



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Not reportable

CASE NO: 346/06

In the matter between :

ANTHONY JOHN KRIEL

Appellant

and

HENDRIK BEUKES

Respondent

Before: STREICHER, MAYA JJA & MUSI AJA

Heard: 15 MAY 2007

Delivered: 31 MAY 2007

Summary: Illegal use of aircraft – claim for payment in respect of such use dismissed.

Neutral citation: This judgment may be referred to as *Kriel v Beukes* [2007] SCA 74 (RSA)

J U D G M E N T

THE COURT

THE COURT:

[1] The appellant instituted action in the magistrate's court for the payment of an amount in respect of the hire of his aircraft by the respondent. The respondent defended the action and claimed damages allegedly having been suffered by him as a result of the appellant having breached the contract of hire. The magistrate granted judgment in favour of the appellant in an amount of R4 283,22, granted absolution from the instance in respect of the respondent's counterclaim and ordered the respondent to pay the costs. An appeal to the Eastern Cape Local Division succeeded with costs in respect of the claim as well as the counterclaim and the magistrate's order was substituted with an order dismissing the appellant's claim and granting the respondent's counterclaim in an amount of R2 037 with costs. With the leave of this court the appellant now appeals against the judgment of the court a quo.

[2] It is common cause that the parties entered into an agreement in terms of which the appellant hired his aircraft to the respondent at a certain rate per hour and on condition that certain fees in respect of the aircraft be paid by the respondent. The respondent needed the aircraft for training purposes. In his counterclaim he alleged that it was a term of the agreement that he would be allowed to use the aircraft until he had obtained his commercial pilot's licence, that the appellant breached this agreement by terminating his use of the aircraft and that he suffered damages as a result. The court a quo would seem to have accepted that an agreement on the terms alleged by the respondent had been proved. In my view it erred in doing so. The appellant's evidence was not to that effect and the respondent tendered no evidence as to what the terms of the agreement were. According to the respondent he had no personal knowledge as to the terms of the agreement of hire as the agreement was concluded on his behalf by third parties. The third parties' evidence as to what the terms of the

agreement of hire were never tendered. In the circumstances the court erred in upholding the appeal in respect of the counterclaim.

[3] The respondent used the aircraft during the period 7 May 1998 to 25 May 1998 for 17.3 hours. At that time the aircraft had been in the possession of the appellant for more than a year. The appellant had acquired the aircraft from Messrs Fowles in whose names it was still registered. In terms of the regulations made in terms of s 22 of the Aviation Act 74 of 1962 the use of the aircraft during the aforesaid period was illegal. Regulation 47.00.10 provides that a certificate of registration of an aircraft expires on the fifteenth day after the date on which the holder of the certificate has transferred to another person the right of possession of the aircraft. From the commencement of the fifteenth day after the date on which a certificate of registration expires the use of the aircraft is prohibited until such time as the aircraft is registered in the name of the person to whom the right of possession of the aircraft is transferred and until such time as such person holds a certificate of registration issued by the Commissioner.¹ The appellant's claim is therefore a claim for payment in respect of the illegal use of his aircraft. Such a claim cannot be countenanced by a

¹Regulation 47.00.10 provides as follows:

- (1) If the holder of a certificate of registration transfers to another person the right of possession of the aircraft specified in the certificate, such holder shall, within 14 days from the date of transfer notify the Commissioner . . .
- (2) . . .
- (3) An application for registration by the person to whom the right of possession of the aircraft referred to in subregulation (1) is transferred, shall be made in terms of regulation 47.00.5 within 14 days from the date of transfer.
- (4) A certificate of registration shall expire on the fifteenth day after the date on which the holder of the certificate of registration has transferred to another person the right of possession of the aircraft.
- (5) From the commencement of the fifteenth day after the date on which a certificate of registration expires, no person shall use the aircraft specified in the certificate unless, and until such time as –
 - (a) the aircraft is registered in the name of the person to whom the right of possession of the aircraft is transferred; and
 - (b) such person holds a certificate of registration issued by the Commissioner.

court.² The *par delictum* rule to which the appellant's counsel referred finds no application in these circumstances.³ The court a quo therefore correctly upheld the appeal in respect of the appellant's claim.

[4] It follows that the appellant's appeal in respect of his claim for payment in respect of the use of the aircraft by the respondent should be dismissed and that his appeal in respect of the respondent's counterclaim should be upheld. In the circumstances it would be fair and practical if each party were to pay its own costs ie if no order as to costs be made in respect of this appeal, the appeal to the court a quo and the trial in the magistrate's court.

[5] The appeal is dismissed and the following order is substituted for the order of the court a quo:

- 1 The appeal in respect of the claim by the respondent (the plaintiff in the court a quo) is upheld.
- 2 The appeal in respect of the counterclaim by the appellant (the defendant in the court a quo) is dismissed.
- 3

²See *Mathews v Rabinowitz* 1948 (2) SA 876 at 878.

³*Loc cit.*

- 4 The following order is substituted for the order of the court a quo:
- (a) The plaintiff's claim is dismissed.
 - (b) The defendant's counterclaim is dismissed.

P E STREICHER
JUDGE OF APPEAL

M M L MAYA
JUDGE OF APPEAL

H M MUSI
ACTING JUDGE OF APPEAL