

SOUTH AFRICA / JUDGMENT

Anglo Wealth Shariah (Pty) Ltd v IMS Call Solutions (Pty) Ltd and Others (003036-2024)

[2024] ZAGPJHC 193 (28 February 2024)

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COURT

South Gauteng High Court, Johannesburg

BEFORE

Makume

CASE / FILE NUMBER

003036/2024

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 003036/2024

1.REPORTABLE:

YES / NO

2.OF

INTEREST TO OTHER JUDGES: YES/NO

3.OF

INTEREST TO OTHER JUDGES: YES/NO

In

the matter between:

ANGLO
WEALTH SHARI'AH (PTY) LTD
Applicant
And
IMS
CALL SOLUTIONS (PTY)
LTD
1st Respondent
MOBI
SYSTEMS SOLUTION (PTY) LTD
2nd Respondent
LONWABO
BATHANDWA SAMBUDLA
3rd Respondent

JUDGMENT

MAKUME, J:

1. The applicant Anglo wealth Shari'ah (Anglo) is the owner of 3 motor vehicles namely:

1.1 A 2021 Bentley flying spur Vin W[...] Engine number D[...]

1.2 A 2022 Ferrari [...] Vin and 2[...]Engine number.

1.3 A 2022 Rolls Royce Cullinan Black Badge Vin S[...] Engine number 9[...].

(The vehicles).

2. During or about October 2022 and at Durban and Sandton the Applicant and the first and second Respondents duly represented by the third Respondent concluded three lease or rent to own agreements in terms of which the Respondents would be paying certain amounts monthly to the Applicant. In respect of the Bentley the Respondent agreed to pay a monthly rental fee of R159 746.20 and in respect of the Ferrari the monthly installment was agreed in the amount of R310 514.38 whilst the monthly rental for the Rolls Royce was the sum of 455 286.94 per month.

3. The Respondents took possession of the three motor vehicles and same as still in their possession. The third Respondent bound himself as Surety and Co-principal Debtor in solidum with the first and second Respondents in respect of their obligations to the Applicant arising from the three rental agreements.

4. It is common cause that the Respondents defaulted in their obligations as a result on the 23rd December 2023 a letter of demand was addressed to the Respondents in which the Applicants demanded payment of the sum of R3 241

929.50 being arrear installments for the months of August, September, October, November and December 2023.

5. The Respondents failed to make payments within the 14 day period as set out in the letters of demand and to the three agreements. This failure resulted in the Applicant addressing letter to the Respondents on the 10th of January 2024 in which the Applicants informed their Respondents that their agreements were now cancelled and demanded that all the three vehicles be returned to the Applicant by not later than 12 noon on Friday the 12th January 2024 failing which an urgent application will be commenced with.
6. On the 16th January 2024 the Applicant issued this application on urgent basis in terms of Rule 6 (12) of the Uniform Rules of Court and prays for the following relief in part A thereof namely:
 - 6.1 Condoning the Applicants non-compliance with the Rule of this Honourable Court and directing that this application be heard as one of urgency in terms of Rule 6(12).
 - 6.2 Directing the Respondents to forthwith disclose to the Applicants' attorneys of record the precise current whereabouts of the three vehicles.
 - 6.3 Directing the Respondents to restore to the possession of the Applicant all three-motor vehicles together with the keys in respect of each motor vehicle.
7. It is only Part A which is before this court. Part B which is not on urgent basis seeks an order at a later stage to confirm cancellation of the agreement and payment of amounts due in terms of the agreements.
8. The Respondents failed to file their Answering Affidavit in time as stipulated in the Applicant's Notice of Motion this the Respondents say was as a result of their genuine attempt to reach an out of Court settlement and that only when such negotiations failed did they decide to brief Counsel to settle the opposing papers. In the meantime, the Respondents made payments on the 23rd and 31st January 2024 of amounts settling the areas as at December 2023 save for a disputed amount being penalties for late payment.
9. The respondent says this application is not urgent for the following reasons:
 - 9.1 Firstly, that the applicant knew that the respondents have been in arrears since August 2023 and yet only decided on this urgent application five months later.
 - 9.2 Secondly that the applicant has always known where the motor vehicles are as they have in their possession reports of the tracker system.
 - 9.3 Thirdly all the motor vehicles have been insured with Discovery and the applicants interest noted on such policies meaning that there is no risk.
 - 9.4 In a letter dated the 20th January 2024 the applicant confirmed having the tracking reports in connection of the whereabouts of the motor vehicles.

10. On the merits the Respondents raised the issue that there is a dispute as regards the correctness of the arrears as at December 2023 and that what they paid in January 2024 settled the area in the result there was no basis to unilaterally cancel the agreement.
11. I am satisfied that the respondents have explained the delay in filing their answering affidavit in the result the late filing of the answering affidavit is hereby condoned, contrary to that I am not persuaded that this application is urgent and should have been struck off the roll. However, because of the view I hold on the merits I now proceed to deal with the merits of part A.
12. There is a dispute about calculation of the arrears as a result the issue about the purported cancellation of the agreement remains to be decided in Part B.
13. When the Respondent settled the arrears as at December 2023 they extinguished any cause of action based on default. It was therefore incumbent on the Applicants to issue fresh notices to place the Respondents in mora for arrears incurred in January 2024.
14. When the Applicant issued this application, the Respondents were not in arrears as this is still in dispute and can only be properly ventilated in Part B.
15. In a letter dated the 22nd January 2024 the Respondents indicated the following to the Applicant at paragraph 8 of the letter:

“ [8] It is our understanding that steps have been taken to make payment of the amounts demanded on 19 January 2024 as undertaken and within 14 days of receipt of demand or breach letter despite such amounts being disputed, therefore any cancellation of the agreement is therefore defective and invalid and any such steps taken to assert your clients right in this regard is premature and not aligned with the parties bona fide attempts to find resolution.”
16. It is trite law that Rule 6(12) requires that an Applicant must satisfy the Court that it will not be able to obtain substantial redress at a hearing in due course. In this matter the Applicants are aware where the motor vehicles are also that same have been comprehensively insured. There is accordingly no harm to the applicants in the result prayer 2 must fall off.
17. This application concerns vindictory relief. Wilson J in the matter of Volvo Financial Services South Africa (Pty) Ltd v Adams TKolose Trading CC Case number 2023/067790 a judgment of this division dated first August 2023 concluded that action or claim based on the rei vindicatio are not necessarily urgent he writes that “anyone familiar with the daily work of the High Court knows that vindictory claims are generally and effectively dealt with on the ordinary motion and trial rolls often in very high volumes.”
18. In this matter there is no imminent threat that the three motor vehicles may be destroyed, lost, hidden or as speculated by Applicant that the Respondent was planning to sell and sprint the motor vehicles out of the country.

19. There is a dispute about the arrears at the time that the Applicant purported to cancel the agreements. The three motor vehicles are safe and their whereabouts are known to the Applicant. They are all covered by a risk insurance. All these issues will be resolved in Part B without reliance on part A.
20. It is for all the reasons set out above that I have come to the conclusion that the Applicant has failed to make out a case in part A and in the result I make the following order:

ORDER

- a) The Application is dismissed.
- b) The Applicants are ordered to pay the Respondents costs including costs of Counsel.

Dated at Johannesburg on this day of February 2024.

Appearances

Date of hearing:

9th February 2024

Date of

Judgement:

6th February 2024

For Applicants:

Adv Boths Sc

With:

Adv M Nowitz

Instructed by:

Messrs Hirschowitz Flionis Attorneys

For Respondent:

Adv M Davids

Instructed by:

Messrs Bielderments Attorneys

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Prepared on 13 October 2026 · Esheria