

SOUTH AFRICA / JUDGMENT

N.E.M v H.C.C and Others (2391/2023) [2023] ZALMPTHC 17 (14 December 2023)

[2023] ZALMPTHC 17

COURT

Limpopo High Court, Thohoyandou

BEFORE

Nemutandani

CASE / FILE NUMBER

2391/2023

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO LOCAL

DIVISION, THOHOYANDOU

CASE

NUMBER: 2391/2023

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED

DATE:

14/12/2023

SIGNATURE

In

the matter between: N[...]
E[...] M[...]
APPLICANT
And
H[...]
C[...] C[...]
1ST RESPONDENT
ONE
ON ONE GROUP INVESTIGATORS
2ND RESPONDENT
POLO
DI MEO
N.O
3RD RESPONDENT
TEBOGO
ASHLEY
MIYENI
4TH RESPONDENT

JUDGMENT

NEMUTANDANI AJ:

INTRODUCTION

- [1] This is an urgent application for an interim interdict pending the determination of a Rule 43 Application and an action for putative marriage between the Applicant and the First Respondent.
- [2] The Applicant seeks interdictory relief contained in prayers 1, 2 and 3.1 to 3.12 of the Notice of Motion. In the main, the orders sought seeks to interdict the Respondents from harassing, threatening, intimidating and/or interfering with Applicant's use, possession and enjoyment of a motor vehicle described as a Mercedes Benz C220d bearing registration letters and numbers K[...] 2[...] V[...] G[...] "the vehicle".
- [3] The First and Fourth Respondents opposed this application. I shall deal with each Respondent's role, involvement and interaction with the Applicant infra. The First Respondent is the Applicant's estranged husband, so she contends. The Fourth Respondent is a tracer, so he contends. The Second and Third Respondents did not oppose the application.
- [4] The First Respondent raised 6 points in limine to wit: lack of urgency, lack of proper service, mis-joinder of the first Respondent, non-joinder of the lawful tittle holder of the vehicle, conflict of interest and lastly that the Applicant's affidavit is not properly commissioned. The First Respondent only pursued lack of Urgency, non-joinder and mis-joinder. Similarly, the Fourth Respondent also raised lack of urgency and mis-joinder. Having considered the submissions on all the points in limine, I dismissed them with costs against the First and

Fourth Respondent with one paying the other to be absolved.

- [5] Following the dismissal of the points in limine, I condoned the non-compliance with the Uniform Rules and the Practice Directives of this court relating to service and time frames and I enrolled the matter on an urgent basis.

APPLICANT'S CASE

- [6] At the core of this application are the events that allegedly occurred on the 5th December 2023 at the Applicant's place of employment at Malamulele. The Second, Third and Fourth Respondent accompanied by members of the police officers confronted the Applicant and demanded that she hand over the keys and the motor vehicle.
- [7] The Applicant refused to hand over the vehicle and upon her refusal, she contends that they started threatening her by amongst others intimating that they will take the vehicle by force and that they will lay criminal charges against her.
- [8] It was submitted that the means used to achieve an end by the Respondents (take the vehicle) is illegal and is in violation of the Applicant's rights. It was submitted further that the Applicant is acting mala fide as the events of the 5th December 2023 are resultant from a letter written by the Applicant's attorneys on the 22nd November 2023. The said letter was requesting confirmation that the monthly repayments of the vehicle are up to date. Applicant avers that her attorneys did not receive a response to the aforesaid letter.
- [9] It is these visits and/or threats from the agents of the First Respondent and persons instructed by the First Respondent that she seeks to avert pending determination of the main dispute between the parties.

FIRST RESPONDENT'S CASE

- [10] The First Respondent submits that there are no facts and/or allegations placed before court relating to him personally

threatening, intimidating or harassing the Applicant. He contends that he never incited anyone to harass or threaten the Applicant.

- [11] He submitted that he surrendered the vehicle to BMW Financial Services (Pty) Ltd as the title holder and financier of the vehicle.

The said surrender was as per the Applicant's WhatsApp message request contained in annexure HCC 5 of the answering affidavit and due to unaffordability. It was submitted further that since they are the title holder, they have a right to demand as they did, their motor vehicle from the Applicant following the surrender.

- [12] He contended further that following his voluntary surrender, the title holder instructed the Fourth Respondent to trace and recover the vehicle on their behalf.

- [13] He submitted further that this application is only a tactic to hold onto the vehicle.

FOURTH RESPONDENT'S CASE

[14] The Fourth Respondent submitted that he is a tracer, instructed by the title holder and was only doing his job. It was submitted that the Fourth Respondent does not have any direct or substantial interest on the motor vehicle. It was argued that he cannot be restrained from carrying his duties.

ISSUES

FOR DETERMINATION

[15] This court must determine-

15.1 Whether the Applicant has made out a case for the granting of an interdict; and

15.2 an appropriate order of costs.

THE LAW AND APPLICATION TO THE FACTS

[16] The four well known requirements to be proven by an Applicant for interim interdictory relief to be successful are the following:[i]

“ a) *Prima facie* right, even if it is subject to some doubt;

- b) a reasonable apprehension of irreparable and imminent harm if an interdict is not granted and ultimate relief is eventually granted;
- c) balance of convenience favours the granting of interim relief; and
- d) the absence of any other satisfactory remedy.”

[17] In *Webster v Michell*, [ii] the court enumerated the test for interim interdict. The test was populated as follows:

“ in an application for a temporary interdict, applicant’s right need not be shown by a balance of probabilities; it is sufficient if such right is prima facie established, though open to some doubt. The proper manner of approach is to take the facts as set out by the applicant together with any facts set out by the respondent which applicant cannot dispute and to consider whether, having regard to the probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up in contradiction by respondent should then be considered, and if serious doubt is thrown upon the case of applicant he could not succeed.

In considering the harm involved in the grant or refusal of a temporary interdict, where a clear right to relief is not shown, the Court acts on a balance of convenience. If, though there is prejudice to the Respondent, that prejudice is less than that of the applicant, the interdict will be granted, subject, if possible, to conditions which will protect the Respondent.”

[18] Our courts have always emphasised the need for utmost good faith by litigants particularly where there are other pending processes and/or pendente lite proceedings.

- [19] It is common cause that the vehicle was purchased by the First Respondent on the 7th December 2022, for the use by the Applicant during the subsistence of their impugned marital relationship. It is further common cause that the Applicant has been using the said vehicle from date of purchase to date hereof. Although the First Respondent dispute that he bought it for her as a birthday gift, what is apparent, is that she has been using it from date of purchase. To this end, the Applicant's prima facie right is premised on the alleged marriage, use and possession.
- [20] The Respondent's contention is that he surrendered the vehicle following her request that he must come and take the vehicle and due to unaffordability on his part. This instructs scrutiny on the circumstances surrounding the request. This court was referred to annexure HCC5 of the First Respondent's answering affidavit. What is glaring from the said annexure is that underneath the text message referred to supra, the First Respondent shelved the request to collect the vehicle. All that the First Respondent wanted to talk about was DNA and nothing else.
- [21] It is apparent that there were no further communications between the parties regarding the vehicle from the date of the message referred to supra to date hereof. What is also apparent is that after that message on 22 August 2023, there were no further messages exchanged between the parties in respect of the vehicle. That in my view confirms that there was no meeting of minds and/or agreement on the alleged collection request by the Applicant and the ensued surrender by the First Respondent.
- [22] Appreciating the fact that the said vehicle is still under finance, and that the title holder is not before court. For the purposes of orders sought, title holding is irrelevant. All that is required is that the status quo must be maintained pending determination of the pending disputes between the parties.
- [23] I find it apposite to deal with some of the salient facts regarding the alleged surrender. The First Respondent did not take the court into his confidence that indeed the surrender is due to affordability as he did not provide proof of his unaffordability or at least, a change in his financial status or means since the purchase of the vehicle in December 2022. Nowhere in his papers did he take this court into his confidence that the alleged surrender was not malicious having cognisance to the timing of the alleged surrender.
- [24] The First Respondent in his opposing papers failed to furnish court with the terms and conditions of the surrender. Counsel for the First Respondent could not assist the court regarding questions on when and how was the vehicle was surrender considering that the Applicant has at all material times been in possession of the vehicle in question. In the absence of clarity regarding the above, it is astonishing how the First Respondent surrendered the vehicle voluntarily and without handing it over. I accept that the vehicle was only surrendered on the 30th November 2023 this being the date appearing in Alpher's letter appearing in annexure TA1 of the Fourth Respondent's answering affidavit.

[25] The Applicant contends that she needs the vehicle for her daily activities including but not limited to transport to work,

transporting the minor children. This is not disputed.

[26] The Applicant contended that the Second and Third Respondents are hired by the First Respondent to conduct certain investigations for him and they have compiled an investigation report appearing in annexure NE4. In response to this, the First Respondent contends that they are in fact instructed by his wife who is not a party to these proceedings to investigate the subsisting marriage of the Applicant. It is these third parties that the Applicant does not want to make any contact with her, so it was submitted.

[27] In considering whether or not to grant the relief sought, the court must consider the reasonableness of the relief sought. Of course taking into account the requirements of an interim interdict, I am satisfied that the Applicant succeeded in establishing that she has a prima facie right not to be dispossessed pending the determination of the main application.

[28] It is enough for the Applicant to show a reasonable apprehension of irreparable and imminent harm by establishing that attempts were made at her workplace to illegally take the vehicle by force and against her will. She has succeeded in showing on a balance of probabilities, that she has grounds for reasonable apprehension that the First Respondent and or his agents would continue to infringe her rights.

[29] The balance of convenience favours the granting of the interim relief pending determination of the putative marriage dispute and Rule 43 Application. On the facts of this case, the Applicant has no other alternative and satisfactory remedy.

[30] In the circumstances of this case, I find that the Applicant has made out a case for the interim interdict. Further, I find that the Applicant has not made out a case of direct threats, insults, harassments, intimidations and physical abuse by the First Respondent.

COSTS

[31] It is an established principle of our law that costs are within the court's discretion, which discretion must be exercised judiciously. The general rule that costs will follow the cause fits well in this matter and I find no reason to deviate from this general principle.

ORDER

[32] Accordingly, I make the following orders:

32.1 The First Respondent is ordered to maintain the status quo of Applicant's possession of the motor vehicle, to wit, a Mercedes Benz C220d bearing registration letters and numbers K[...] 2[...] V[...] G[...] pending final determination of the Rule 43 application and action proceedings under case number 1790/2023 between the parties.

32.2 The First Respondent is further ordered to pay the monthly repayments of the motor vehicle, to wit, a Mercedes Benz C220d bearing registration letters and numbers K[...] 2[...] V[...] G[...] pending final determination of the Rule 43 application and action proceedings under case number 1790/2023 between the parties.

32.3 The Second and Third Respondents are interdicted and restrained from directly and/or indirectly interfering with the Applicant's possession and use of the motor vehicle, to wit, a Mercedes Benz C220d bearing registration letters and numbers K[...] 2[...] V[...] G[...] pending final determination of the Rule 43 application and action proceedings under case number 1790/2023 between the parties.

32.4 The First Respondent is ordered to pay the Applicant's costs of the application on party and party scale.

NEMUTANDANI AJ

ACTING JUDGE OF THE HIGH COURT

Counsel for the Applicants : Adv K Maluleke Counsel for the First Respondent: Mr. Moolman
Counsel for the Fourth Respondent: Adv Mudau Attorneys for the Applicants: Ntsako Phyllis
Mbhiza Attorneys Attorneys for the First Respondent: Burger Hyser Attorneys Attorneys for the
Fourth Respondent: Kern Dekker and Muthevhuli Inc Attorneys Heard on 08th December 2023
Date of judgment: 14th December 2023

[i] Setlogelo v Setlogelo 1914 AD 221 AT 227

[ii] 1948 (1) SA 1186(WLD) (Headnote)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALMPHC/2023/17.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/nem-v-hcc-and-others-unknown-topic-almphc-2023>

Prepared on 11 October 2026 · Esheria