereof.

[9] The cancellation letter was also electronically transmitted to the respondent on 20 July 2023. It received the letter. That was confirmed by the respondent in an email of 4 August 2023, wherein it is stated: *'We notice that this account has been handed over to the attorney, and we would like to know if its possible to settle one of the vehicles and buy it over'*. Significantly, the respondent did not challenge the termination of the agreement at the time. It was also provided to the respondent in further correspondence on 7 August 2023.

[10] The respondent did not in the answering papers deny that it received the cancellation notice. It is thus clear that the cancellation letter came to the notice of the respondent and that service was effective. It is well established that the mere fact that a *domicilium citandi et executandi* was chosen, does not preclude effective service via the other methods authorised by r 4.⁵ I am not persuaded that the respondent established that the cancellation letter was not properly served. It follows that the application was not premature.

[11] It was common cause that the respondent was not provided with any notice to remedy the breaches. The respondent contended that it was not afforded an opportunity to rectify its breach. The agreement did not however contain a breach clause. It was undisputed that the common law permits the cancellation of an agreement if there is a breach that goes to the root of the contract. It was not disputed that the breaches relied on by the applicant, did so. The existence of the breaches was not disputed. It was further undisputed that in terms of the agreement, the applicant was at liberty to cancel

⁵ Sandton Square Finance (Pty) Ltd v Biagi, Bertola and Vasco 1997 (1) SA 258 (W) at 260C.

the agreement without any notice if the respondent defaulted in the punctual payment of any monthly rental due, without prejudice to the applicant's rights.⁶

[12] The respondent submitted that even though the agreement did not provide for a breach notice to be given and if the common law did not require it, the common law should be developed to require an innocent party to give such notice prior to being entitled to cancel the agreement. The respondent however made out no proper case for such relief. Mere lip service was given to the requirements.

[13] The grounds advanced in the r 6(5)(b)(iii) notice were that: (i) ownership of the vehicles have not been positively confirmed by the applicant; (ii) proof of ownership was not provided; and (iii) the applicant failed to allege that the respondent was in possession of the vehicles. I deal with those grounds in turn.

[14] Read in context, the founding affidavit and its attachments clearly reflect that the applicant relied on its ownership of the vehicles. Paragraph 5.1 expressly referred to the return of the applicant's vehicles. The respondent did not expressly place the applicant's ownership of the vehicles in issue in its answering affidavit. Instead, it admitted or "noted" those averments.⁷ It also admitted the full maintenance lease agreement and its terms. Clause 19.3 thereof expressly provided that the respondent would not acquire any right, title or interest in the vehicles other than as provided in the agreement. The applicant would at all times remain the title holder of the vehicles and its ownership would not be prejudiced by the respondent in any way.

[15] The founding papers and the documentation attached to the applicant's supplementary affidavit, clearly identified the five vehicles in question and provided proof that the applicant remained the title holder and registered owner of such vehicles.

⁶ Agreement, clause 15.2.

⁷ In paragraphs 5.1, 7.2 and 7.5.

[16] It was further not disputed that the vehicles were delivered and placed in the possession of the respondent. The respondent admitted such delivery.⁸ It did not aver that it was no longer in possession of the vehicles or that the *status quo* had changed. The irresistible inference is that the vehicles remained in the possession of the respondent.

[17] It is trite that in vindicatory proceedings, a claimant need do no more than allege and prove that they are the owner of the property, that the other party is in possession of the property, and that the property is still in existence and clearly identifiable. The onus is on the party in possession of the property to allege and establish an enforceable right to continue to hold the property as against the owner.⁹

[18] The respondent's challenge in the r 6(5)(b)(iii) notice lacks merit. The applicant's papers establish all the requisite requirements of the *rei vindicatio*.

[19] I conclude that none of the grounds of opposition advanced by the respondent have merit. The applicant has on the papers established its entitlement to the relief sought. It follows that the application must succeed. There is no reason to deviate from the normal principle that costs follow the result. In terms of the agreement, the applicant is entitled to costs on the scale as between attorney and own client.¹⁰

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

[1] Pending the finalisation of an action to be instituted by the applicant, the respondent is ordered to forthwith return to the applicant the following motor vehicles:

[1.1] MVA NUMBER : 2[...]

⁸ Founding affidavit, para 10 and answering affidavit para 36.

⁹ *Nedbank Ltd v Bukweni NO* (1970/2022) [2023] ZAECKMHC 116 (11 November 2024) paras 11 and 12 and the authorities referred to in fn5.

¹⁰ Clause 19.10.

- VEHICLE DESCRIPTION : Toyota Fortuner 2.4 GD-6 R/B A/T
ENGINE NUMBER : 2[...]
REGISTRATION NUMBER : J[...]
- [1.2] MVA NUMBER : 2[...]
VEHICLE DESCRIPTION : Toyota Quantum P/V 2.8 LWB 3 – Seat A/C
ENGINE NUMBER : 1[...]
REGISTRATION NUMBER : J[...]
- [1.3] MVA NUMBER : 2[...]
VEHICLE DESCRIPTION : Toyota Quantum P/V 2.8 SLWB 3-Seat
ENGINE NUMBER : 1[...]
REGISTRATION NUMBER : K[...]
- [1.4] MVA NUMBER : 2[...]
VEHICLE DESCRIPTION : Toyota Quantum P/V 2.8 SLWB 3-Seat
ENGINE NUMBER : 1[...]
REGISTRATION NUMBER : K[...]
- [1.5] MVA NUMBER : 2[...]
VEHICLE DESCRIPTION : Volkswagen Golf 7 2.0 TSI R DSG
ENGINE NUMBER : D[...]
REGISTRATION NUMBER : J[...]

(hereinafter referred to as the “vehicles”)

- [2] In the event of the respondent failing or refusing to return the vehicles upon service of this order by the Sheriff, the Sheriff of this Court is authorized, to seize and attach the motor vehicles, with the assistance of the SAPS, if required, wherever it may be found, or from any other person in whose custody or possession the said motor vehicles may be found, and to hand it to the applicant;

- [3] The applicant is directed to retain the motor vehicles in safe custody, pending the finalisation of the proposed action, which is to be instituted within thirty (30) days from the date of attachment of the vehicle or their return to the applicant;
- [4] If the applicant fails to institute the proposed action within the thirty (30) day period in [3] above, the order shall lapse;
- [5] The respondent is directed to pay the costs of the application on the scale as between attorney and own client.

EF DIPPENAAR
JUDGE OF THE HIGH COURT
GAUTENG PRETORIA

DATE OF HEARING	: 11 NOVEMBER 2024
DATE OF JUDGMENT	: 06 JANUARY 2025
APPLICANTS' COUNSEL	: Adv. TP Kruger SC
APPLICANTS' ATTORNEYS	: Rothmann Phahlamohlaka Inc
RESPONDENT'S COUNSEL	: Adv M Luyt
RESPONDENT'S ATTORNEYS	: Van Der Walt Attorneys Inc.