

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

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DATE
SIGNATURE

Case no.: **9578/2020**

In the matter between:

WASTE PARTNER INVESTMENTS (PTY) LTD

APPLICANT

And

TOYOTA FINANCIAL SERVICES

1ST RESPONDENT

DEQUAR GROUP CC

2ND RESPONDENT

SHERIFF OF THE HIGH COURT, BRAKPAN

3RD RESPONDENT

SHERIFF OF THE HIGH COURT, BENONI

4TH RESPONDENT

Coram:

Dlamini J

Date of hearing: 23 January 2024 - (Courtroom 9B)

Handed down on: 15 February 2024

This judgment is deemed to have been delivered electronically by circulation to the parties' representatives via email and the same shall be uploaded onto the caselines system.

JUDGMENT

DLAMINI J

[1] On 23 January 2024, I made the draft order marked "X" an order of the court. Below, are my reasons for that order.

[2] This an application for an interim order wherein the applicant seeks the following relief; -

2.1 Until otherwise ordered by the court and pending the final determination of the application for leave to appeal filed of record in this matter, the First, Second, Third, and Fourth Respondents are interdicted and restrained from attaching and removing a certain 2019 HINO 500 2836 (DU5) 6*4 LWB F/C C/C with chassis number: AHHFM2PT1XXX10106 (the vehicle).

2.2 That the warrant for delivery of goods and order issued in respect of the vehicle identified in paragraph 9.1 above by the High Court under the above case number be stayed, pending final determination of the application for leave to appeal filed of record in this matter.

BACKGROUND FACTS

- [3] The background facts underlying this matter are largely common cause. Summary Judgment was granted against the applicant on 29 August 2022, in terms of which the credit agreement between the parties was canceled and the applicant was ordered and directed to return the above-mentioned motor vehicle to the first respondent and other related ancillary reliefs.
- [4] The applicant testified that following the granting of the Summary Judgment by the trial court, the respondents have on several occasions attempted to attach and remove the aforesaid vehicle from the applicant despite the applicant having filled and served the notice of leave to appeal to set aside the order of the trial court.
- [5] Waste Partners avers that after granting of the Summary Judgment it served and filed a Notice of Application for Leave to Appeal timeously on 29 August 2022.
- [6] The respondents are opposing the application on various grounds and have raised a point *in limine* that the applicant's application for Leave to Appeal was filled and served out time and consequently, the Leave to Appeal Application has lapsed.
- [7] At the hearing of the matter, the parties agreed that this court must first hear the respondent's point *in limine* as the decision in this regard will be dispositive of the matter.
- [8] The question that fell to be determined was whether the applicant's application for Leave to Appeal was filled timeously and if not what is the consequence of such failure to file the application timeously.
- [9] The applicant conceded that its application was filled out of time, but avers that its application was out of time by only 5 days. The applicants further conceded that it did not and has not to date filed any application for condonation for the late filing of the application for Leave to Appeal.

[10] The respondent submitted that the applicant's application for leave to appeal the order ought to have been brought by no later than 20 September 2022, that is 15 days from 29 August 2022. The respondents aver that the applicant failed to launch its application within the time prescribed as stipulated by the Uniform Rules of Court. Therefore, insists the respondent, that the application for leave to appeal is not before this court because the application was served out of time.

[11] As a result, the respondents are adamant that the applicant's application to stay execution and to interdict the enforcement of the first respondent's judgment should be dismissed.

[12] The established principle of our law is that the noting of an appeal suspends the operation and execution of a judgment pending the outcome of the appeal. In my view, the late filing of the applicant's application for Leave to Appeal is fatal, even if the applicant has filled an application to condone the late filing of the application. This position was confirmed by the Full Court of this division in **Dudzile Cynthia Myeni v Organisation Undoing Tax Abuse NPC case number 15996 /2017** as follows at [19] *"As, such, an important question would then be what effect would the lodging of the petition after the right to appeal has lapsed then have on the principal judgment's order. Having regard to case law, in light of the belated petition now filed by the appellant, the principal judgment's order continues to remain operational for the mere fact that the service of an application to condone the late filing of the petition to the SCA does not suspend the operation and execution of any order. To conclude otherwise would give rise to an untenable situation in law where, after an order has been operational for a number of months, a party could simply bring a condonation application which would result in such order suddenly being suspended. Such a situation would clearly give rise to far reaching consequences that this court cannot condone"*.

[13] As is the case in this application, the Full Court continued and made the following conclusion at [26] *"The application for leave to appeal in the present matter lapsed. In order for the application for leave to appeal to be revived,*

condonation will have to be granted by the SCA. Until such time, there is no application as contemplated by section 18(5) of the Superior Courts Act, and the ineluctable consequence is that the section 18 (4) appeal is not competent. We further hold the view that, although the length of the delay in filling the application for leave to appeal to the SCA is negligible, having read the principal judgment of the court a quo and the judgment in the application for leave to appeal, the prospect of the appellant succeeding with her condonation application to the SCA are rather slim”.

[14] Taking into account all the circumstances of this case, the pleadings, and arguments I agree with the judgment of the Full Court. This court is any event bound by the Full Court’s decision.

[15] In the result, I am satisfied that the respondent has discharged the onus that rested in their shoulders and their point *in limine* is upheld. Accordingly, the applicant's application to stay execution and to interdict the enforcement of the first respondent's judgment is thus dismissed.

ORDER

1. The order marked X that I signed on 23 January 2024 is made an order of this court.

DLAMINI J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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