

SOUTH AFRICA / JUDGMENT

Andries v Mango Moon Trading 1122 CC t/a V & R Auto Collision Repair Specialists (1798/2014) [2014] ZAECPEHC 42 (18 June 2014)

[2014] ZAECPEHC 42

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

G Goosen

CASE / FILE NUMBER

1798/2014

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH

CASE NO: 1798/2014

DATE HEARD: 17 JUNE 2014

REASONS

FURNISHED: 18 JUNE 2014

NOT REPORTABLE

In the matter between

ANDILE AUSTIN ANDRIES

Applicant

And

MANGO MOON TRADING 1122 CC t/a

V & R AUTO COLLISION REPAIR SPECIALISTS

Respondent

REASONS

GOOSEN, J.

- [1] On 17 June 2014 I heard an urgent application in which the applicant sought to have the position of his motor vehicle returned to him by the respondent, I made an order in the following terms:
1. Whereas the Applicant has filed a bond of security which appears as annexure “AAA3” to the Applicant’s replying affidavit, the Respondent is ordered to return the Applicant’s motor vehicle being a 2011 Toyota Quantum with registration letters and numbers [.....] VIN number [.....] and Engine Number [.....] to him, forthwith;
 2. The respondent is ordered to pay the costs of the application.
- [2] I indicated that my reasons would be filed in due course. These are my reasons.
- [3] It was common cause that the motor vehicle at issue in these proceedings was involved in a motor vehicle collision on Monday 26 May 2014. The applicant, who alleged in the application that he is the owner of the motor vehicle, attended at the scene of the collision. He was in discussion with one Ruan of Chelsea Towing and, following telephonic discussion with Clarendon Transport Underwriters the applicant’s insurers; instructions were given to Chelsea Towing to tow the motor vehicle to CNA Bodyworks in North End, Port Elizabeth. Later that day, the applicant attended at the premises of CNA Bodyworks and, to his surprise discovered that the motor vehicle had been towed to the premises of the respondent. Upon enquiring from Ruan what had occurred, he was informed by Ruan that he had done so because the owner of CNA Bodyworks was not at the premises. Later on that same day the applicant went to the respondent’s premises in order to arrange that the vehicle be towed to CNA. He was told that he would have to speak to the manager who was, at the time, not available. He waited at the premises for some time, but was unable to speak to the manager of the respondent. On the following day he again went to the respondent’s premises. He was then told that in order to have his vehicle released certain fees would have to be paid. He was shocked to discover this because he had given no instruction to have his vehicle towed to the respondent’s premises. He nevertheless indicated that an invoice should be presented to him so that he could take the matter up with his insurers. He was then informed that an invoice could only be arranged when the owner of the respondent was present and that he was at that time away on a business trip and he would have to await his return.
- [4] The applicant went to the respondent’s premises on the Wednesday and Thursday but was told that the owner of the business
- was away on business and that he would be returning on the Friday. On the Monday, 2 June 2014, the applicant went to the respondent’s

premises. On that occasion the respondent attempted to persuade the applicant to have them repair the vehicle. The applicant refused and insisted that his vehicle be delivered to CNA Bodyworks. As a result of this he made contact with his insurance broker and instructions were ultimately given to a firm of attorneys to address a letter to the respondent which occurred on 3 June 2014. Notwithstanding the demand made in the said letter the respondent refused to deliver the vehicle to the applicant and, as a result the applicant brought the present application.

- [5] The respondent opposed the application on various grounds, which I shall address hereunder. In its affidavit the respondent raises two points in limine, namely a challenge to the applicant's proof of ownership of the vehicle as well as a point in relation to subrogation of the applicant's claim. As this latter point was not pursued during argument it may therefore be left out of account.
- [6] In relation to the substantive allegations set out in the applicant's founding affidavit the respondent avers that it has no knowledge of the facts and that it, in essence, is unable to either admit or deny such averments. There is also something made of the alleged lack of urgency in relation to the applicant's application, although this too was not pursued in argument before me. Significantly the respondent states in its answering affidavit that the applicant has a speedy and effective remedy available to him, in order to defeat the respondent's lien, namely that the applicant can tender adequate monetary security to defeat the lien or may provide security for what is owed to the respondent in relation to the vehicle. This the applicant did in reply when it filed a bond of security in the amount of 18,139 Rand which bond is valid until 25 of July 2014 as security for any action instituted against the applicant for the recovery of fees relating to the applicant's vehicle for the period 26 May 2014 to 17 June. The respondent nevertheless persisted in its opposition.
- [7] The essential thrust of the respondent's opposition to the orders sought for the return of the applicant's vehicle

centered on the alleged lack of proof of ownership of the vehicle by the applicant. It was submitted that the applicant had failed in its founding affidavit to prove its ownership and therefore locus standi to pursue the application. When the applicant sought, in reply, to deal with this aspect raised by the respondent by annexing to his replying affidavit a copy of a certificate of registration, this was met with a conditional application to strike out the certificate of registration.

- [8] This latter aspect can be dealt with summarily. It hardly behoves a respondent, who replaces in issue the locus standi of an applicant on the basis of a denial of proof to seek to have that proof struck out when it is produced in reply. Whilst it is always necessary for an applicant to set out in his founding affidavit averments sufficient to establish his cause of action and his locus standi, it is well established that there is no bar upon an applicant furnishing proof of such authority in reply where it is called for. There is accordingly no merit to the stance adopted by the respondent

- [9] The respondent's challenge to the ownership of the vehicle is also without substance. In the first instance the applicant alleges pertinently and unequivocally in his founding affidavit that he is the owner of the vehicle in question. In answer to this the respondent merely alleges that the applicant has provided no proof as to his ownership of the vehicle or indeed his entitlement to possess the vehicle. As I have already indicated, when this proof is furnished the respondent seeks to have it struck out. There is in fact no denial of ownership on the part of the respondent. There is only the allegation that there is no proof of ownership. The respondent chooses, somewhat surprisingly, to ignore the specific allegation made by the applicant under oath that he is the owner of the vehicle. The certificate of registration reflects that he is the owner of the vehicle. There is, admittedly, reference in that certificate to the titleholder being a banking institution. It was sought to be argued that this indicates that the applicant is indeed not the owner of the vehicle.
- [10] I accept that the applicant has indeed established, on the papers before me, that he is entitled to exercise ownership of the vehicle in question. I accept also that on the undisputed evidence placed before me by the applicant that he was on the day of the collision in possession of the vehicle and that he was duly entitled to exercise that possession of the vehicle.
- [11] The respondent sought to suggest that the applicant had not made out the requisites for either vindicatory relief or spoliation. I have already indicated my finding in relation to ownership. Furthermore, there is the uncontested evidence of the applicant indicating the steps taken by him immediately he became aware of the fact that the respondent was in possession of his vehicle. The allegations made by the applicant in this regard are uncontested and they establish that the applicant immediately sought to have the vehicle released to be taken to CNA Bodyworks. They establish also that the applicant at no stage gave authority to Chelsea Towing to tow the vehicle to the respondent's premises. The uncontroverted averments also establish that the respondent sought, over a number of days, to frustrate the applicant in his endeavours to have the vehicle delivered to the CNA Bodyworks. The sequence of events is clearly set out in the applicant's attorney's letter of demand. This letter went unanswered. The averments by the applicant, in my view, establish that the applicant at all times exercised the incidence of ownership of the vehicle and that he acted in accordance with his due and lawful possession of the vehicle. Those averments also establish that the respondent manifested the am intention to obstruct and delay the process of delivering the vehicle to the applicant. As a result the applicant was obliged to approach this court for appropriate relief.
- [12] The applicant has also put up a bond of security in respect of any claims which the respondent may have against the applicant. To the extent that the respondent may have a lien in relation to legitimate claims for storage and the like of the applicant's vehicle such claims are, in the circumstances of the matter, adequately addressed by the security tendered on the part of the applicant. It was suggested in argument that the security is insufficient having regard to her an invoice dated 4 June 2014 in which the respondent's

claim is foreshadowed. That invoice was in an amount of R14 548.91. As I understood the argument, the respondent's claim for securing the applicant's vehicle would have escalated since that date and that the amount is now in excess of R19 000.00 and that therefore the security tendered is insufficient to meet the respondent's claims.

[13] The difficulty that the respondent faces in this regard appears from the tax invoice dated 4 June 2014 f as well as from the respondent's answering affidavit. In the invoice setting out the amount of R14 548.91 provision is made for an item of R5712. 20 as being the costs of towing as per V&R towing. This appears to be a reference to the respondent. The difficulty with this appears to be that it is common cause that the respondent had nothing to do with the towing of the applicant's vehicle. The applicant's vehicle was towed by Chelsea Towing and the invoice in respect of that service, as it appears in the papers, reflects a total amount due of R2394. It appears therefore that the amount that the respondent alleges may be due to it may have been inflated. This view is strengthened when regard is had to the answering affidavit of the respondent. In that affidavit, which was deposed to on 13 June 2014, the respondent states that it has incurred expenses in the amount of R16 543.90. There is nothing in the papers upon which to suggest that that has now escalated to an amount in excess of the tendered bond of security. There can accordingly be no reason to find that the tendered bond of security is insufficient to meet such claims as the respondent may in due course, seek to claim.

[14] The ordering of the release of the vehicle against the tendering of security is discretionary (see *Zeda Financing (Pty) Ltd v du Toit t/a Amco Dienstasie* 1992(4) SA 157 (O) a 160I – 161H; see also *Peter Cooper & Company (Previously Cooper & Ferreira) v de Vos* [1998] 2 All SA 237 (E) at 247 – 249). In my view, having careful regard to all the circumstances of this matter and the equities, there is no reason why that discretion should not be exercised in favour of the applicant.

[15] Finally there is the question of costs. The respondent's counsel sought to suggest that the costs should properly be reserved to be determined in any action that the respondent may be minded to Institute in relation to its claims against the applicant. I can see no reason for doing so. I have already referred to the uncontroverted evidence presented by the applicant regarding the circumstances preceding the launching of this application. Those facts and circumstances point to an obstructive and obfuscating attitude adopted by the respondent In the circumstances the respondent brought about the situation in which the applicant was forced to bring this application In those circumstances there is no reason why the respondent should not bear the costs of the application.

[16] For these reasons I made the order referred to hereinabove.

G GOOSEN

JUDGE OF THE HIGH COURT

Appearances For the applicant

Adv G Gayar

Instructed by Kaplan Blumberg Attorneys

For the respondent Adv. D Smith Instructed

by Joubert. Galpin & Searle

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Prepared on 10 October 2026 · Esheria