



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

CASE NO:38294/2019

(1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised: No
Date: 27 May 2026 Signatur [REDACTED]

In the matter between:

SUPERDRIVE INVESTMENTS LIMITED (RF)

Applicant

and

EDDIE BONGANI UBISI

Respondent

The matter was heard in open court. The judgment is handed down electronically by circulation to the parties' legal representatives by email. The date for hand-down is deemed to be 27 May 2025.

J U D G M E N T

Mazibuko J

[1] This interlocutory application seeks an interim attachment of a motor vehicle, described as a 2012 BMW [..., sport, engine number ..., chassis number ...] ('the BMW'), pending the finalisation of the trial proceedings, which are due to commence in August 2026. The application is opposed.

- [2] It was common cause, or at least not seriously disputed, that in July 2014 the parties entered into a written instalment sale agreement ('the agreement'), under which the applicant financed the respondent's purchase of the BMW. The BMW was delivered to the respondent and remains in the respondent's possession. It is a depreciating asset, and the respondent has provided no proof of insurance. The respondent has refused to return the BMW when requested by the applicant.
- [3] The applicant commenced proceedings in June 2019, seeking, among other things, the cancellation of the agreement, the return of the BMW, and the postponement of judgment for damages and interest pending the return of the BMW. The action was defended. In September 2019, the respondent successfully resisted the application for summary judgment, thereby enabling him to defend the matter.
- [4] The applicant alleged that the final residual instalment of R144 285.42 was due on or before 1 August 2020. An outstanding amount of R515 805.87 is due, owing and payable by the respondent. Further, the agreement had lapsed by operation of law when the residual instalment became due and payable.
- [5] In support of its application, the applicant argued that it was entitled to the return of the BMW, as it is its only security. Its value might deteriorate, given the risk of its daily use, the respondent's failure to disclose its location, and whether it was comprehensively insured. Further, if it were damaged, the applicant would suffer direct loss and irreparable harm.
- [6] Although the rest of the opposing affidavit did not necessarily engage with the allegations in the applicant's founding affidavit, the respondent opposed the application on the basis that the applicant relied on disputed facts already raised in the pending trial proceedings set down for hearing in August 2026. That action concerns the same BMW and seeks the same relief, except that the relief sought now is interim in nature; therefore, granting the interim attachment would be seen as predetermining the outcome of the pending trial proceedings. He disputed the outstanding amount of R515 805.87, in that the applicant failed to raise irreparable harm in June 2020, when the parties held a pre-trial

conference, and instead elected to raise it a few months before the trial of the issues central to the cancellation of the agreement and the return of the BMW, which already existed.

- [7] The issue is whether the applicant has made out a case for interim relief in respect of the attachment and safekeeping of the BMW pending the finalisation of the trial proceedings.
- [8] Regarding the agreement governing the relationship between the parties, the applicant's counsel referred the court to *SA Taxi Securitisation (Pty) Ltd v Chesane*, where it was held that a prerequisite to the grant of an interim attachment order is the cancellation of any agreement under which the respondent has the right to possess the vehicles. Such cancellation could be communicated to the respondent in the particulars of claim served on them. Further, as the agreement appears to have been validly terminated, the applicant is not precluded from obtaining an order for the interim attachment of the vehicles.
- [9] I agree with the applicant's counsel that, once an agreement is cancelled, an applicant is not precluded from recovering goods.¹ In *casu*, the applicant has purported to cancel the agreement in its particulars of claim in the pending action, which is due to be heard in August 2026. However, the inquiry ought not end here.
- [10] For an applicant to succeed in obtaining an interim attachment order, they must meet all the requirements for an interim interdict. An interim interdict pending an action is an extraordinary remedy within the court's discretion. The applicant bears the onus of proving that they have a *prima facie* right, a well-grounded apprehension of irreparable harm if the relief is not granted, that the balance of convenience favours the granting of an interim order, and the absence of another satisfactory remedy.²

¹ *SA Taxi Securitisation (Pty) Ltd v Chesane*, (26382/2009) [2010] ZAGPJHC 30; 2010 (6) SA 557(GSJ) (1 April 2010), paras 13, 23.

² *Tau v Mashaba & Others* 2020 (5) SA 135 (SCA), para 21.



- [11] With respect to a *prima facie* right, according to the agreement, ownership of the BMW would remain vested in the applicant until the purchase price was paid in full by monthly instalments over the term of the agreement. The issue of arrears is in dispute and will be adjudicated at the hearing in August 2026. However, I am satisfied that the applicant successfully established a *prima facie* right to the relief sought.
- [12] Concerning irreparable harm. In order for the court to grant an order to preserve the status quo of the BMW, the applicant must show a well-founded apprehension of irreparable harm.
- [13] Temporary interdicts have an immediate and substantial effect; this depends on whether the harm is serious, immediate, ongoing, and irreparable. Reasonable apprehension of harm refers to the perpetuation of the alleged offence that will cause irreparable harm to a protected right of the applicant pending trial. The loss need not necessarily be financial. It may consist of an irredeemable breach of the applicant's rights.
- [14] An interdict is not a remedy for past invasion of rights but concerns present or future infringements. It is appropriate only where future harm is feared. Where a wrongful act giving rise to the injury has already occurred, it must be of a continuing nature, or there must be a reasonable apprehension that it will be repeated.³ Harm must be threatened by an impending or imminent act.
- [15] The respondent has had the BMW since 2014. The applicant instituted an action in 2019 seeking the return of the motor vehicle. Depreciation and wear and tear from daily use of the BMW have been ongoing. Therefore, the alleged harm has already occurred since 2019 and continues to occur. In addition to the instalment payments of the purchase price, the respondent was obliged to keep the BMW comprehensively insured. The respondent did not provide proof that the BMW was insured. It is unclear why the applicant raised the issue of irreparable harm a few months before the hearing in the pending action.

³ *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw*, 2008 5 SA 339 (SCA) 346H para 20.

- [16] Although it is unlikely that the legislature in the National Credit Act⁴ intended that the consumer could retain the goods whilst not making payments for them, an interim relief application does not constitute debt enforcement under the National Credit Act; rather, it serves the purpose of safekeeping. Therefore, I do not attach much weight to the disputed facts regarding the issues to be determined at trial, including the disputed arrears.
- [17] The balance of convenience requirement for interim orders concerns the exercise of judicial discretion, whereby the court must consider all the requirements for interdictory relief. The court must also weigh the relative prejudice to the applicant and the respondent in the alternative situations in which the relief sought is granted or denied.⁵
- [18] It is well-founded that the only security the applicant has for the disputed debt is the BMW. At that stage, the BMW, which is the security for the alleged debt owed, may have little or no value to discharge the debt owed to the applicant. In my respectful view, though I accept that the BMW is depreciating due to daily use or non-use, I am not persuaded that the applicant will suffer irreparable harm if the interim relief sought is not granted a few months before the hearing of the pending trial. Accordingly, the balance of convenience militates in favour of dismissing the interim attachment application.
- [19] Regarding the costs, though the respondent has been successful, he is not a legal practitioner; I will not award costs in his favour.
- [20] In the circumstances, the following order is made;

Order:

1. The application is dismissed.



N G M MAZIBUKO
Judge of the High Court

⁴ Act 34 of 2005.

⁵ *PS Booksellers (Pty) Ltd v Harrison* 2008(3) SA 633 (C).

Date of Hearing: 2 March 2026

Judgment delivered on: 27 May 2026

APPEARANCES:

For the Appellant: Adv S F Fisher-Klein

Attorneys for the Applicant: Velile Tinto & Associates Inc

For the Respondent: In person

Attorneys for the Respondent: None