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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NUMBER: 4642/2024P

In the matter between:

BMW FINANCIAL SERVICES (SOUTH AFRICA) (PTY) LTD

PLAINTIFF

and

JOBHA THEMBINKOSI GUMEDE

DEFENDANT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Plaintiff bought an application for summary judgment against Defendant for the return of a certain Land Rover Discovery Sport. A plea was filed on behalf of Defendant but the attorneys who represented Defendant at the time of the plea thereafter withdrew as attorneys of record. After the plea had been filed the application for summary judgment was brought by Plaintiff.

[2] Defendant's attorneys of record withdrew on 23 of July 2024. The application for summary judgment was issued on 13 June 2024 and set down for 30 July 2024. A short answering affidavit was filed on 14 August 2024 by Defendant stating that he was refused legal aid and was appearing on his own. He stated that he believed he has a *bona fide* defence and that he wished to present his case through oral evidence.

[3] On 16 August 2024 an order was then granted by Barnard AJ that *inter alia* the Defendant be granted leave to adduce oral evidence in opposition to the summary

judgment application. Applicant was directed to appoint the services of an interpreter and it was then adjourned to 22 October 2024.

[4] On 22 October 2024 the matter came before me and Applicant had arranged an interpreter, who was a duly sworn interpreter and Defendant was then sworn in and presented his oral evidence. His evidence was as follows:

“I wish to explain how I got here. There are pending cases before court in line with this case. This must be combined with the other matters before court. The people who opened the case paid for the motor vehicle. At this point the money to be paid is not being paid because of pending cases. Also I wish to state after the other cases I will be able to pay for the motor vehicle. My second request is if this case may be transferred to the persons who pays for the motor vehicle, namely one Duldani Zungu Sikhobuso Mngcwaba and one Mthembu. Lastly my request is BMW that must pay for the vehicle. I will be able to pay after the case. I signed an agreement with BMW for the motor vehicle. The motor vehicle is still with me. I have nothing else.”

This was then the evidence of Defendant which constituted his affidavit in opposition to the summary judgment application.

[5] He was not cross examined as set out in Rule 32 (4). Both Plaintiff's representative and Defendant then addressed the court.

[6] It was submitted by Mr. Moodley, on behalf of Plaintiff, that if Defendant wishes to consolidate various matters he must present particulars of the other matters, who the parties are etc. No details thereof were provided and that there was therefore no case for consolidation.

[7] He further submitted that the agreement which appears at pages 52 to 59 of the indexed papers sets out Defendants full name and particulars, his identity number and

his signature appears thereon as was also confirmed by Defendant, in his evidence that he did enter into such an agreement. Further on page 57 of the indexed papers was a release note where he accepted the said vehicle which he admits he took possession of. It was submitted that there was compliance with section 129 of the National Credit Act and a certificate of balance was provided in terms of the said agreement. In paragraph 7 of his plea Defendant admits that he failed to make due and punctual payments. In paragraph 13 of the particulars of claim it was set out that Defendant has not returned the vehicle. In paragraph 13 of the plea, this is admitted, which was also admitted in his oral evidence. It was submitted that there was no *bona fide* defence and that summary judgment should be granted.

[8] Thereafter Defendant addressed the court through the interpreter and stated that he does not dispute that he took delivery of the vehicle but the money that has to be paid for the vehicle comes from the church and he at the moment does not have access to funds.

[9] In *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426 it was held that a defence must be fully disclosed, the nature and ground thereof and the material facts upon which it is founded. On these facts does the Defendant have a defence, which is *bona fide* and good in law? This test was confirmed in *Job Job Investments v Stocks Mavundla* ZEK 2009 (5) SA 1 (SCA).

[10] It is common cause that Defendant admits that he is in arrears with the instalments and further that he is still in possession of the said vehicle. He raises the defence that the church must pay for the vehicle and is not doing so. He also refers to other cases but without providing any detail thereof. It is therefore clear from his plea, that what he has stated in his evidence and the submissions made that he has no *bona fide* defence to the claim. He admits that the instalments are outstanding, that he is still in possession of the vehicle and unfortunately the fact that the church is not paying the instalments is not a defence as he personally was the person who entered into the agreement with Plaintiff and accordingly has the responsibility to pay for the said

vehicle. Further the fact that he has requested BMW South Africa to wait for the money is not something that this Court can decide on as that is an indulgence which BMW South African has to decide on.

[11] Accordingly Defendant has not set out any *bona fide* defence to the said claim in his plea nor in his testimony in court and accordingly Plaintiff is entitled to summary judgment.

Order:

I therefore grant Summary Judgment in favour of Plaintiff against Defendant for.

1. Confirming termination of the agreement.
2. Authorising the Sheriff of the High Court to attach, seize and handover the vehicle to the Plaintiff;

MOTOR VEHICLE: LAND ROVER DISCOVERY SPORT 2.0i4 DHSE

ENGINE NUMBER: 1[...]

CHASSIS NUMBER: S[...]

3. Costs of suit;
4. The Plaintiff shall allege and prove in its action for any outstanding damages, that it has complied with the requirements set out in paragraph 20.3 of the order in Firststrand Bank Limited t/a Wesbank vs Davel (1229/2018) [2019] ZASCA 168 (29 November 2019).

P C BEZUIDENHOUT J.

JUDGMENT RESERVED ON: 22 OCTOBER 2024

JUDGMENT HANDED DOWN ON: 28 OCTOBER 2024

COUSEL FOR PLAINTIFF: MR D MOODLEY

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