

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH-AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 2022/055028**

Heard on: 9 October 2023

Judgement on: 14 December 2023

- (1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES / NO  
(3) REVISED.
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**IN THE MATTER BETWEEN:**

**M[...] V[...]**

**APPLICANT**

**AND**

**W[...] V[...]**

**RESPONDENT**

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## JUDGMENT

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**Strijdom AJ**

### INTRODUCTION

1. In this matter the applicant seeks an order in the following terms:
  - 1.1 That the respondent be directed to comply with his obligations as per clause 2.2, 2.3 and 2.5 of the settlement agreement concluded between the parties on 10 August 2010.
  - 1.2 That the respondent be ordered to purchase a Toyota Yaris motor vehicle for the applicant to the value of not less than R80 000.00 within 15 (fifteen) days from date of the order; alternatively, a vehicle of similar specifications, size and build quality to the value of not less than R80 000.000.

### POINT IN LIMINE

2. The respondent suggests that there are proceedings *lis pendens*.

3. The applicant has withdrawn those proceedings, which sought to have the respondent committed for contempt of court and in order to avoid a lis pendens defence.

## THE SALIENT FACTS

4. The applicant and the respondent got married out of community of property excluding the accrual system, on 4 November 2006. The marriage was dissolved on 22 September 2010.
5. The parties concluded a written agreement of settlement which, for purpose of this application, regulated how the parties would attend to certain proprietary aspects of the divorce. This agreement was made an order of court as is evidenced by the court order attached to the founding affidavit as 'N1'<sup>1</sup>.
6. The settlement agreement<sup>2</sup> provides that:

“2.2 Die partye kom voorts ooreen dat die Verweerdeer n Toyota Yaris motor voertuig sal aankoop en in die Eiseres se naam sal registreer.

2.3 Die partye kom ooreen dat die waarde van bovermelde voertuig nie minder as R80 000.00 sal beloop nie.

2.4 Die partye kom ooreen dat die Eiseres die Toyota Prado motorvoertuig welke in die Verweerder se naam geregistreer is, mag gebruik tot en met datum waarop hy die voertuig in par 2.2 hierbo in haar naam registreer en aan Eiseres lewer.

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<sup>1</sup> Caseline: 01-111

<sup>2</sup> Caseline: 01-116

2.5 Verweerder sal verantwoordelik wees vir alle onderhoudskoste, sowel as die koste verbonde aan die maandelikse versekering van die voertuig.”

7. At all relevant times after the parties got divorced the respondent provided to the applicant, for use at her discretion, a Toyota Prado. At one point in time the respondent complained about the fuel use of the Toyota Prado and purchased a Ford Eco Sport for the applicant to use. The car was not registered in the applicant’s name.
8. Subsequently the respondent sold the Ford Eco Sport and purchased a Toyota Fortuner which the applicant could utilise. The Toyota Fortuner was not registered in the applicant’s name.
9. After the Toyota Fortuner broke down, the respondent proceeded to take the vehicle in for repairs. The respondent was then informed that the applicant was engaged to her new romantic partner, and that her new fiancé, purchased a Toyota Fortuner for the applicant to use. The respondent then decided that his Toyota Fortuner will remain within his possession.<sup>3</sup>

## **COMMON CAUSE FACTS**

10. It is common cause that:

10.1 The parties were married and subsequently divorced.

10.2 That the parties entered into an agreement of settlement which was made an order of court and the terms of the settlement agreement.

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<sup>3</sup> Caseline: AA; 04-88 para 17 and 18.

10.3 That the respondent has not purchased a vehicle for the applicant and registered it in her name as per the provisions of the settlement agreement.

10.4 That the respondent has provided the applicant with a vehicle for her use in compliance with clause 2.4 of the agreement.

## **THE ISSUES IN DISPUTE**

11. It was submitted by the respondent that he fulfilled the obligations in terms of the agreement of settlement and that the applicant failed to fulfil the obligations for final relief.

12. The applicant contends that it is incumbent on the respondent to show that he has complied with his obligations flowing from the agreement of settlement. It was further submitted that on any interpretation of the terms of the agreement of settlement, read with the common cause facts, it is evident that the respondent has only partially complied with his obligations.

13. In this matter the respondent attempt to create a dispute of fact where in my view there are none. The courts were enjoined to adopt a 'robust approach' to such disputes of fact.

14. 'It is necessary to make a robust, common – sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung

and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it would be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over – fastidious approach to a dispute raised in the affidavit'.<sup>4</sup>

15. It was submitted by the respondent that clause 2.4 of the agreement only required of him to provide the applicant with adequate transportation. This interpretation isolates itself to clause 2.4 of the agreement and loses sight of the clear and unambiguous language utilised in clauses 2.2, 2.3 and 2.5 and further fails to appreciate that clause 2.4 clearly caters for an interim situation i.e.:

'Making sure the applicant has the use of a vehicle until such time as there is compliance with clause 2.2'

16. It is not in dispute that the respondent complied with clause 2.4, however that clause cannot be looked at in isolation.

17. The intention of the parties is clear insofar as the wording of clause 2.3 is concerned. Clause 2.3, 2.4 and 2.5 make it clear that a vehicle had to be purchased insofar as:

17.1 A value is attached to the purchase.

17.2 The respondent is obligated to supply transportation as an interim measure until there is compliance with clause 2.2.

17.3 The respondent undertook further obligations after the purchase of the vehicle.

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<sup>4</sup> Soffiantini v Mould [1956] 4 ALL SA 171 (E) 175; 1956 (4) SA 150 (E) 154 E-H Prinsloo v Shaw, 1938 A D 570.

18. It is trite that the requirements for a final interdict are as follows: (i) a clear right, being a legal right to be protected against infringement; (ii) infringement of the clear right, which includes an injury actually committed or a reasonable apprehension of such infringement; and (iii) the lack of an adequate alternate remedy.
19. It is evident from the admitted agreement of settlement that the applicant has a real right to receive a vehicle and have it registered in her name.
20. The respondent has undertaken to provide the applicant with a vehicle and has failed to do so. The injury lies in the fact that the applicant does not have a vehicle that she is contractually entitled to have.
21. I am of the view that the respondent is obliged to comply with his contractual obligations and a final mandatory interdict is the only manner in which this end result can be obtained seeing as the respondent seems to suggest that he is not obligated to comply with the court order.
22. It is common cause that the respondent has not as yet purchased a vehicle for the applicant, whether it being a Toyota Yaris or any other vehicle and has not complied with his obligations in terms of the agreement of settlement.
23. On a conspectus of all the evidence before me. I am persuaded that the applicant complied with all the requirements of a final interdict and that a proper case has been made out for the relief sought.
24. In the result, the draft order marked "X" is made an order of Court.

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**STRIJDOM JJ  
ACTING JUDGE OF THE HIGH COURT  
OF SOUTH AFRICA  
GAUTENG DIVISION  
JOHANNESBURG**

**Appearances:**

For the Applicant: Adv S Mc Turk  
Instructed by: W.A. Opperman Attorneys

For the Respondent: Adv Van Tonder  
Instructed by: Theron, Jordaan E Smit Inc.