

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

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED:

Date: **18th September 2018** Signature: _____

CASE NO: 2018/33126

In the matter between:

PILLAY, PREBAI

Applicant

and

SABER, RODWAAN

First Respondent

AFFORDABLE INVESTMENTS CC

Second Respondent

JUDGMENT

ADAMS J:

[1]. This is an urgent application by the applicant for interim vindicatory relief against the first and second respondents. This part of the applicant's application is for an interim order pending a decision on the applicant's main application based on *rei vindicatio* in relation to her motor vehicle.

[2]. In the relevant portion of her notice of motion the applicant applies for an order, pending the hearing of her application for the return of her vehicle, *inter alia* in the following terms:

- '2. The second respondent and any other persons who may be in possession of the motor vehicle bearing the following description: Land Rover Discovery 4 V8 5-0 HSE with VIN no: SALLAAAF3BA585945 (formerly with registration no: [...]GP) ('the vehicle') are forthwith interdicted from disposing of the said motor vehicle.
3. The sheriff of this Honourable Court is hereby directed to forthwith remove the vehicle from wherever it may be located and to store the same in safekeeping.'

[3]. This portion of the applicant's application, being part 'A', is primarily aimed at the second respondent, who the applicant alleges is presently in possession of the said vehicle. From the papers before me this fact appears to be common cause. No relief is sought against the first respondent at this stage, and he did not oppose this part of the application, which the applicant initially launched as an *ex parte* application, but, on my insistence when the matter was called for the first time on Tuesday, the 11th of September 2018, was served on the second applicant.

[4]. The applicant's application is founded on her ownership of the vehicle, in respect of which she maintains that she retained ownership. During February 2018 the applicant had instructed the first respondent, a car dealer and a neighbour of theirs at the time, to assist her in selling the vehicle for a good price. In her founding affidavit the applicant states that the agreement between her and the first respondent was that the first respondent would immediately pay to her the purchase price of the vehicle once a purchaser had been secured and the proper transfer of the ownership effected. She further states that on the 13th of March 2018 the first respondent advised her that the vehicle had been sold for the sum of approximately R431 000 and they were in fact given an amount of R48000 in cash, being a portion of the purchase price. The first respondent furthermore advised her that the balance would follow shortly. She then went on to state as follows: 'This was contrary to our arrangement that he would pay me in full immediately upon the sale of the vehicle'.

[5]. The foregoing statement is, in my judgment, the death knell for the case of the applicant. Implicit in what is stated by her in her founding affidavit is that the vehicle was sold to a third party on her behalf and that she acquiesced, at very best for her, in the sale of the vehicle. Later on in her affidavit the applicant again confirmed that they had established that the vehicle had been sold to the second respondent and in fact registered into its name. As soon as this fact had been established, the applicant then demanded payment of the balance of the purchase price from the first respondent, who in turn undertook to pay the amount due to the applicant on specified dates. This undertaking was not kept by the first respondent, who subsequently signed an acknowledgment of debt in favour of the applicant for the sum of 'R473 000 less repair cost'.

[6]. An integral part of the applicant's cause is her alleged ownership of the vehicle. It is however abundantly clear that on her own version the applicant had authorised the first respondent to sell the vehicle on her behalf, which he did by selling the said vehicle to the second respondent. The applicant has therefore not

established the basic requirement for an interim interdict that being that she has a *prima facie* right. On her own version the vehicle had been sold to the second respondent on her instructions and pursuant to the sale agreement the said vehicle had been registered into the name of the second respondent.

[7]. In any event, the second respondent opposes the urgent application on precisely that ground, namely that it (the second respondent) had bought the vehicle from the applicant, via her agent, the first respondent. The first respondent's authority was evidenced by the following facts: he was in possession of the vehicle, the keys of the vehicle, the original certificate of registration and a copy of the identity card of the applicant, being the registered owner of the vehicle.

[8]. It was submitted on behalf of the second respondent that at the very least the first respondent had ostensible authority to sell the vehicle. That, from a legal point of view, entitled him to sell to the second respondent the vehicle, which he did. I find myself in agreement with this submission.

[9]. In *Worldwide Vehicle Supplies Ltd v Auto Elegance (Pty) Ltd and Others*, 1998 (2) SA 1075 (W), the facts of the matter were not dissimilar to those *in casu*. The applicant in that matter had placed the first respondent, a dealer in second - hand cars, in possession of two motor vehicles and the first respondent had sold the vehicles to the second and third respondents. The applicant claimed, however, that it had retained ownership of the motor vehicles. It stated that it had supplied the motor vehicles to the first respondent on consignment in order for the first respondent to attempt to sell the motor vehicles as the applicant's agent. It was common cause that the agency agreement had been cancelled. The applicant therefore brought an urgent application for the delivery by the second and third respondents of the motor vehicles.

[10]. Wunsh J held that the termination of the agreement between the applicant and the first respondent could not affect third parties who were not even aware of such an agreement. When the agency agreement was terminated, the apparent *jus disponendi* of the first respondent in the eyes of the public remained. The court held further that the applicant should have foreseen that, with the first respondent's control of the vehicle and its situation as part of its stock in trade continuing after the termination of the agency or consignment agreement, a third party could have been misled to his or her prejudice in buying and paying for the vehicle and the applicant should have taken prompt action to recover possession. Even if the applicant was the owner of the vehicle therefore, it was estopped from vindicating it.

[11]. Applying these principles *in casu*, I am of the view that under no circumstances is the applicant entitled to vindicate her vehicle from the second respondent.

[12]. The applicant's urgent application against the second respondent therefore stands to be dismissed.

Order

In the result, I make the following order:-

1. The applicant's urgent application against the second respondent is dismissed with cost.

L R ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg



HEARD ON:	14 th September 2018
JUDGMENT DATE:	18 th September 2018
FOR THE APPLICANT:	Advocate
INSTRUCTED BY:	Shaheed Dollie Incorporated
FOR THE SECOND RESPONDENTS:	Advocate Cowley
INSTRUCTED BY:	Vos Viljoen & Becker Inc