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

CASE NUMBER: 2023-133126

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

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA
LIMITED

Applicant

And

SIMANGA BRENDA CHILI

Respondent

JUDGMENT

PILLAY AJ

Introduction

1. This is an application for the return of a 2019 Porsche Macan motor vehicle with engine number D[...] and chassis number W[...] (“the vehicle”) which is owned by the applicant and which it sold to the respondent under an instalment sale agreement.
2. The applicant contends that the respondent breached that agreement and that, as a result, it cancelled the agreement. It now seeks orders:
 - 2.1. Confirming the cancellation of the agreement; and
 - 2.2. Authorising the sheriff to attach, seize and hand the vehicle over to the applicant.
3. The respondent raises two points in limine:
 - 3.1. First, the vehicle is in the possession of SAPS and that, as a result, the order sought by the applicant is not executable.
 - 3.2. Second, the applicant has failed to comply with the National Credit Act 34 of 2005 (**NCA**) in that she did not receive the applicant’s notice in terms of section 129 of the NCA (section 129 notice) or the letter of cancellation.
4. Apart from these preliminary points, the respondent did not put up any substantive opposition to the relief sought.

The facts

5. On 12 August 2019 the applicant and respondent concluded an instalment sale agreement in terms of which the respondent purchased, by way of instalment sale, the aforementioned Porsche Macan motor vehicle.
6. The conclusion and terms of the instalment sale agreement are not in dispute.

7. The applicant contends that the respondent breached the instalment sale agreement by failing to pay the monthly instalments as and when they fell due.
8. As a result, the applicant elected to cancel the instalment sale agreement and to seek repossession of the vehicle, which it did by way of a letter dated 4 January 2023.
9. Subsequent to this application being instituted, the respondent asserted for the first time that the vehicle is in the possession of the South African Police Service ("SAPS"). She however asserts that she intends bringing an application to have the vehicle returned to her given that all charges against her have been withdrawn.

Issues to be determined

8. The issues to be determined include:
 - 8.1. Whether the applicant properly cancelled the agreement; and
 - 8.2. Whether the failure to join SAPS as a party means that the application ought to be dismissed.

Cancellation of the agreement

9. The respondent raises the argument in her answering affidavit that she did not receive notice of cancellation of the agreement. I note however that this issue is not addressed in the heads of argument filed on behalf of the respondent.
10. In any event, the applicant has put up sufficient evidence that the section 129 notice of cancellation was transmitted by registered mail to the respondent's

chosen domicilium address. In addition, it was emailed to the respondent at an email address used by her for other communication.

11. I am accordingly satisfied that there was proper notice given of the cancellation of the agreement.

The failure to join SAPS

12. The respondent alleges that the vehicle was taken into custody by SAPS as a result of a criminal complaint lodged against her.

13. The applicant however contends that the respondent has failed to establish, as a matter of fact that the vehicle is in the possession of SAPS. In this regard, the applicant contends that:

- 13.1. The respondent has failed to produce any positive evidence that the vehicle is in the possession of SAPS. Her bald allegation to this effect is insufficient to raise a *bona fide* dispute of fact.

- 13.2. Despite the facts being peculiarly within her knowledge, the respondent has failed to provide any information relating to the circumstances under which the vehicle was taken into custody by SAPS, if it in fact was taken into custody.

14. In any event, the applicant contends that even if this Court accepts that the vehicle is in the possession of SAPS, this Court should utilize the mechanism of a rule nisi as an alternative to a joinder of necessary parties. In this regard, the applicant relied on the judgment of the Supreme Court of Appeal in

*Insamcor*¹ in which the SCA held that in certain instances it was appropriate to grant a prior rule nisi as an alternative to joinder of all necessary parties.

15. Having considered the matter, it seems to me that on the papers, the respondent has established that the vehicle is currently in the possession of SAPS. While I agree that the respondent has failed to properly take the court into her confidence on the details surrounding the circumstances under which the vehicle was taken into the possession of SAPS, this does not detract from the fact that there is nothing to gainsay her allegation that the vehicle is currently in the possession of SAPS.
16. This is however not the end of the matter (as the respondent appears to suggest). I have to consider whether it is appropriate to grant a prior rule nisi as envisaged by the SCA in *Insamcor* affording SAPS an opportunity to persuade this court why an order should not be made restoring the vehicle to the applicant.
17. Having considered all the facts in this matter including:
 - 17.1. The paucity of information pertaining to when and why SAPS took possession of the vehicle;
 - 17.2. The absence of an explanation for the continued detention of the vehicle by SAPS given the respondent's allegation that all charges against her were withdrawn; and
 - 17.3. The applicant's right to the return of the vehicle.

I consider that it is in the interests of justice to issue the rule nisi requested in the alternative by the applicant.

¹ *Insamcor (Pty) Ltd v Dorbyl Light & General Engineering (Pty) Ltd; Dorbyl Light & General Engineering (Pty) Ltd v Insamcor (Pty) Ltd* 2007 (4) SA 467 (SCA)

Costs

18. I note that in its notice of motion the applicant seeks a punitive costs order. In terms of the agreement, the applicant is entitled to “collection costs” which is defined in the agreement as the amount that may be charged in enforcing the monetary obligations under the agreement, but excludes any default administration charges.
19. This is not the equivalent of legal costs on a punitive scale. I accordingly find that there is no contractual entitlement to punitive costs. Given that there are no other compelling grounds on which the applicant sought for costs on a punitive scale, it is appropriate that costs be awarded on a party and party scale.

Order

20. I accordingly make the following order:
 1. The cancellation of the agreement entered into between the applicant and the respondent and attached to the applicant's founding affidavit marked “FA3” is confirmed.
 2. The National Commissioner of the South Africa Police Services, the Provincial Commissioner of South African Police Services and the Gauteng Provincial Head: Directorate for Priority Crime Investigation are called upon to show cause on 22 September 2025 at 10:00 or so soon thereafter as counsel may be heard, why the order in paragraph 3 below should not be made final.

3. The sheriff of this Honourable Court or his/her lawful Deputy is authorised, directed and empowered to attach, seize and hand over to the applicant a 2019 Porsche Macan with engine number D[...] and chassis number W[...];
4. The applicant is given leave to approach this Court on the same papers duly supplemented for payment of the difference between the balance outstanding and the market value of the aforesaid asset at the date of cancellation together with any damages the applicant may have suffered;
5. The respondent is ordered to pay the costs of this application on scale B;
6. The orders in paragraphs 1, 4 and 5 above will be of immediate force and effect notwithstanding the rule nisi in paragraph 2 above.

K PILLAY
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Adv M De Oliveira instructed by

For the Applicant: Jason Michael Smith Inc

Attorneys

For the Respondent:

GW Mashele Attorneys

Hearing date:

21 July 2025

Judgment date:

