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

Case Number: 25-092618

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

18 AUGUST 2025

In the matter between:

EXECUTIVE MOBILITY FINANCIAL SOLUTIONS PTY LTD

Applicant

and

NTSEMELE, MICHAEL NTESANG

Respondent

In re: the *ex parte* proceedings brought by:

NTSEMELE, MICHAEL NTESANG

Applicant

against

EXECUTIVE MOBILITY FINANCIAL SOLUTIONS PTY LTD

Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the applicant's legal representatives by e-mail and by uploading to Caselines.

Moultrie AJ:

[1] In this application, Executive Mobility Financial Solutions (Pty) Ltd ("the applicant") applies urgently under Rule 6(12)(c) for the reconsideration and setting

aside, with punitive costs, of an order issued in the urgent court on an *ex parte* basis at the instance of Mr Tsimele (“the respondent”) on 24 June 2025.

[2] The *ex parte* order as granted was framed as follows:

1. *The [respondent’s] non-compliance with the forms and service as prescribed in the Uniform Rules of the above Honourable Court is condoned, and the matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of the above Honourable Court.*
2. *A Rule Nisi is hereby issued, calling upon the [applicant] to show cause, if any, on Tuesday, 12 August 2025, at 10:00 or so soon thereafter as the matter may be heard, why a final order should not be granted in the following terms:*
 - 2.1 *That the [applicant], whether personally or through any third party acting on its instruction or behalf, be interdicted and restrained from entering or approaching the [respondent’s] residential premises.*
 - 2.2 *That the [applicant] be and is hereby interdicted and restrained from attempting to repossess, confiscate, or in any manner interfere with the [respondent’s] possession of the motor vehicle described as a Ford Ranger Raptor 2.0 BiTurbo Double Cab Special Edition, bearing registration number NR[] and VIN number: [], pending the return date of this application and in the absence of a court order authorising such repossession or interference.*
 - 2.3 *That the [applicant] be interdicted and restrained from harassing, intimidating, or otherwise unlawfully interfering with the [respondent] or any member of the [respondent’s] family in any manner whatsoever.*
 - 2.4 *That the [applicant] be interdicted, and restrained from directly contacting the [respondent], whether in person, telephonically, or through any other means of communication, in so far as both parties are legally represented.*

3. *That the [applicant] shall be entitled to anticipate the return date on twenty-four (24) hours' written notice to the [respondent].*
4. *Pending the return date mentioned in paragraph 2 above, the [applicant] is interdicted and restrained, on an interim basis, from taking any steps to repossess or confiscate the aforementioned motor vehicle without a court order.*
5. *This matter is postponed to 12 August 2025 for the return date of the Rule Nisi.*
6. *That service of this order be effected upon the [applicant] by way of electronic communication, specifically by email directed to []@emfs.co.za, []@emfs.co.za, and []@thomsonwilks .co.za, as authorised by this Honourable Court in terms of Rule 4(2) of the Uniform Rules of Court and/or in the exercise of the Court's inherent jurisdiction, insofar as such service may be necessary in the interests of justice.*
7. *Costs of this application are reserved for determination on the return date.*

[3] Briefly, the relationship between the parties regarding the vehicle referred to in paragraph 2.2 of the *ex parte* order arises from a written agreement concluded between them in August 2022. While it is common cause that this was in fact a rental agreement, in terms of which the respondent leased the vehicle to the applicant, the applicant has launched action proceedings citing the respondent as a defendant together with a motor dealership and alleging that they were responsible for a “misrepresentation, whether fraudulent or negligent” that the agreement he concluded with the respondent was a financed sale agreement. Acknowledging that ownership of the vehicle did not pass to him in terms of the rental agreement, the respondent seeks relief in the form of “cancellation of the rental or lease agreement” and “transfer of ownership of the vehicle” into his name, alternatively restitution of the rental payments.

[4] In its reconsideration papers, the applicant advances a counterapplication in which it seeks confirmation of the cancellation of the rental agreement and vindicatory relief in respect of the vehicle and seeks costs on the scale as between

attorney and client. On the other hand, the respondent contended that the reconsideration application was not urgent, that the procedure adopted by the respondent in seeking the vindictory relief was abusive, and sought the dismissal of the application (in its entirety) as well as a punitive costs order against the applicant. A further issue arises from the fact that, on the morning of the day that the matter was allocated for hearing before me, the respondent's attorney delivered a draft order in terms of which the applicant's attorneys of record (Thomson Wilks Inc.) would be held liable (*de bonis propriis*) jointly and severally together with the applicant to pay the punitive costs order sought, and in which the respondent persisted despite having been given an opportunity to withdraw it.

[5] When the matter was initially called in the urgent court, I requested the parties' representatives to address me on the issue of urgency, both insofar as it related to the reconsideration application and in relation to the vindictory relief. Having heard argument I ruled that both the reconsideration and the further relief sought by the applicant merited the attention of the urgent court.¹

[6] In relation to the reconsideration relief, I did not consider that the applicant was required to meet the ordinary test for "objective" urgency as contemplated in Rule 6(5)(b) (i.e. that it "could not be afforded substantial redress at a hearing in due course"). Relief granted on an *ex parte* basis "necessarily invades, for the time being, the freedom of action of a person or persons who have not been heard and it is, to that extent, a negation of the fundamental precept of *audi alteram partem*".² In *Mazetti*, a full bench of this division held that this "sacred right" requires that "no decision adverse to a person ought to be made without giving that person an opportunity to be heard" and "in a court of law this norm is scrupulously observed".³ In my view, the very purpose of a reconsideration (i.e. to remedy the harm caused by the – potentially justifiable – breach of a party's right to be heard) presumptively justifies the enrolment of such an application on the urgent roll. Requiring a party seeking reconsideration of an order obtained *ex parte* to demonstrate an inability to

¹ Having given this procedural ruling at the hearing, it is not necessary to include it in the order made in this judgment.

² *Republic Motors (Pty) Ltd v Lytton Road Service Station (Pvt) Ltd* 1971 (2) SA 516 (R) at 518G.

³ *Mazetti Management Services (Pty) Ltd And Another v Amabhungane Centre For Investigative Journalism NPC And Others* 2023 (6) SA 578 (GJ) para 1.

obtain substantial relief in due course would only serve to encourage potentially unscrupulous applicants to seek far-reaching *ex parte* relief before the overburdened urgent court and then rely on every means provided by the process for enrolment of matters on the opposed motion roll (for example by refusing to file heads of argument) in order to achieve an extensive delay in the reconsideration. As such, my view is that a reconsideration application should be entertained as long as the party bringing it has not unduly delayed in doing so.⁴

[7] In this regard (i.e. the question of delay in seeking the reconsideration), the applicant emphasised that within a week of being made aware of the *ex parte* order, its attorneys formally advised the applicant's attorney, Mr Dlulisa, not only that it intended to oppose the confirmation of the rule *nisi*, but also that it sought an undertaking from the respondent that the vehicle "will not be driven and will remain at a secure location" pending the outcome of the proceedings for confirmation or discharge of the rule. Although the return date provided for in paragraph 5 of the *ex parte* order was not particularly distant, that would have been 'cold comfort' to the applicant in view of the procedures applicable in this court for the enrolment of return dates in opposed matters.⁵ Given that such an undertaking would have avoided the necessity of an urgent application for reconsideration, it appeared to me that it was prudent for the applicant to have followed this course of action, and the fact that it did so should not be held against it in considering delay.⁶ In the circumstances, I indicated that I was satisfied that the reconsideration relief, at least, merited my

⁴ In my view, this approach (which is similar to that adopted in *Faraday Taxi Association v Director of Registration and Monitoring and Others* 2022 JDR 0934 (GJ) para 7) is consistent both with the authority cited by the applicant's counsel in support of urgency (*Money Global (Pty) Ltd and Others v Coetzee N.O.* 2022 JDR 2772 (GP) at para 7) and also with those referred to as conflicting with that judgment, such as *Packet Seaketso and another v 2023 Sanco Durban and others* 2024 JDR 1605 (GJ).

⁵ Although paragraphs 24.10 – 24.17 of this court's Practice Directive 1 of 2024 (as amended) indicates that matters with allocated return dates may be provisionally enrolled on the unopposed roll, the matter will not be entertained on that roll should confirmation of the rule *nisi* become opposed (as it was in this instance). In any event, the mere fact that a return date may have been allocated in the order should not in my view preclude a party from seeking the reconsideration of an order obtained *ex parte* from seeking an urgent reconsideration.

⁶ *Transnet Limited v Rubenstein* 2006 (1) SA 591 SCA paras 21 and 33.

attention in the urgent court, but that I remained concerned about the further vindicatory relief sought by the applicant, which is not typically regarded as urgent.⁷

[8] In seeking to address my concerns in this regard, Mr Williams argued that the court may consider such relief on an urgent basis in circumstances where it is clearly apparent that a respondent insists on failing to restore possession despite it being obvious that he is unable to advance any defence at all to such relief. He went on to argue that in this case, the respondent simply has no cognisable defence to the vindicatory relief, given that it is common cause that (i) the applicant is the owner of the vehicle; (ii) the respondent's possession of the vehicle arises pursuant to the rental agreement which both parties consider to have been concluded but terminated; and (iii) in terms of the Rental Agreement, the respondent is obliged to return the vehicle on termination.⁸

[9] Mr Dlulisa's response to Mr Williams's argument on urgency of the vindicatory relief was telling – not only for the purposes of the issue of urgency, but also for the merits of both the reconsideration application and the vindicatory relief. He conceded that the applicant is the owner of the vehicle and that the respondent has no substantive basis whatsoever to contend that his possession thereof is lawful.⁹ I was at pains to ascertain whether this concession was both fully understood and correctly made, and Mr Dlulisa duly confirmed that this was the case, but indicated that the respondent nevertheless contended that I should not only decline to entertain the counter-application but in fact dismiss it because any urgency had been self-created, in view of the fact that the applicants had been aware of his client's (unjustified) refusal to return possession since as early as 26 May 2025.

[10] I disagreed, for two reasons. Firstly, given that the reconsideration relief was already before the court, separation of that relief and the vindicatory relief in circumstances where both fall to be decided on the same underlying substantive principles, would only serve to unnecessarily duplicate the use of scarce judicial

⁷ *Volvo Financial Services South Africa (Pty) Ltd v Adams TKolose Trading CC* 2023 JDR 2806 (GJ) paras 9 – 12, holding that *Jacobs v Mostert* [2021] ZAWCHC 213 was “clearly wrong” and declining to follow it in this division.

⁸ Mr Williams also argued that the vindicatory relief was objectively urgent for various reasons.

⁹ It should be noted that Mr Dlulisa indicated that he only came to this realisation during the

resources. Secondly, I could not see how this court could turn a blind eye to the conduct of the respondent in circumstances where it is candidly conceded that his possession is unlawful and no substantive basis could be advanced for its continuation.

[11] I gave my ruling in relation to urgency shortly after the end of ordinary court hours on the Wednesday of the urgent court week, and the parties agreed that the hearing would then proceed later in the week.

[12] Upon reconvening, I was not surprised to learn that Mr Dlulisa recognised that the conclusions I had reached above in relation to urgency effectively also determined the merits of both the reconsideration and the vindictory relief. He did, however, insist on arguing the question of costs, and furthermore persisted in seeking punitive costs against the applicant and costs *de bonis propriis* against the applicant's attorneys. To the extent that I was able to follow his argument, it appears that his contention was that the respondent had stolen a march by linking the vindictory relief with the reconsideration application, which was deprecated in his client's answering papers as "grossly unreasonable", "procedurally flawed" and an "abuse of court process".

[13] My difficulty with this argument is that it unduly privileges procedural formality over substance in seeking to protect admittedly unlawful conduct in circumstances where there is no basis to do so. A Court does not possess the same statutory duties to protect any interests of unlawful possessors of motor vehicles and limit the rights of owners of movable property by refusing, delaying or otherwise tempering the grant of relief for the return of admittedly unlawfully held movables with reference to justice and equity, as it does in relation to unlawful occupiers of residential property, and which is specifically mandated by section 26(3) of the Constitution.¹⁰ Any attempt to apply those concepts (i.e. justice and equity) in the context of the *rei vindicatio* in respect of movables would in my view only serve to immeasurably undermine their significance and normative power when conscientiously applied in their proper context in the light of relevant constitutional principles and standards.

¹⁰ cf. Harms, LTC Amler's Pleadings. 10 ed. (LexisNexis, 2024) p. 383, referring (at 191) to the Land Reform (Labour Tenants) Act, 3 of 1996; the Extension of Security of Tenure Act, 62 of 1997; and the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998.

[14] In the specific context of this matter, where no defence is advanced at all to the vindictory relief, I cannot see how the applicant's conduct, or that of their attorneys could possibly be regarded as unreasonable, procedurally flawed or constitute an abuse.

[15] In my view, the abuse of legal process in this case has been on the side of the respondent, who came to court on an *ex parte* basis in purported protection of (what his legal representative only belatedly recognised to be) a non-existent right of possession. Whereas the applicant incurred no costs in relation to the *ex parte* proceeding, and there is thus no reason to grant it any costs in relation to that hearing, the respondent's insistence on pursuing punitive (and still more bizarrely, *de bonis propriis* costs) even after the merits had already been effectively conceded, thus resulting in a further on hearing on costs only constitutes vexatious conduct that should attract the censure of the court in the form of a costs order on a punitive scale as between attorney and client.¹¹

[16] I thus make the following order:

1. The order granted by Kahn AJ in this matter on 24 June 2025 is reconsidered and set aside;
2. The rental agreement entered into between Executive Mobility Financial Solutions (Pty) Ltd ("the applicant") and M N Tsimele ("the respondent") on 19 August 2022 is confirmed to have been cancelled;
3. The respondent is ordered to forthwith deliver the following motor vehicle to the premises of the applicant at 22 Hurlingham Road, Dunkeld, Johannesburg:

**Ford Ranger Raptor S[...]
Engine number: Y[...]
Chassis number: A[...]
Registration number: N[...]**

4. In the event that the respondent fails or refuses to comply with paragraph 3 above before 17h00 on Tuesday, 19 August 2025, the Sheriff of the

¹¹ *In re Alluvial Creek Ltd* 1929 CPD 532; *Marsh v Odendaalsrust Cold Storages Ltd* 1963 (2) SA 263 (W) at 270C-F.

Honourable Court is authorised to forthwith attach the vehicle, wherever it may be found, and deliver same to a representative of the applicant, in so doing is authorised to employ whatever means necessary, including making use of members of the South African Police Services, who are directed to assist the relevant Sheriff in enforcing the terms of this Order;

5. The respondent shall pay the applicant's costs of the application on the scale as between attorney and client;
6. The respondent shall pay the costs incurred by the applicant's attorneys (Thomson Wilks Inc.) in resisting the costs order sought against them *de bonis propriis* by the respondent on the scale as between attorney and client.

**RJ MOULTRIE
ACTING JUDGE**

Reserved: 25 July 2025

Appearances: For the applicant: D Williams, instructed by Thomson Wilks Inc., (011) 784 8984; darryl@thomsonwilks.co.za

For the applicant's attorneys: K Senyatsi, instructed by Thomson Wilks, (011) 784 8984; darryl@thomsonwilks.co.za

For the respondent: B Dlulisa of Dlulisa Attorneys (062) 743 7253 / (073) 969 5203; bonga@dlulisaatt.co.za / info@dlulisaatt.co.za