

SOUTH AFRICA / JUDGMENT

Konate Logistics (Pty) Ltd v Minister of Police (16236/2021) [2025] ZAGPPHC 629 (23 June 2025)

[2025] ZAGPPHC 629

COURT

North Gauteng High Court, Pretoria

BEFORE

Ellis AJ

CASE / FILE NUMBER

16236/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION PRETORIA

Case

Number: 16236/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO THE

JUDGES: NO

(3) REVISED.

DATE:

23/06/2025

SIGNATURE:

KONATE

LOGISTICS (PTY) LTD

Applicant

and

MINISTER OF POLICE

Respondent

This

judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to

the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines.

JUDGMENT

ELLIS AJ

[1] In this application, Applicant seeks an order in the following terms:

1.1 delivery of the property (listed in annexure “A” to the notice of motion), from Respondent;

1.2 alternatively, payment of an amount of R14 002 070.00 (fourteen million two thousand and seventy rand).

[2] Respondent opposes the application on various grounds, which will be referred to hereunder.

[3] Applicant conducts a warehousing business modelled on the following: it receives money from companies outside the Republic of South Africa, purchasing liquor on the instruction and specification of these companies, and thereafter warehousing the liquor pending collection by the purchasing company. In this regard, Applicant would levy fees for sourcing and ordering the liquor as well as warehousing same until such time as collection takes place. Applicant conducts its business (including warehousing) from a leased premises, situated at Washington Business Park, Washington Drive, Halfway House,

Midrand.

[4] During 2019, Applicant apparently sourced, purchased and warehoused an inventory of liquor (allegedly listed in annexure “A” to the notice of motion) on behalf of CHUPA WATANSI SARL, a juristic entity incorporated in the Democratic Republic of the Congo. Applicant also attaches 3 invoices to the founding affidavit, issued on 2 February 2019, 28 February 2019 and 5 March 2019 respectively, alleging that they evidence the purchasing of the items by CHUPA WATANSI SARL.

[5] On 13 March 2019, members of the South African Police Services (“SAPS”) raided Applicant’s warehouse and apparently seized all the items held on behalf of CHUPA WATANSI SARL, whereupon SAPS moved the items to a warehouse in Germiston. SAPS compiled an inventory of the items seized, which allegedly corresponds with annexure “A” to the notice of motion and the 3 invoices attached to the founding affidavit.

[6] However, there is no annexure “A” attached to the notice of motion and counsel for Applicant also did not provide a copy thereof during the hearing of the matter, despite being requested to do so. This issue proves problematic for Applicant in that it is impossible to compare the so-called property (annexure “A” to the notice of motion), with either the 3 invoices, the inventory or the list of bonded goods mentioned in the cession agreement, which I will refer to in more detail hereunder. Moreover, the inventory does not in the slightest indicate that it is the property of CHUPA WATANSI SARL, as averred by Applicant and is for the most part illegible.

- [7] On 23 April 2019, Applicant brought a spoliation application in this court under case number: 27973/2019 and succeeded on 4 February 2020 by obtaining an order declaring the seizure of the confiscated goods by SAPS to be unlawful and invalid, coupled with an order redirecting Respondent to restore possession of the confiscated goods to Applicant within 5 days from service of the order.
- [8] Before referring to the aforesaid spoliation application in its founding affidavit, the deponent to Applicant's founding affidavit states that on 24 August 2020, CHUPA WATANSHI SARL mandated Applicant to commence with proceedings in the High Court to recover the confiscated items from the SAPS.[1]
- [9] However, it is quite apparent that the mandate could not have been given to the Applicant in support of the spoliation application, due to the fact that it is dated after the order under case number: 27973/2019 was already issued on 4 February 2020, and the mandate in fact referred to the said court order in the first paragraph thereof. Applicant also does not rely on the mandate in order to have launched the present application and its reference is therefore non sequitur.
- [10] Moreover, it is trite that Applicant did not need a mandate from CHUPA WATANSHI SARL (the owner of the property) in order to succeed with a spoliation application. All Applicant needed to allege and prove was that it was in peaceful and undisturbed possession of the property, which it succeeded in doing, hence the court order granted under case number: 27973/2019 in Applicant's favour.
- [11] Applicant alleges that Respondent failed, refused and/or neglected to comply with the terms of the order made under case number: 27973/2019.
- [12] On 26 November 2020, CHUPA WATANSHI SARL, the owner of the confiscated goods, executed a deed of cession in terms of which it ceded to Applicant all the rights, title and interest in the confiscated goods, as result of which, Applicant asserts that it stepped into the shoes of CHUPA WATANSHI SARL and is entitled to reclaim possession (delivery) of the confiscated goods from Respondent with the *rei vindicatio*, or in the event that Respondent have disposed of the confiscated goods, before or after the institution of these proceedings, to claim damages from Respondent in terms of the *actio ad exhibendum*.
- [13] Respondent's opposition to the application is essentially premised on the following:
- 13.1 That Applicant failed to satisfy the requirements established in our law to succeed with a claim based on *rei vindicatio*;
- 13.2 That the property, which is the subject matter of this application, was already detained by the South African Revenue Services ("SARS") on 23 April 2019 and Applicant is fully aware of this and was aware thereof during the proceedings under case number: 27973/2019, i.e. the spoliation application;

13.3 That Applicant seeks delivery of the property, which is in essence the same relief already granted by the court under case number: 27973/2019, which is an abuse of court process and should be struck out or refused;

13.4 Regarding Applicant's claim in terms of the *actio ad exhibendum*, that Applicant is not the owner of the property and the deed of cession cannot be construed to afford Applicant the right of ownership of the property; and

13.5 That the property has not been alienated or disposed of by Respondent (in any event not *mala fide*), but is in possession of SARS and the subject matter of discussions between SARS and the owner thereof being CHUPA WATANSHI SARF.

[14] It is trite that an owner is entitled to reclaim possession of its property with the *rei vindicatio*, which is an action in rem. In order to succeed with a claim of *rei vindication*, Applicant must allege and prove the following:

14.1 ownership of the property;[2] and

14.2 that Respondent was in possession of the property when the claim was instituted.[3]

[15] The *actio ad exhibendum* is a delictual action which is normally instituted as an alternative to the *rei vindicatio*. It enables an owner to claim damages from an erstwhile possessor of the owner's property.[4] Applicant will only succeed with an *actio ad exhibendum* by alleging and proving the following:

15.1 that Applicant is or was the owner of the property concerned when it was alienated by Respondent;[5]

15.2 Respondent had been in possession (in the sense of civil possession) of the property;[6]

15.3 Respondent alienated or destroyed the property;[7]

15.4 Respondent's loss of possession was *mala fide*. This will be the case if, at the time of the loss of possession or destruction, Respondent knew of Applicant's ownership or claim to ownership. [8]

[16] It is clear from the aforesaid, that the primary requirement for a claim premised on the *rei vindicatio* or the *actio ad exhibendum*, is for Applicant to allege and prove ownership of the property.

[17] During the hearing of the matter, counsel for Applicant was specifically requested to address me on its ownership of the property. In response thereto, I was repeatedly informed that paragraph 5 of the founding affidavit constitutes the necessary averments in order to prove Applicant's ownership in the property.

[18] To this end, it is prudent to refer to paragraph 5 of the founding affidavit (with the heading "LOCUS STANDI"), which reads as follows:

‘5.1 CHUPA WATANSI S.A.R.L, a juristic person, duly incorporated in the Democratic Republic of the Congo, with principal place of business and registered address at 1753 Avenue RUWE, C/ LUBUMBASHI / 146 Nyanza, C/Kinsha (RCCM: 14-B-1230) & registration number: Id Nat: 6-9-N82777K was the owner of the property listed in annexure “A” to the notice of motion (hereinafter simply referred to as ‘the property’).

5.2 On 26 November 2020 CHUPA WATANSI SARL executed the following deed of cession in respect of the property:

We, the undersigned, CHUPA WATANSI SARL, a juristic person, duly incorporated in the Democratic Republic of the Congo, with principal place of business and registered address at 1753 Avenue RUWE, C/LUBUMBASHI / 146 Nyanza, C/Kinsha(RCCM: 14-B-1230) & registration number: Id Nat: 6-9-N82777K cede, assign and transfer unto and in favour of KONATE LOGISTICS (PTY) LTD, a private company duly incorporated in the Republic of South Africa with principal place of business at Washington Business Park, Washington Drive, Halfway House, Midrand, 1685& registration number: 2013/232962/07, all our right, title and interest in and to all the goods, listed in annexure “B” (hereinafter referred to as ‘the bonded goods’), which we may now or in the future have, acquire and hold against all or any persons, governments, companies, corporations, firms, partnerships, associations, syndicates and other legal personae.

We hereby irrevocably grant to the cessionary, with power of substitution, full power and authority to recover in our name from

all persons, governments, companies, corporations, firms, partnerships, associations, syndicates and other legal personae, all

the bonded goods, and claims in the bonded goods, which we may be entitled to recover and / or repossess and, if so determined by the cessionary, to institute action in our name against all or any persons, governments, companies, operations, firms, partnerships,

associations, syndicates and other legal personae for the purpose of the said recoveries and to retain the proceeds recovered in the exercise of such powers.

We hereby warrant and undertake in favour of the cessionary and agreed that:

- We have not ceded to anyone else all or any of the bonded goods, and if, despite anything hereinbefore contained, there shall have been any prior cession in whole or import of the claims hereby ceded to the cessionary, then this cession shall be deemed to be a cession of any reversionary right, title and interest in and to any of the claims which we may have, or which we may acquire, after the termination of any prior cession.
- We agree that this cession and pledge shall be of force and effect indefinitely and the cessionary shall at any time hereafter be

entitled to give notice of this cession to all or any third party.

A copy of the deed of cession is attached and marked annexure “FA03”.

5.3 As a result of the cession, the applicant now holds all the rights, title and interest in the property.

5.4 The respondent is in possession of the property.

5.5 In the alternative, and if it be found that the respondent is no longer in possession of the property, the respondent disposed of the property with the knowledge that CHUPWA WATANSHI SARL's ownership, the value of which is R14'002'070'00 (fourteen million two thousand & seventy rand).

5.6 Based on the aforesaid the applicant has locus standi to claim:

5.6.1 delivery of the property;

5.6.2 payment of the amount of R14'002'070'00 (fourteen million two thousand & seventy rand) being the value of the property."

[19] It is well known that the transfer of ownership of movable property requires delivery, i.e. transfer of possession of the property by the owner to the transferee coupled with a real agreement between them.[9]

[20] On the other hand, the purpose of a cession agreement is to divest the cedent of the cedent's personal (and not real) rights against the debtor and to subject the debtor to another creditor. [10]

[21] I interpose to note that the cession agreement that served before me also did not have annexure "B" attached thereto, which is supposed to list the "bonded goods" or subject matter of the cession agreement. Notwithstanding my reasonable request to be provided with annexure "B" to the cession agreement, Applicant failed to do so during the hearing hereof. This flies in the face of the statement made by Applicant in paragraph 2.5 of the founding affidavit, wherein the deponent indicates that copies of documents are attached to the founding affidavit, as opposed to originals, to avert the risk of these documents being lost or destroyed and that the originals will be made available at the hearing of the matter. This clearly did not transpire in this instance.

[22] Be that as it may, I am of the firm view that Applicant has failed to prove ownership of the property in this instance and I say so for the following reasons:

22.1 First, the contents of the cession agreement itself, do not in the slightest denote a transfer (delivery) of possession of the property from CHUPA WATANSHI SARF to Applicant, with the intent of transferring ownership of the property in the real sense;

22.2 Second, the cession agreement states that it cedes, assigns and transfers all of CHUPA WATANSHI SARF's right, title and interest to the bonded goods to Applicant, which bonded goods are neither known, nor defined or described due to the absence of annexure "B" to the cession agreement. This is further exacerbated by the fact that annexure "A" to the notice of motion was not attached thereto. The cession agreement is therefore void for vagueness and cannot be accepted as a valid agreement in the circumstances of this matter;

22.3 Third, the cession agreement is in any event not a real agreement for purposes of transferring ownership of movable property in that it specifically provides that CHUPA WATANSHI SARF retains ownership thereof by only allowing Applicant to, by the power of substitution "...recover in our name.." or "...to institute action in our name...", which implies that CHUPA WATANSHI SARF remains the owner insofar as it concerns a vindication claim or a claim in terms of the actio ad exhibendum;

22.4 Fourth, even in the event that the cession agreement is to be regarded as a valid agreement, which I deemed it is not, it is on Applicant's version a simulated attempt by CHUPA WATANSHI SARF, the owner of the property, to transfer ownership (a real right) to Applicant, whilst it appears ex facie the cession agreement that it is only CHUPA WATANSHI SARF's right to claim (a personal right) that is ceded to Applicant.

[23] In result of the aforesaid, I find that Applicant has failed to prove that it is the owner of any property that belongs to CHUPA WATANSHI SARF, which is the first requirement of Applicant's claims for delivery and/or damages against Respondent.

[24] In other words, Applicant has no locus standi to have instituted this application in its own name, alleging that it is the rightful owner of any property belonging to CHUPA WATANSHI SARF.

[25] In any event, Applicant would not have been clothed with the necessary locus standi to have brought this application in the name of CHUPA WATANSHI SARF, due to the fact that the cession agreement in this instance is void for vagueness and invalid, as I indicated above.

[26] In view of Applicant's lack of locus standi in this matter, I do not deem it necessary to deal with the merits of any of the further requirements of the claims made by Applicant or Respondent's contentions in opposition thereto.

[27] Wherefore I make the following order:

1. Applicant's application is dismissed;
2. Applicant is ordered to pay the costs of Respondent on scale C in terms of Rule 69(7), inclusive of the costs consequent upon the employment of two counsel.

ELLIS AJ

ACTING JUDGE OF THE GAUTENG

DIVISION OF THE HIGH COURT OF

SOUTH AFRICA

APPEARANCES:

For Applicant: Adv ME Manala

Instructed by: Kabinde Attorneys Inc.

For Respondent: Adv J Motepe SC

Adv DD Mosoma

Instructed by: State Attorney, Pretoria

Date of hearing: 13 March 2024

Date Delivered: 23 June 2025

[1] Annexure FA09 to the founding affidavit.

[2] Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd [1992] ZASCA 208; 1993

(1) SA 77 (A) at 82A-B. Concor Construction (Cape) (Pty) Ltd v Santambank Ltd 1993

(3) SA 930 (A) at 933A-934A.

[3] Graham v Ridley 1931 TPD 476 at 479. Chetty v Naidoo 1974

(3) SA 13 (A) at 18G-19A.

[4] Frankel Pollak Vinderine Inc v Stanton 2000

(1) SA 425 (W) at 429G-430B.

[5] RMS Transport v Psicon Holdings (Pty) Ltd 1996

(2) SA 176 (T) at 181B-I.

[6] Frankel Pollak Vinderine Inc v Stanton supra at 429G- 430B.

[7] Unimark Distributors (Pty) Ltd v Erf 94 Silvertondale (Pty) Ltd 1999 (2) SA 986 (T) at 1011I-1012B.

[8] Unimark Distributors (Pty) Ltd v Erf 94 Silvertondale (Pty) Ltd supra at 1011I-1012B

[9] Info Plus v Sheelke [1998] ZASCA 21; 1998

(3) SA 184 (SCA) at 189D-E.

[10] Johnson v Inc General Insurances Ltd 1983

(1) SA 318 (A) at 331G-H.

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