



**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
(Application for leave to appeal)

Magardie AJ

1. The applicant applies for leave to appeal against the judgment and order delivered by this court on 16 August 2024.¹
2. The principal judgment concerned an application for a mandatory interdict and certain alternative relief sought by the applicant for the return of a motor vehicle which had been impounded by the City on 12 January 2023 after it was found to be operating as a taxi without an operating permit. The applicant alleged that the vehicle was an asset in the deceased estate of her late husband and had been unlawfully released by the first respondent (“the City”) on 23 February 2023 to the Deputy Sheriff, Cape Town East (“the Sheriff”).
3. The City opposed the application. According to the City, the vehicle had been identified as the property of SA Taxi Development Finance Pty (Ltd) and had been lawfully released to the Sheriff on the strength of a court order and warrant for delivery of goods obtained in this court under case no. 8850/2020.
4. The detailed background facts are set out in the principal judgment and will not be rehearsed again. I shall however adopt the same nomenclature regarding the vehicles as in the principal judgment. I will refer to the vehicle which the City states was released to the Sheriff as “the SADTF vehicle” and the vehicle claimed by the applicant as “the Mvula vehicle.”
5. The court concluded that contrary to the applicant’s assertions, the Mvula vehicle and the SADTF vehicle were one and the same vehicle. The vehicle in question had been identified through microdot technology as bearing the same chassis/VIN number as that recorded on the warrant and order issued in favour of the SADTF. The judgment held that the vehicle had therefore been lawfully released from the City’s impoundment facility on the strength of a duly issued court order and warrant for delivery of goods obtained by the SADTF. It is these findings which form the main subject of this application for leave to appeal. The applicant contends that the court erred and misdirected itself in a number of

¹ *Mvula v City of Cape Town and Others* (8583/24) [2024] ZAWCHC 221 (16 August 2024).

respects in concluding that the Mvula vehicle and the SADTF vehicle were the same vehicle.

6. In the course of oral argument, Mr. Lingani, who appeared for the applicant, sought to advance a further ground of appeal not foreshadowed in the application for leave to appeal. This ground was said to be the City's failure to observe procedural fairness prior to releasing the vehicle from impoundment. The absence of such procedural fairness, so the argument went, rendered the City's release of the vehicle unlawful and invalid. I will briefly consider this contention after evaluating the main grounds set out in the application for leave to appeal.
7. As a preliminary observation, it is worth restating the trite principle that motion proceedings, unless they relate to interim relief, are directed at the resolution of legal issues based on common cause facts. Allied to this is the equally trite principle that where final relief is sought on motion, as was in this case, the applicant is bound to accept the respondent's version of the facts unless those allegations are so far-fetched and untenable that the court would be justified in rejecting them merely on the papers. The application of these principles to the facts of the present case was not disputed.
8. On this score, there is one central and undisputed fact that was determinative of the main application and is as equally determinative of the fate of this application for leave to appeal. It is this: the evidence of Mr. Theo Marais, a risk mitigation officer employed by the SADTF, was that he had inspected the vehicle at the City's impoundment facility and ascertained that the vehicle's microdots bore the same chassis/VIN number as those of the SADTF vehicle as recorded on the court order and warrant issued to the SADTF. Once applied to a vehicle, microdots cannot be changed or replaced and become an immutable identifier of the vehicle, in effect its unique DNA fingerprint. None of this was disputed by the applicant in her replying affidavit.
9. As pointed out in the principal judgment, once it is accepted that the vehicle which the City released to the Sheriff on 23 February 2023 was fitted with

microdots identifying it as having the same chassis/VIN number as the SADTF vehicle, the applicant's case was confronted by several insuperable difficulties.

10. Foremost among these was the applicant's failure to explain how it came about that the vehicle in question was bearing microdots for a different VIN/chassis number to the VIN/chassis number which she claimed belonged to the Mvula vehicle. There were two further difficulties for the case advanced by the applicant. The first was that it was clear from the evidence that the vehicle in question, while bearing immutable microdots reflecting the VIN/chassis number of the SADTF vehicle, was fitted with a licence plate which the applicant, on her own version, stated to be that of the Mvula vehicle. Secondly, the vehicle was bearing a licence disc on its front windscreen recording the registration and VIN/chassis number for the vehicle claimed by the applicant as the Mvula vehicle. This again was at odds with the microdots on the vehicle, which recorded an entirely different VIN/chassis number. These inconsistencies required an explanation from the applicant. None of any substance was forthcoming. The City's evidence relating to the microdots, licence plate and licence disc on the vehicle inspected by Mr Marais was undisputed and essentially common cause.
11. It is contended in the first ground of appeal that the court overlooked "the fact" that the vehicle claimed by the applicant did not have a microdot and that consequently, the City's "entire story" with reference to the microdot verification should have been rejected. The contention is erroneous. The applicant's affidavits contain no factual averment that the Mvula vehicle did not have microdots. An attempt was made belatedly in reply to contend that the Mvula vehicle was a 2011 model and hence was not subject to the post 2012 legislative requirement that all new vehicles should be fitted with microdots.
12. Mr. Marais' undisputed evidence was that he identified the vehicle in question as the SADTF vehicle through its microdots, which as stated earlier are a motor vehicle's unique DNA fingerprint. Engine numbers, licence plates and licence discs on a vehicle can easily be changed or replaced. Microdots cannot. This is precisely why microdot technology was adopted as mandatory statutory

requirement for vehicles under the terms of Regulation 56 of the National Road Traffic Regulations, 2000 (as amended). No sustainable basis was advanced by the applicant to justify Mr. Marais's evidence being rejected on the papers. This ground of appeal lacks merit.

13. The applicant in its second ground of appeal contends that the court failed to appreciate that the court order and warrant for delivery in respect of the SADTF vehicle, identified a vehicle with a different year model, engine number and VIN/chassis number to the vehicle which the applicant claimed as the Mvula vehicle. This reasoning by the applicant is circular. It begins by assuming the correctness of the conclusion which the applicant seeks to establish.
14. Confronted with the evidence of Mr. Marais that the vehicle released to the Sheriff was coated with microdots recording the chassis/VIN number of the SADTF vehicle, it is perhaps understandable why the applicant was then ineluctably driven to contend that the vehicle identified by Mr. Marais, was not the same vehicle as that which she claims to be the Mvula vehicle. This contention however and the ground of appeal on which it is based, flies in the face of the undisputed evidence of Mr. Marais. The evidence of Mr. Marais was that he identified only one vehicle as the SADTF vehicle. The microdots on that vehicle recorded the same chassis/VIN number as those stipulated in the court order and warrant which authorized the release of the SADTF vehicle to the Sheriff.
15. The applicant contends in a further ground of appeal that in the absence of evidence of tampering with the engine number and/or chassis/VIN number of the vehicle claimed by the applicant, the court erred in finding that Mvula vehicle and the SADTF vehicle were the same vehicles. I do not see how this contention, which was in any event not pleaded by the applicant, detracts from the undisputed evidence that the microdots on the vehicle claimed by the applicant as the Mvula vehicle, record the chassis/VIN number of a vehicle owned by the SADTF not the applicant's late husband. The applicant is on the horns of a dilemma. On the one hand, the applicant contends that the SADTF vehicle and the Mvula vehicle are not the same vehicle, i.e. they are two

different vehicles. Yet on the other hand, she does not dispute or address the fact that the licence plates and licence registration disc for the vehicle she claims to have been owned by her late husband, are found affixed to a vehicle whose microdots conclusively identify it as being owned by SADTF.

16. It is not open to the applicant to plead mutually inconsistent facts. I can find no sustainable basis to conclude that there is a reasonable prospect of another court rejecting this court's factual conclusion that the overwhelming evidence was that the SADTF vehicle and the vehicle claimed by the applicant to be the Mvula vehicle, were the same vehicles.
17. The applicant contends in its fifth ground of appeal that the court erred in finding that the applicant did not dispute the City's allegation that the applicant's late husband purchased the vehicle from Mr. Nqenqa. It is clear from the evidence that the City in its correspondence to the applicant's attorneys, expressly advised the applicant that the vehicle had been released on the basis of a warrant obtained against Mr. Nqenqa, the previous owner of the vehicle, from whom the applicant's late husband had allegedly purchased the vehicle. The applicant did not address this allegation in further correspondence, nor did she deal with it in her affidavits. The allegation required an answer. I agree with Ms. Titus, who appeared on behalf of the City, that the applicant could have easily set out in her papers, how and from whom her late husband acquired the vehicle. This ground of appeal has no merit.
18. The final string in the applicant's bow relates to what was alleged to be a failure by the City to observe procedural fairness prior to releasing the motor vehicle to the Sheriff on 23 February 2023. No factual basis was laid for this contention in the applicant's affidavits. The extent of a decision-maker's duty to act fairly and observe procedural fairness cannot be decided in a factual and evidentiary vacuum. This is because the standard and content of procedural fairness is a fact specific enquiry and differs from case to case. The applicant has not established a factual basis on the affidavits for her alleged entitlement to procedural fairness. It is not permissible for the applicant to attempt to do so

through oral submissions on a ground of appeal which has not even been pleaded in her application for leave to appeal.

19. Section 17(1)(a) of the Superior Courts Act 10 of 2013 (“the Act”) provides that leave to appeal may only be granted if an appeal would have a reasonable prospect of success or if there are some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.
20. This applicant does not suggest that there are compelling reasons why her appeal should be heard as contemplated by section 17(1)(a)(ii) of the Act. The only question then is whether the applicant has persuaded this court that there are reasonable prospects of success on appeal. It is in this regard well established that the test for leave to appeal postulates a reasonable or realistic chance of success on appeal. A mere possibility of success or an arguable case on appeal does not suffice.
21. The applicant failed to establish a sustainable factual or legal basis for the relief sought in the main application. I am not satisfied that there are reasonable prospects of it being held otherwise on appeal.
22. The application for leave to appeal is dismissed with costs.

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

Appearances:

For the applicant: Mr. K Lingani

Instructed by: Lingani & Partners

For the second and third respondents: Adv Z Titus

Instructed by: Diale Mogashoa Attorneys

Date of hearing: 5 December 2024

Date of judgment (revised): 11 December 2024 (electronically)