

SOUTH AFRICA / JUDGMENT

Volkswagen Financial Services SA (Pty) Ltd v Nceba Giwu N.O (3792/2023) [2024] ZAECKMKHC 5 (18 January 2024) [2024] ZAECKMKHC 5

COURT

Eastern Cape High Court, Makhandha

BEFORE

N G Beshe

CASE / FILE NUMBER

3792/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN CAPE
DIVISION, MAKHANDA)
CASE NUMBER.:
3792/2023
In

the matter between:

VOLKSWAGEN
FINANCIAL SERVICES SA (PTY) LTD
Plaintiff
And
NCEBA
GIWU N.O.
Defendant

JUDGMENT

Beshe J

[1] In October 2023 plaintiff issued summons against the defendant seeking the following:

- (a) Cancellation of an agreement in respect of a specified motor vehicle.
- (b) The return of the said motor vehicle, described as a 2015 Volkswagen Polo GP 1.4 Trendline Tip motor vehicle with given Chassis and Engine Numbers.

- (c) Costs of suit.
- (d) Alternative relief.

It is common cause that the plaintiff had entered into an instalment agreement in respect of the said motor vehicle with one Amandla Dimanda. Mr Dimanda passed away on the 25 February 2022. The defendant is cited in his capacity as the appointed executor in respect of Mr Dimanda's estate. The defendant holds a letter of authority in this regard issued by the Master on 23 June 2022.

- [2] Defendant filed a notice of intention to defend the action. Duly filed a plea. Defendant pleaded that the motor vehicle was handed over to the plaintiff's official upon deceased's death. Defendant stated categorically that it was not in possession of the motor vehicle.
- [3] Defendant having entered an appearance to defend, plaintiff applied for summary judgment in respect of which the same relief as prayed for in the summons is sought.
- [4] In plaintiff's affidavit in support of summary judgment, it is admitted that plaintiff is in possession of the motor vehicle but is unable to sell same without an order granting the delivery of the motor vehicle. It was argued on behalf of the plaintiff that should the court not be amenable to issue the order in this regard, it should issue an order confirming the return of the motor vehicle. To this end, an amendment of the summary judgment application was sought to reflect that what is sought is the confirmation of the return of the motor vehicle. In my view, this will not be necessary as the court is also asked to grant any alternative relief it may deem fit in the circumstances.
- [5] It is common cause that defendant on behalf of deceased's wife is unable to keep up with the payment of the instalment. That much is also clear from the correspondence exchanged between the parties, inter alia about the settlement amount. The defence raised by the defendant is that the motor vehicle was voluntarily returned to the plaintiff. There is no provision in the agreement that stipulates that the sale of the repossessed motor vehicle must be preceded by a court order. Regarding the order for the cancellation of the agreement, defendant contends that the agreement was terminated upon the repossession of the motor vehicle. I could not find any such clause in the contract to that effect.
- [6] The reliance by defendant on the failure by the plaintiff to comply with clause 11 of the agreement is misplaced. This clause provides for the voluntary surrender of the goods to the plaintiff. Clause 11.1 provides that the defendant may terminate the agreement by giving the plaintiff a written notice and surrendering the goods to the plaintiff. The goods may have been surrendered or repossessed, but there is no evidence of a written notice by the defendant to terminate the agreement. The requirement for a written notice is also provided for by Section 127 of the National Credit Act, Act 34 of 2005. Both parties alluded to part of this provision. Everything else, including the provision by credit provider of the estimate value of the good and as well as any other prescribed information follow after the receipt by the credit provider of a notice of cancellation from the consumer. By parity of reason, until

such time the agreement is cancelled by any of the parties, the requirement to have the goods appraised and subsequently sold does not become due.

- [7] For these reasons, I am of the view that the plaintiff has made out a case for cancellation of the agreement as well as for an order confirming the return of the motor vehicle to the plaintiff.
- [8] Accordingly, summary judgment is granted in favour of the plaintiff against the defendant for:
- (a) The cancellation of the agreement in respect of the motor vehicle described in paragraph
 - (b) below.
 - (b) Confirmation of the return of a 2015 Volkswagen Polo GP 1.4 Trendline Tip motor vehicle with given Chassis and Engine Numbers.
 - (c) Costs.

N G BESHE

JUDGE OF THE HIGH COURT

APPEARANCES For the Plaintiff Adv: K.L. Watt Instructed by MANILAL BREWIS ATTORNEYS C/o HUXTABLE ATTORNEYS 26 New Street MAKHANDA Ref: 01M100062/87004844535 Tel.: 046 – 622 2692 For the defendant Adv: Z.A. Mqokozo Instructed by NCEBA GIWU INC. C/o YOKWANA ATTORNEYS 10 New Street MAKHANDA Ref.: Ms L Bulube Tel.: 046 – 622 9928 Date Heard 16 January 2024 Date Reserved 16 January 2024 Date Delivered 18 January 2024

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/volkswagen-financial-services-sa-pty-ltd-v-nceba-unknown-topic-aecmkhc-2024>

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