

SOUTH AFRICA / JUDGMENT

MNI Transport and Another v Sokwali (2073/2018) [2019] ZAECHGC 39 (2 April 2019) [2019] ZAECHGC 39

COURT

Eastern Cape High Court, Grahamstown

BEFORE

NG Beshe

CASE / FILE NUMBER

2073/2018

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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION,
GRAHAMSTOWN)

Case

No: 2073/2018

In

the matter

between:

MNI
TRANSPORT
Applicant / First Respondent
MNINAWWE
NYIBA
Second Respondent
And
MZWANDILE
SOKWALI
Respondent / Applicant

JUDGMENT**BESHE J:**

- [1] This is an application for the review and setting aside of a sale agreement entered into between the applicant and the respondent. Also sought by the applicant is the return to it of the motor vehicle that was the subject matter of the agreement. In addition to opposing the granting of the relief sought by the applicant, respondent Mr Sokwali filed a counter application whereby an order directing the applicant(s) in the main application to produce and sign all the documents necessary for effecting transfer of the motor vehicle in question.
- [2] The applicant, Mni Transport CC is cited as the first respondent in the counter application. The second respondent is Mr Mninawe Nyiba, a member of the first respondent. He is also the deponent to the founding affidavit comprising of 38 paragraphs. It is only from paragraph 25 onwards that the founding affidavit talks to the relief sought. He later deposed to a supplementary affidavit “to include pertinent facts which were not raised or dealt with extensively in the Founding Affidavit”
- [3] In the supplementary affidavit, Mr Nyiba suggests that he bought the motor vehicle in question at the instance of the respondent, Mr Sokwali. Whereas in the founding affidavit he suggests that he pleaded with Mr Sokwali to come to his assistance as he was struggling to service the instalments of the vehicle in question.
- [4] According to Mr Nyiba, Mr Sokwali took him to the offices of his attorney where it was suggested Mr Sokwali should take over the payment of the instalments of the said motor vehicle and utilize it for his contracts. It was also agreed that Mr Sokwali would pay him an amount of R60 000.00 he had paid as deposit for the motor vehicle.
- [5] This is what brought the assailed “agreement” into life. According to him he did realise that it was a sale agreement. When he queried this he was assured by Mr Sokwali’s attorney that it was not binding.
- [6] Mr Nyiba asserts that it was agreed that once Mr Sokwali had paid the motor vehicle in full, he would hand it back to him.
- [7] It will be apposite to reproduce the terms of an agreement purportedly entered into by Mr Nyiba and Mr Sokwali. The salient parts of the contract read thus:

“The parties agree:

3 SALE AND PURCHASE

3.1 The parties agree to sell and purchase the motor vehicle described in the Schedule to the Agreement, hereinafter referred to as the “Vehicle”

4. PRICE

4.1 The purchase price of the vehicle is R346 669.32.

4.1.1 The vehicle is subject to hire purchase agreement and the sale is financed by Wesbank.

4.1.2 The purchase price for the vehicle is payable as follows:

4.1.2.1 The purchaser will effect payment of R60 000.00 to the Seller being the refund for the deposit that was paid by the seller to Wesbank on or before Friday the 11th May 2015.

4.1.2.2 The R60 000.00 will be paid into the bank account of the seller by the purchaser.

4.1.2.3 The seller will continue with the payment of the monthly instalments of R12 300.00 into Wesbank account with effect from 1st June 2015.

4.1.2.4 The R60 000.00 paid by the purchaser to the seller will be in full and final settlement of the amount due to the Seller. The outstanding debt will be paid by the Purchaser directly to Wesbank.

4.2 The ownership of the vehicle will be transferred to the Purchaser upon full payment of the outstanding amount.

4.3 The seller will sign the transfer documents to the purchaser upon payment of the last instalment.

5. DELIVERY

The Seller will deliver the motor vehicle to the purchaser on Friday the 11th May 2015.”

It is initialled on all pages and signed by both parties.

[8] Mr Nyiba admits that a sum of R60 000.00 was paid to him as per the aforementioned agreement.

[9] As to whether or not Mr Sokwali played his part in terms of the agreement by paying the instalments Mr Nyiba blows hot and cold. At paragraph 28 of the founding affidavit he states the following:

“I am aware that the Respondent paid over to me a sum of R60 000.00 and from the proceeds thereof, I paid over the outstanding

instalments.”

However in his replying affidavit he admits Mr Sokwali’s assertion that he paid the purchase price of the motor vehicle in full.

[10] If that is the case, the million dollar question is: What was in it for Mr Sokwali? Why would he pay back to Mr Nyiba the amount he paid as deposit for the vehicle? And then proceed to pay the monthly instalments totalling some R300 000.00 only for him to return the motor vehicle back to Mr Nyiba? It does not make sense – it does not make any business sense.

- [11] If the agreement was not meant to be binding, why was it drawn in the terms it was drawn? Why did Mr Nyiba sign it if it was no meant to be binding on him? A business man according to him in his own right. He then continues to perform his part or complies with his obligation based on the agreement by handing the motor vehicle over to Mr Sokwali to keep all these years. It was only once it was fully paid that he sought its return.
- [12] The contract is clear and unambiguous and permits no other meaning / interpretation but what it contains. It was signed by Mr Nyiba who was in his sound and sober senses. His version that the contract was not meant to be binding on him is implausible.
- [13] Mr Nyiba also seems to be raising the point as a defence – as a means of disavowing that the contract is not binding on him, the fact that the motor vehicle in question was purchased by the CC. It appears to be common cause that he is the sole member of the CC. He purchased the motor vehicle on behalf of the CC. In other words he represented the CC. Any decision concerning the CC would invariably be made by him. This becomes even more apparent from paragraph 5 of his supplementary affidavit which reads thus:

“5. In 2013 I owned a truck. The respondent advised me to buy the vehicle in question because he had contracts to transport people within the Eastern Cape, my close corporation bought it.”

He goes on to say since 2013 the motor vehicle was kept by Mr Sokwali.

- [14] In my view there is no merit in this ground.
- [15] My Nyiba has not made out a case for the setting aside of the contract concluded between him and the respondent in the main application. The contract is valid and binding.
- [17] In the result, the application is dismissed with costs.

The relief sought in the counter application is granted with costs.

NG BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant/Respondent: Adv: LD Ntlokwana

Instructed by

: MGANGATHO ATTORNEYS

3 New Street

GRAHAMSTOWN

Ref: Mr Mgangatho/M228

Tel.: 073 761 7751

For the Respondent/Applicant: Adv: J Bester

Instructed by

: NETTELTONS ATTORNEYS

118A High Street

Ref: Ms Pienaar

Tel.: 046 – 622 7149

Date Heard

: 22 March 2019

Date Reserved

22 March 2019

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