

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

**IN THE HIGH COURT OF
GAUTENG DIVISION,**



**SOUTH AFRICA
JOHANNESBURG**

CASE NO: 2022-050518

1. Reportable: No
2. Of interest to other judges: No
3. Revised

Wright J
30 January 2024

In the matter between:

ABSA BANK LIMITED

Applicant

and

SEVENGWANI ANA MAVUNDZA

Respondent

JUDGMENT

WRIGHT J

1. On 23 November 2018, the applicant bank sold a vehicle to the respondent, Ms Mavundza under a written credit agreement. The bank now seeks return of the vehicle under the rei vindicatio.
2. In the agreement, Ms Mavundza chose as domicilium, [...] [...] [...], [...].
3. Ms Mavundza fell into arrears. On 14 March 2022, the bank sent a letter under section 129 of the National Credit Act, 34 of 2005 to the domicilium address. In the letter it is stated that the account has been in arrears for more than twenty days, that Ms Mavundza has ten business days to rectify the breach and that if the letter is not complied with, the credit agreement will be automatically cancelled.
4. This letter is annexed to the founding affidavit as is proof of posting in the form of a registered postal slip and proof of tracking in the form of a track and trace report showing that the letter was received by the relevant post office.
5. Ms Mavundza denies receiving the letter. She may well not have but that could only be due to a failure to collect it.
6. Ms Mavundza says that she had informed the bank of change of address sometime before the bank sent the section 129 letter. She refers in her answering affidavit to an annex to it but there is none. Upon enquiry by the bank's attorney, Ms Mavundza's attorney sent the annex. This document is a bank printout dated 10 August 2022, some five months after the section 129 letter was sent. It lists a physical address for Ms Mavundza of " [...] [...] [...]number [...] " in [...], different to the chosen domicilium. This document is by no means a communication from Ms Mavundza at all. In my view, the allegation by Ms Mavundza that she informed the bank of change of address is incorrect.

7. Attached to the founding affidavit is a Notice of Termination dated 30 May 2022 and signed, according to the bank by Ms Mavundza. Ms Mvundza says that she was spoliated of the vehicle on that day when bank agents arrived at her house in Limpopo. She says that the notice was signed by her son. She says that she was misled by the agents into believing that the notice merely confirmed that the vehicle had been “*inspected and taken in the condition that it was, and further that I have removed every item that belongs to me* “. The bank’s agents took the vehicle.
8. Ms Mavundza approached the Magistrate’s Court in Mamelodi and on 29 June 2022 obtained a temporary order in the form of a rule nisi for the return of the vehicle to her. On 3 August 2022, after the bank had been heard, the Magistrate discharged the rule nisi with punitive costs. The effect of the Magistrate’s Order was to declare Ms Mavundza’s possession of the vehicle unlawful.
9. Ms Mavundza is bound by the order of the Magistrate. Her defence that she was tricked into releasing the vehicle is not open to her.
10. Ms Mavundza admits possession of the vehicle, that the bank is the owner and that she is still in arrears. A point of lack of jurisdiction raised by Ms Mavundza was sensibly abandoned.
11. In my view, there is no defence to the application.
12. The agreement provided for punitive costs in the event of litigation by the bank.

ORDER

1. The respondent and/or any other party that may be in possession of the motor vehicle 2018 Quantum Minibus Kombi 2.5D bearing VIN number [...] is to return the vehicle to the applicant forthwith.

2. In the event that such person fails or refuses to do so, the applicant may approach the sheriff or the SAPS to give effect to this order.
3. The respondent is to pay the applicant's costs on the attorney and client scale.

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 30 January 2024

DELIVERED : 30 January 2024

APPEARANCES :

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