

**NOT REPORTABLE**

**IN THE HIGH COURT OF SOUTH AFRICA  
(EAST LONDON CIRCUIT LOCAL DIVISION)**

CASE NO. EL 1191/2021

In the matter between:

**NONGOGO GUZANA INCORPORATED**

Applicant

and

**SOUTH AFRICAN POLICE SERVICES**

First Respondent

**MKHULULI LEONARD DLEVU**

Second Respondent

**BARLOWORD TOYOTA KUILSRIVIER**

Third Respondent

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**JUDGMENT**

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**HARTLE J**

[1] On 8 September 2021 this court granted a rule *nisi* in the following terms:

- “1. Dispensing with the forms and services provided in the Uniform Rules of the Court and directing that, this application is heard on urgent basis in terms of Rule 6 (12) (a).
2. A rule *nisi* do issue with immediate effect calling on the 1<sup>st</sup> respondent to show cause on 22 September 2021 at 10:00 why the following order should not be granted:

- 2.1 declaring that the applicant is the lawful owner of the motor vehicle described as a Toyota Fortuner with Chassis Number VIN AHTCB3GS602010684, Engine Number 2GDC657652 and bearing the Licence Number JJ83DMGP (“the vehicle”).
  - 2.2 The 1<sup>st</sup> respondent is hereby directed and/or authorized to restore possession of the motor vehicle described as a Toyota Fortuner with Chassis Number VIN AHTCB3GS602010684, Engine Number 2GDC657652 and bearing the Licence Number JJ83DMGP (“the vehicle”) with immediate effect to the applicant.
  - 2.3 The 2<sup>nd</sup> respondent is hereby interdicted and restrained from interfering with the applicant’s possession directly or indirectly pending the determination of whatever claim, if any, that the 2<sup>nd</sup> respondent might have to the vehicle.
  - 2.4 The 2<sup>nd</sup> respondent is ordered to hand over the spare keys and other items of the motor vehicle that are in his possession to the applicant.
  - 2.5 The 3<sup>rd</sup> respondent is hereby interdicted and restrained from taking any steps that may facilitate registration of the motor vehicle into the name of the 2<sup>nd</sup> respondent or any person nominated by the 2<sup>nd</sup> respondent pending the determination of whatever claim, if any, that the 2<sup>nd</sup> respondent might have to the vehicle.
3. Paragraphs 2.2, 2.3, 2.4 and 2.5 are directed to operate as interim order pending the finalization of this application.
  4. Any of the respondent/s who opposes this application is ordered to pay the costs of this application on an attorney and client scale, jointly and severally, one paying the other to be absolved.” (sic)

[2] The question on the extended return date, when the matter came before me, was whether the rule could be confirmed.

[3] Only the second respondent opposed the application

[4] It is rather unusual that the applicant seeks confirmation of an interim order of the *mandament van spolie* and at the same time on motion a declarator of its ownership of the motor vehicle of which it claims to have been unlawfully despoiled.

[5] In respect of the *mandament van spolie* there is, even on the second respondent's showing, no reason not to find that the applicant was in peaceful and undisturbed possession of the motor vehicle at the time of its dispossession by the first respondent at his instance and that the second respondent, on a baseless allegation of theft, used stealth to deprive the applicant of its possession. (In this respect he complained to his insurer (Netstar) and the first respondent that the vehicle had been stolen in order to deprive the applicant of its possession when on his version the motor vehicle could not have been stolen because he had voluntarily returned it to the applicant after his agency relationship with it was terminated).

[6] The second respondent put up a feeble argument that the applicant lacked *locus standi* and that the matter was not urgent, but neither point has any merit. The second respondent contended for example, rather bizarrely, that since the applicant is a juristic person, it could not satisfy the first requirement for the *mandament van spolie* because it could not be in peaceful undisturbed control of the motor vehicle. No authority was suggested for this proposition. As for urgency, applications for spoliation are by their very nature urgent because they involve a deprivation of possession without due legal process.

[7] Whilst it is so that an issue of urgency can be revisited on the return day (it is not moot simply because a judge issues a certificate of urgency in terms of paragraph 12 (a)(i) of the Joint Rules of Practice or because a rule *nisi* is coincidentally granted at the first appearance), I see no reason to do so in the present instance.

[8] I am accordingly inclined to confirm the rule of 8 September 2021 but only in respect of paragraphs 2.2, 2.3 and 2.4 thereof. The second respondent alleged for the first time at the hearing that he cannot locate the keys. He

offered no explanation in this respect on the papers, so he must still give a proper account therefor.

[9] As for the effect of paragraph 2.3 of the rule *nisi* once confirmed, it will in my view be up to the second respondent to pursue whatever lawful claim he believes he may have to the vehicle.

[10] Concerning the declaratory relief sought in paragraph 2.1 of the rule *nisi*, I am not inclined to resolve this on motion since there is a dispute of fact concerning ownership and because the applicant made itself party to a fiction for purposes of encouraging the third respondent to register the motor vehicle in the applicant's name by stating that it had purchased the motor vehicle from the second respondent, whereas on its case it was instead already the claimed owner.

[11] I am also not inclined to confirm the interim interdict in respect of paragraph 2.5 of the rule *nisi*. The third respondent must follow lawful processes and not cause the parties to adopt positions that do not accord with the claimed true situation. Odd scenarios of ownership arise, do not require a declarator of ownership (except if an interpleader is interposed) and can and should be resolved on the basis of declarations or affidavits, if necessary, concerning the requisite documentation to be lodged with the registering authority for NATIS purposes.

[12] Despite my reservations expressed above, the applicant has however been substantially successful in these proceedings and the costs should follow the result.

[13] In the premises I issue the following order:

1. The rule dated 8 September 2021 is confirmed in respect of prayers 2.2, 2.3 and 2.4 thereof.
2. The second respondent is ordered to pay the costs of the application including the reserved costs of 22 September 2021.

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**B HARTLE**

**JUDGE OF THE HIGH COURT**

DATE OF HEARING: 10 February 2022

DATE OF JUDGMENT: 23 June 2022\*

\*Judgement delivered by email to the parties on this date.

APPEARANCES:

*For the applicant: Mr. Mapoma instructed by Nongogo Guzana Inc. c/o Smith Tabata Inc., East London (ref. Ms Swartz).*

*For the second respondent: Mr. Magaleni of M O Magaleni Attorneys, East London (ref. M Magaleni).*

*For the first and third respondent: No appearance.*