



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

CASE NO: A3001/2023

HEARD ON: 24.10.2023.

JUDGMENT: 23/01/2024

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

IN THE MATTER BETWEEN:

BRIAN MURWIRA

APPELLANT

AND

PREVILAGE CHIDZEWERE

RESPONDENT

JUDGMENT

STRIJDOM J

1. This is an appeal against the entire judgment of regional magistrate Hoosen in case number¹ GR/BB/RC 485/2022. The appellant brought an application for a mandament van spolie which was heard in the regional court, Boksburg on the 30th November 2022.

2. On the 15th day of January 2023, the appellant filed a notice of motion for an order to lead further evidence in terms of section 19 of the Superior Court's Act 10 of 2013.²

3. The appellant brought an application in the court *a quo* and sought an order inter alia:

3.1 that the respondent be and is hereby directed forthwith to make over and restore applicants' peaceful and undisturbed full possession use and control of the motor vehicle a Land Rover, Range Rover Sport, with registration number VCC 510 W and VIN number: SALWA 2 FE 7 EA 377 893;

3.2 in the event that the respondent fails to do so the Sheriff of the court and any other persons appointed by him are hereby directed and authorized to

¹ Caselines: Section 003-1 to 003-3

² Caseline: Section 002-1 to 002-3

give effect to the order, by taking possession and delivering the motor vehicle to the appellant;

3.3 that the respondent be and is hereby interdicted and restrained from unlawfully interfering with the applicant's possession and use and control of the motor vehicle.³

4. The application in the court *a quo* was brought in terms of section 30 of the Magistrate's Courts Act 32 of 1944 ('the MCA').

5. When the matter was heard in the court *a quo* on 24 November 2022, the court requested the parties to address it regarding the monetary jurisdiction. Having considered the application and the heads submitted by the parties, the court *a quo* concluded that it lacks the necessary jurisdiction to hear the matter. However, the court also considered the merits and found that the applicant was not wrongfully dispossessed of the vehicle.⁴

6. The crisp issue in this appeal for determination is whether the court *a quo* has the necessary monetary jurisdiction to adjudicate the application.

7. Section 30 of the Magistrates' Courts Act 32 of 1944 provides as follows:

³ Caseline: Section 007-1 to 007-3

⁴ Caseline: Section 005-1 to 005-6

'Arrests and interdicts

(1) Subject to the limits of jurisdiction prescribed by this Act, the court may grant against persons and things orders for attachments, interdicts and mandament van spolie.'

8. The 'limits' of jurisdiction referred to in this subsection are those contained in sections 28 and 29 of the Act; consequently, no order can be made in respect of any person or thing unless the court has jurisdiction over him or it in terms of sections 28 and 29.

9. Section 29 (1) reads as follows:

'Subject to the provisions of this Act and the National Credit Act, 2005 (Act 34 of 2005), a court, in respect of causes of action, shall have jurisdiction in

(a) Actions in which is claimed the delivery or transfer of any property, movable or immovable, not exceeding in value the amount determined by the Minister from time to time by notice in the Gazette.'

10. The amount has been determined by the Minister as being above R200 000.00 and up to R400 000.00 in respect of a Regional Court.

11. It has been argued on behalf of the appellant in the court *a quo* that it has jurisdiction over the person of the respondent as the respondent resides within the area of the Boksburg Regional Court. This submission loses sight of the provisions of section 29(1) and cannot be entertained.

12. The court *a quo* found that it cannot make an order in respect of a thing unless it has the jurisdiction in terms of section 29(1) of the MCA. The court further found that in the absence of any evidence of the value of the Range Rover, the court is not in a position to find that it has the necessary jurisdiction to hear the matter.⁵

13. It is common cause that no evidence was presented to prove the value of the Range Rover.

14. In this appeal there was no appearance for the respondent and no heads of argument was filed by the respondent.

15. At the commencement of the appeal counsel for the appellant was invited by the court to address us on the issue of jurisdiction before dealing with the merits. Counsel for the appellant conceded that the learned magistrate did not

⁵ Caseline: Section 005-8 para 8

misdirect himself on the law and that the court a quo could not entertain the said application for lack of jurisdiction.

16. In my view the concession by the appellant is dispositive of the crisp legal issue in this matter. Consequently, I find it unnecessary to deal with the merits of this appeal.

17. The new evidence which the appellant sought to adduce, relates to the sequence of events culminated in the respondent having possession of the appellant's vehicle and does not relate to the value of the said vehicle.⁶

18. I conclude that there is no basis for the conclusion that the learned magistrate misdirected himself on the law.

19. In the result, the following order is made:

Order

1. the appeal is dismissed.
2. No cost order is made.

⁶ Caselines: Section 002-1 to 002-3
Section 004-1 to 004-2 FA

**STRIJDOM J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

I agree and it is so ordered.

**MDALANA-MAYISELA J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearances:

For the appellant: Adv A Sibanda
Instructed by: Machingura Attorneys

For the respondent: No appearances