

SOUTH AFRICA / JUDGMENT

Maleka v Mundane (2024-067766) [2024] ZAGPPHC 646 (11 July 2024) [2024] ZAGPPHC 646

COURT

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

2024-067766

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO.: 2024-067766

(1)

REPORTABLE: YES/NO

(2) OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date: 11 July 2024

E van der Schyff

In

the matter between: Khutjo
 Maleka
 Applicant
 And
 James
 Mundane
 Respondent

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicant approached the urgent court for an order to secure the return of a motor vehicle which she claims to be the owner of.
- [2] The applicant avers that the court has the necessary jurisdiction to hear the matter because the cause of action wholly arose in the court's jurisdiction, she resides within the court's jurisdiction, and the vehicle in dispute is registered in the court's area of jurisdiction.
- [3] The applicant explains in the founding affidavit that her father bought her a motor vehicle in December 2022. The vehicle was registered in her name. Her father relocated to Limpopo when he fell ill in 2024, and the decision was made that the vehicle should be taken to the village in Limpopo to transport her father to the doctor or hospital when the need arises. The plaintiff's uncle was assigned to take care of the vehicle. The plaintiff's father passed away on 5 May 2024. Her uncle, however, refuses to hand back the car.

Discussion

- [4] I raised two main concerns with counsel. The first is the issue of service, and the second is whether this court has the necessary jurisdiction to hear the application.
- [5] The application was apparently served by email to the respondent's email address. The applicant failed, however, to make out a case or explain why it was necessary to deviate from the Uniform Rules of Court regarding service. In addition, this court does not know whether the email address to which the notice of set down was ostensibly sent is indeed the respondent's email address. While the service affidavit mentions an email sent to j[...], the annexures reflect that an email was apparently sent to j[...]. No read-receipt was attached to the papers. In these circumstances, the question arises as to whether the respondent was aware of the proceedings.

- [6] The court cannot condone non-compliance with the requirements of Uniform Rule 4 without an explanation as to why the rule was not adhered to and where the papers do not indicate that effective service occurred.
- [7] As for the remaining question regarding jurisdiction, this court doesn't need to decide the issue since a case has not been made out that there was effective service of the application and notice of set down. Counsel is, however, urged to ponder the question in light of the fact that the vehicle was in Limpopo when it was allegedly appropriated by the applicant's uncle, the vehicle is still in Limpopo, and the applicant's uncle resides in Limpopo. The mere fact that an order to recover a motor vehicle is 'executable nationally' as submitted by counsel, does not vest jurisdiction.

ORDER

In the result, the following order is granted:

1. The application is removed from the roll.

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant: Adv. M. Mugwena Instructed by: HG Makhubele Attorneys For the respondent:
No appearance Date of the hearing: 9 July 2024 Date of judgment: 11 July 2024

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Prepared on 9 October 2026 · Esheria