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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 03851/15

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

.....
DATE

.....
SIGNATURE

In the matter between:

**FIRSTRAND BANK LIMITED t/a GMSA FINANCIAL SERVICES
A DIVISION OF WESBANK**

Applicant

And

LEE-ANNE OLIVIER

First Respondent

DAVID VAN DER MERWE

Second Respondent

JUDGMENT ON APPLICATION FOR SUMMARY JUDGMENT

MAKUME, J:

[1] The Applicant issued summons against First and Second Respondents on the 25th February 2015. In the action Plaintiff prays for judgment against the First Respondent for return of a motor vehicle namely 2011 Mercedes Benz B200 with Engine Number [26.....] Chassis Number [WDD2.....] (*“the vehicle”*).

[2] Only the First Respondent entered appearance to defend and filed a plea to the summons whereafter the Applicant lodged this application for summary judgment. The First Respondent promptly filed an affidavit opposing the granting of summary judgment.

[3] The Applicant says that it is the owner of the vehicle and attaches a Certificate of Registration issued by the Licensing Department dated the 31st January 2013 and that the First Respondent is in unlawful possession of the vehicle. In the plea read together with the answering affidavit the First Respondent denies being in unlawful possession of the vehicle and puts up a version that she acquired possession of the said motor vehicle as a gift from her husband the Second Respondent. Secondly, the First Respondent places in dispute on ownership of the motor vehicle. She says that the document attached to the Applicant’s summons indicates that the First Respondent is the owner of the vehicle not the Applicant. There is a clear dispute as to ownership accordingly the general rule that credibility ought not to be decided on affidavit in my view applies in this matter.

[4] The Applicant contends that the First Respondent does not have a *bona fide* defence to its claim. This is not true. The First Respondent has indeed in her answering affidavit as well as in the plea set out sufficient material statement of fact which if proved at the trial will constitute a defence to the Plaintiff's claim. In my view the First Respondent's affidavit complies in all respects with the requirements as set out in *Breitenback v Fiat* 1976 (2) SA 226 (T).

[5] In my view the application for summary judgment should not be granted and I accordingly make the following order:

5.1 The application for summary judgment against the First Respondent is dismissed.

5.2 The First Respondent is granted leave to defend the action.

5.3 The Applicant is ordered to pay the costs of this application.

DATED at JOHANNESBURG this 5th day of JUNE 2015.

M A MAKUME
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING	22 APRIL 2015
DATE OF JUDGMENT	05 TH JUNE 2015
COUNSEL FOR THE APPLICANT	ADV C A DU PLESSIS
INSTRUCTED BY	MESSRS ROSSOUWS LESIE INC 8 Sherborne Avenue Parktown Johannesburg Tel: (011) 726 9000 Ref: MAT13717/JJ Coertze/dg
COUNSEL FOR THE FIRST RESPONDENT	MR A S MARAIS
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