

In the Supreme Court of South Africa  
In die Hooggeregshof van Suid-Afrika

(APPELLATE Provincial Division)  
(PROVINSIALE AFDDELING)

Appeal in Civil Case  
Appel in Siviele Saak

HIRE PURCHASE DISCOUNT CO. (PTY) LTD. Appellant,

versus

ANDRE ANTHONY MAGUEN Respondent

Appellant's Attorney Davidson & Marais Respondent's Attorney *Im person*  
Prokureur vir Appellant Prokureur vir Respondent

Appellant's Advocate *W. P. Schetz* Respondent's Advocate *No appearance*  
Advokaat vir Appellant Advokaat vir Respondent

Set down for hearing on *28-11-72*  
Op die rol geplaas vir verhoor op

*1.3.78.11*

*Coram: Ogilvie Thompson C.J., Rumpff,  
Potgieter, Janssens et al. J.S.A.*

(T.P.D.)

*9.4.78 am 10.45 am  
c. v.*

*Appeal dismissed.*

*[Signature]*

- 4 12 1972

Writ issued  
Lasbrief uitgereik

Date and initials  
Datum en paraaf

Bills Taxed—Kosterekenings Getakseer

Date Datum	Amount Bedrag	Initials Paraaf

IN THE SUPREME COURT OF SOUTH AFRICA  
(APPELLATE DIVISION)

In the matter between:

HIRE PURCHASE DISCOUNT COMPANY  
(PROPRIETARY) LIMITED ..... Appellant

and

ANDRE ANTHONY MAGUA ..... Respondent

Coram: Ogilvie Thompson, C.J., Rumpff, Potgieter, Jansen,  
et Muller, JJ.A.

Heard: 28 November 1972.

Delivered: ~~27th~~ Dec. 1972.

---

J U D G M E N T.

POTGIETER, J.A. :

This appeal involves the interpretation of  
section 18 of the Hire-Purchase Act, No. 36 of 1942  
which reads as follows:

"No decree of civil imprisonment or garnishee  
order or order under Section 65 of the Magi-  
strate's Courts Act of 1944, for the purpose  
of enforcing payment by the buyer of any

amount...../2

~~amount payable under an agreement or as a~~  
 result of the termination or rescission  
 thereof or as damages for any breach  
 thereof, shall be made by any Court."

The respondent (hereinafter referred to as  
 "defendant") bought a motor car under a written hire  
 purchase agreement from a motor dealer - a company -  
 which ceded its rights under the said agreement to the  
 appellant (hereinafter referred to as "plaintiff").

It is clear that the provisions of the Hire-Purchase Act  
 apply to the agreement. In terms of the agreement, if  
 the defendant committed any breach thereof, the seller  
 became entitled without prejudice to any other rights  
 it had and subject to the provisions of the Hire Purchase  
 Act:

- (i) to claim payment of the full balance  
 of the purchase price; or
- (ii) to cancel the agreement, retake  
 possession of the said vehicle and to  
 retain all amounts paid by the defen-  
 dant; or

3.

(iii) to cancel the agreement, retake possession of the vehicle and to recover damages from the defendant.

On the respondent's failure to pay certain instalments under the agreement, the plaintiff as cessionary, sued and obtained a default judgment against the defendant in the Johannesburg magistrate's court for cancellation of the agreement, return of the car and damages in the sum of R212-25 plus costs to be taxed. The plaintiff thereafter presented a bill of costs which was taxed at the amount of R104-49. A warrant of execution was then issued to recover the damages and costs. This warrant was served several times but nothing was recovered.

The appellant thereupon issued ~~out~~ a notice in terms of section 65 (1) of the Magistrates' Courts Act, No. 32 of 1944. The notice specified that the plaintiff sought to recover only the judgment and writ costs. Despite this notice the defendant failed to

appear...../4

4.

appear at the inquiry held pursuant to the provisions of section 65 (1) and the court consequently authorized the issue of a warrant of arrest. The defendant was subsequently arrested and brought before the court. At the hearing the magistrate released the defendant because he held that in terms of section 18 of the Hire-Purchase Act the court was precluded from making any order under section 65 of the Magistrates' Courts Act. The magistrate, however, granted the plaintiff leave to re-issue the notice in terms of section 65 (1), which was done. The notice was properly served on the defendant per registered post and he was also sent a registered letter informing him that the purpose of the application was to test the plaintiff's right to proceed by way of section 65 (1) to recover the costs in respect of the judgment debt and the costs incurred in issuing and serving the writ and that, while he was at liberty to attend the

hearing...../5

hearing, he was not obliged to do so. He did not attend the hearing and plaintiff's attorney presented a written argument in support of his contention that, despite section 18 of the Hire-Purchase Act, he was nevertheless entitled to invoke the provisions of section 65 (1) in order to enforce payment of the judgment and writ costs. The magistrate refused the application and the plaintiff appealed to the Transvaal Provincial Division. The appeal was dismissed and, as the defendant did not appear to resist the appeal, no order as to costs was made. Leave to appeal to this Court was granted.

The magistrate's reasons for refusing the application are as follows:

"These words (appearing in section 18) in their ordinary sense can only mean that no Court may make a garnishee or Section 65 order in respect of the causae debiti named in the Section.

5. The next enquiry to be made is 'What are garnishee and Section 65 orders?' These are described in Section 72 and Section 65 of

the ...../6

~~the Magistrates' Courts Act and need no further~~  
 scrutiny. It is to be noted, however, that a garnishee or Section 65 order may only be made when there is a judgment debt. They cannot be made when there is only a debt, even if acknowledged, but no judgment debt. Section 72 gives leave to a 'judgment creditor' to apply for a garnishee order and Section 65 (1) gives leave again to a 'judgment creditor' to recover 'if a Court has given judgment for the payment of money'. Clearly the judgment creditor in these contexts is a creditor not only for the causa debiti but also for the costs he incurs in enforcing the causa debiti and obtaining the judgment. I cannot conceive that there could be any other interpretation.

6. Thus the prohibition contained in Section 18 of the Hire Purchase Act is against a judgment creditor enforcing payment of his judgment debt which must include the costs in obtaining the judgment. If, however, it was the intention of the Legislature that the prohibition was against the causa debiti only and not the judgment costs, in my opinion it would have

stated...../7

stated so in so many words. It did not do so, and to interpret that its intention was to exclude the applicability to costs, would mean the addition of special explanatory words to this effect. In my opinion the addition of any such words cannot be made as they would be repugnant to the ordinary meaning of the Section and the intention of the Legislature."

The Court a quo, came to <sup>the same</sup> ~~a similar~~ conclusion but for different reasons. Galgut J., who delivered the judgment of the Court a quo, based his judgment mainly on the interpretation of the words "any amount payable ..... as a result of the termination or rescission of the agreement" and came to the conclusion that on a true construction of the words "as a result of" read in their context there is a causal connection between the costs incurred in obtaining cancellation of the agreement and the return of the vehicle. He stated in his judgment:

"The real relief obtained and the costs of obtaining such relief is caused by the termination or rescission of the agreement and so

~~arise out of or is the result of the termination~~  
 or rescission of the agreement. It follows  
 from what I have said that as a matter of law  
 the costs are a result of the termination  
 or rescission of the agreement."

The learned Judge a quo, after pointing out that the words  
 "for the purpose of enforcing payment" are significant,  
 said:

"The types of execution are prohibited from  
 being used to enforce payments for amounts  
 falling due on termination of the hire-  
 purchase agreement. In order to be able to  
 launch the prohibited forms of execution the  
 seller of necessity would first have to  
 obtain judgment with the attendant costs.  
 It seems to me to be quite illogical to  
 assume that the Legislature would allow  
 costs incurred in steps which in law must  
 precede the forms of execution should not  
 be included in the prohibited field." <sup>(sic; to be)</sup>

In this Court also there was no appearance  
 for the defendant. Mr. Schutz, on behalf of the appellant

submitted that there are three specific causae debiti mentioned in section 18 and the causa debiti where costs are sought to be recovered is not one of them.

Relying on the decision of Allen and Others v. Duke, 1954 (1) S.A. 213 (N) he contended that the right to costs does not arise from the breach of a hire-purchase agreement, but from the necessity of obtaining a court order for the enforcement of rights which have already come into existence because of a breach. The costs awarded as a result of obtaining judgment for the main relief claimed, so counsel argued, is, therefore, a causa debiti separate from the three causae listed in section 18 and, inasmuch as this causa debiti is not mentioned in the section, it does not fall within the ambit of the prohibition. In support of the proposition that costs should be treated separately counsel referred us to sections 17 (1) (e), (3) and (4) of the Hire-Purchase Act. He furthermore referred us to section 88 of Act 46 of 1935 and contended that at the time

the Legislature passed the Hire-Purchase Act it was ~~there~~  
~~fore~~ mindful of a statutory provision distinguishing be-  
 tween liability under a hire-purchase agreement and the  
 costs incurred in enforcing such liability.

As to the reasoning of the Court a quo, counsel  
 submitted that the words "as a result of" in the section  
 govern only one of the three causae debiti mentioned in the  
 section and the fact that the present case is one in which  
 the contract happens to have been terminated cannot decide  
 the construction of the section.

As to the statement by the Court a quo that it  
 would be illogical if proceedings under section 65 could  
 be used to enforce an order as to costs but not the main  
 judgment, counsel contended that there is nothing illogical  
 in such a conclusion and that there is every reason to as-  
 sume that the Legislature envisaged it. Counsel pointed  
 out that there may be cases where ultimately the costs

incurred ...../11

11.

incurred in obtaining relief under a hire-purchase agreement  
may by far exceed the amount awarded under the main judgment.

Section 18 prohibits the forms of execution therein  
stated for enforcing payment by the buyer of any amount payable:

- (i) under the hire-purchase agreement; or
- (ii) as a result of the termination or rescission of the hire-purchase agreement; or
- (iii) as damages for any breach of the hire-purchase agreement.

It has been <sup>decided</sup> ~~held down~~ by this Court that the  
Legislature's intention was that (i) should apply to any  
amount directly payable under the hire-purchase agreement,  
such as an instalment; that (ii) should relate to any  
amount payable under the agreement or by law as a result  
of its termination or rescission, such as damages, a  
penalty or any liability under section 15(1)(b); and  
that (iii) should cover any amount payable as damages for  
any breach thereof, where the agreement is not terminated

or...../12

or rescinded. (See Market Furnishers v. Reddy, 1967 (1) S.A. 528 (A.D.) at p. 533 B.) Section 15 (1) (b) of the Hire-Purchase Act imposes an additional statutory liability on the buyer under a hire-purchase agreement who exercises his statutory right under section 14 (a) to terminate the agreement. It has, quite correctly in my view, been conceded by counsel for the appellant that the amounts payable as set out above, are the only monetary obligations of a buyer that could arise as a result of the entering into of a hire-purchase agreement to which the Hire-Purchase Act is applicable.

For the purposes of this judgment I shall assume, without deciding, that the decision in Allen and Others v. Duke (supra) was correct ~~and~~, namely that a judgment debt and a judgment for the costs in obtaining that judgment are two separate debts. For the reasons which follow I am of opinion that, even if this is the position, it does not assist the plaintiff.



I should also mention that I agree with Mr.

Schutz's contention that the Court's reasoning based on the words "as a result of" in section 18 is not a valid one in construing the <sup>whole</sup> <sub>1</sub> section because those words govern only the second one of the three causae debiti and has no bearing on the other two.

It is quite clear that a garnishee order and an order under section 65 of the Magistrates' Courts Act, 1944, can only be obtained after a judgment had been given by a magistrate for the payment of money. (See sections 65(1) and 72 of the Magistrates' Courts Act.) Although the power to make a decree of civil imprisonment was abolished in 1944, such a decree <sup>also</sup> <sub>1</sub> could, at the date when the Hire-Purchase Act came into force, ~~also~~ only be obtained after a judgment had been given. (See section 68 of Act 32 of 1917, now repealed.) It follows, in my judgment, therefore, that when a garnishee order or an order under section 65 is sought, such order is resorted to in order to enforce a judgment for payment by the buyer of any monetary

the 1970s, the 1980s, and the 1990s.

The 1970s were a time of great change for the world of medicine.

The 1980s were a time of great change for the world of medicine.

The 1990s were a time of great change for the world of medicine.

The 1970s were a time of great change for the world of medicine.

The 1980s were a time of great change for the world of medicine.

The 1990s were a time of great change for the world of medicine.

The 1970s were a time of great change for the world of medicine.

The 1980s were a time of great change for the world of medicine.

The 1990s were a time of great change for the world of medicine.

The 1970s were a time of great change for the world of medicine.

The 1980s were a time of great change for the world of medicine.

The 1990s were a time of great change for the world of medicine.

The 1970s were a time of great change for the world of medicine.

The 1980s were a time of great change for the world of medicine.

The 1990s were a time of great change for the world of medicine.

The 1970s were a time of great change for the world of medicine.

The 1980s were a time of great change for the world of medicine.

The 1990s were a time of great change for the world of medicine.

NIH.....

amounts arising from the three causae debiti described in section 18. ~~Every civil judgment given by a court~~ of law generally includes an order as to costs. Although an order as to costs might constitute a separate cause of action (I have pointed out that it is unnecessary to decide this issue), such order is nevertheless closely associated and ancillary to it. The magistrate quite correctly points out that section 72 gives leave to a "judgment creditor" to apply for a garnishee order and section 65(1) gives leave to a "judgment creditor" to recover "if a court has given judgment for the payment of money". I may add that in terms of the repealed section 68 of Act 32 of 1917, a decree of civil imprisonment could be made "whenever judgment has been given in favour of a judgment creditor". In my view, the conclusion is almost irresistible that in the context in which the words "judgment creditor" are used in the aforesaid enactments, the judgment creditor is a creditor nor only in respect of the causa debiti, but also for the costs incurred in obtaining judgment for the enforcement of the causa debiti. In my

judgment, therefore, the necessary implication is that what section 18 prohibits is the employment of the forms of execution therein described for the purpose of enforcing, not only the judgment debt arising out of any one of the three causae debiti mentioned in the section, but also the judgment as to the costs incurred in obtaining that judgment.

A consideration which, I think, lends support to the view I have just expressed, is that the three causae debiti mentioned in section 18 would appear to be the only causae debiti for the payment of money which could arise by virtue of a hire-purchase agreement and in terms of the Hire-Purchase Act. I have pointed out above that this was conceded by counsel for the appellant. The Legislature could, therefore, instead of enumerating three specific causae debiti for the payment of money, have provided in general terms that the prohibition should apply to

all...../15

all monetary obligations arising from the hire-purchase agreement, and the effect thereof would have been exactly the same as if specific causae debiti for the payment of money were mentioned. If the Legislature had done that, the contention that a judgment as to costs does not fall within the ambit of the prohibition because three specified causae/debiti are listed in the section and that an award of costs is not one of them, could not prevail.

The primary object of the Legislature is to protect buyers against themselves and against exploitation by sellers (see Coetzee v. Impala Motors (Edms.) Bpk., 1962 (3) S.A. 539 (T) ). I therefore regard it as inconceivable that the Legislature could have intended proscribing the employment of the remedies described in section 18 for the purpose of enforcing judgment debts arising out of the causae debiti mentioned in the section, but at the same time intended to permit a judgment creditor to use the ~~stated~~ stated forms

of ...../17

of execution in order to enforce the ancillary order as to costs. To ascribe such an intention to the Legislature would, in my judgment, lead to illogical and anomalous results. I am not impressed by counsel's argument that the Legislature envisaged that the stated forms of execution could be used to recover costs inasmuch as there may be instances where the costs incurred in obtaining a judgment may substantially exceed the amount of the judgment debt. Relatively speaking such cases are presumably rare and, in any event, the order as to costs still remains ancillary to the main judgment.

I proceed now to deal with the other sections of the Hire-Purchase Act referred to by counsel as an aid to the interpretation of section 18. If I understand counsel's argument correctly, it is that the Legislature recognised that the main judgment debt and the costs incurred in respect thereof arise from two separate causes of action, and, therefore, where it intended to deal with the question of costs it expressly provided therefor.

It follows, according to counsel's submission, that,

in...../18.

in the absence of any express provision as to costs in section 18, the Legislature intended to exclude the costs incurred in obtaining the judgment debt from the prohibition. In order to deal properly with counsel's contention it is necessary to set out the relevant statutory enactments he referred to. The portions of section 17, in so far as they are here relevant, read:

" (1) In any action by the seller for the return of any goods to which any agreement relates, the court may, without prejudice to any other power -

(a) if it is not satisfied as to the value of the goods, make an order requiring the goods to be sold, within a period stated in the order, by public auction by an auctioneer nominated by the court, or if the parties so agree, by private treaty.

(3) Any order referred to in paragraph (e) of sub-section (1) shall state the total amount found by the court to be payable under the agreement, the total amount of payments so found to have been made thereunder and the party by whom the costs incidental to the sale shall be borne; and the court may, when making any such order, at the same time order the buyer to pay to the seller the deficiency referred to in sub-section (5), if any.

(4) If any goods are sold in pursuance of any order referred to in paragraph (e) of sub-section (1), the auctioneer or, in the case of a sale by private treaty, the seller, shall, after deducting any costs incidental to the sale awarded by the



court against the buyer, any other costs so awarded and the total amount stated in the order to be payable under the agreement less the total amount of payments so stated to have been made thereunder, pay over the balance of the proceeds of the sale to the buyer. Any costs incidental to the sale, which have been so awarded, shall be a first charge upon the proceeds of the sale".

As to section 17(1)(e) and (3), it suffices to state that the costs referred to in section 17(3) are costs incidental to the sale ordered pursuant to the provisions of section 17(1)(e) and they do not include costs incurred in obtaining such order.

As to section 17(4), I shall accept counsel's contention that the words "any other costs" appearing in the section might include the costs incurred in obtaining the order referred to in section 17(1)(e). It is clear, however, in my view, that it was necessary for the Legislature in order to determine the balance of the proceeds of the sale that has to be paid to the buyer, to provide explicitly that, in addition to the other deductions

provided ...../20



provided for in the section, the costs incurred in obtaining the order pursuant to section 17(1)(e) should also be deducted.

For the foregoing reasons I do not consider that the sections referred to by Mr. Schutz lend support to his contention.

Counsel also sought to call in aid the provisions of section 69 (4) of the Magistrates' Courts Act, No. 32 of 1917 (introduced by section 88 of the General Law Amendment Act, No. 46 of 1935), and, the repeal thereof by section 22 of the Hire-Purchase Act. Section 69 (4) of the Magistrates' Courts Act, 1917, provided that "a judgment debtor shall not be liable for any costs incurred by the judgment creditor in any proceedings in connection with a decree of civil imprisonment.....

- (a) If the judgment debt arose from..... any liability to pay any money under a hire-purchase agreement ..... "

Counsel submitted that, in view of this provision, at the time the Hire-Purchase Act was passed, the Legislature was mindful...../21

mindful of a statutory provision distinguishing between costs and a liability under a hire-purchase agreement and, therefore, if it intended costs to be included in the prohibition contained in section 18 it would have provided so in express terms. I do not agree with this contention of counsel. It is true that the Legislature must have been mindful of the distinction between costs of litigation and a liability under a hire-purchase agreement, but, the fact that section 69 (4) of the Magistrates' Court Act, 1917, prohibited the recovery of costs in proceedings in connection with a decree of civil imprisonment if the judgment debt arose from any liability to pay any money under a hire-purchase agreement and <sup>the fact</sup> that section 18 of the Hire-Purchase Act now prohibits a decree of civil imprisonment ~~in order~~ to enforce a judgment debt arising from the listed causae debiti, rather point to an intention by the Legislature to include costs in the prohibition. It seems clear that section 69 (4) of the Magistrates' Court Act, 1917, was introduced

for the protection of the buyer under a hire-purchase agreement. In my judgment, section 18 of the Hire-Purchase Act was passed to afford even greater protection to the buyer. It is inconceivable, therefore, that the Legislature, while now prohibiting a decree of civil imprisonment altogether, would at the same time revert to the position as it was before the introduction of section 69 (4) and allow a decree of civil imprisonment in order to recover the costs incurred by a judgment creditor.

For all the foregoing reasons I come to the conclusion that the Legislature intended to include in the prohibition provided for in section 18 any costs incurred by the seller in enforcing payment of any amount the liability for which arises from any one or more of the causae debiti mentioned in the said section. The application for an order under section 65(1) of the Magistrates' Courts Act was therefore correctly refused. The appellant's counsel intimated that he would not ask for costs in this Court if successful. He is however unsuccessful

but as there was no appearance for the defendant the  
question of costs does not arise.

The appeal is dismissed.

OGILVIE THOMPSON, C.J.)  
RUMPF, J.A.)  
JANSEN, J.A.)  
MULLER, J.A.)

Concur.

*Handwritten signature: H. P. Gutman*