

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

Case Numbers: **2023-042622**

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

DATE

SIGNATURE

In the matter between:

**TRANSFLOW (RF) (PTY) LIMITED**

Plaintiff

and

**SITHOLE MARIA NONYEMBEZI**

Defendant

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**JUDGMENT**

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**SENYATSI, J**

*Introduction*

[1] This application concerns a judgment for confirmation of cancellation of instalment sale agreement and the return of the 2020 TOYOTA QUANTUM/HIACE

2.5- D-4D SESFIKILE 16S with engine number 2[...] and chassis number A[...] (“the vehicle”) to the Plaintiff forthwith.

### *Background*

[2] The applicant and respondent entered into a credit agreement (“the agreement”) in Midrand in terms of which the plaintiff sold a vehicle to the defendant. I say so because although the original agreement was concluded with Potpale Investment (RF) Pty Ltd (“Potpale”) and the respondent, but the agreement was ceded to the applicant. For convenience sake, the parties will be referred to as in the summons.

[3] The agreement was for the finance of the vehicle which after payment of the deposit as agreed was delivered to the defendant and used in a minibus taxi business. The common facts are that the defendant has not been able to meet the monthly repayment obligations. At the time of issuing of the summons the defendant was in arrears in the sum of R199 953.54 and the amount remains due. Consequently, summons was issued and served on the defendant during May 2023 and defended by the defendant who filed her plea.

[4] The gist of her plea is a bare denial of the allegations in the summons. She however, concedes that she informed one of the representatives of the plaintiff that she was not able to meet her monthly repayment obligations. The defendant states in her defences that:

- 4.1. termination of the agreement is not an order that can be sought in summary judgment proceedings;
- 4.2. the plaintiff does not have *locus standi* to seek a declarator that the agreement was cancelled;
- 4.3. men from SA Taxi already repossessed her vehicle on 30 November 2022 whilst Qumbu in the Eastern Cape Province.
- 4.4. An order that the agreement is cancelled is ancillary to the main claim for return of the vehicle, in the same way that an order for costs is not mentioned as one of the forms of relief allowed under summary judgment but is ancillary relief; and

4.5. the plaintiff has no *locus standi* to institute the claim against her.

[5] In its answer to the defendant's opposing affidavit, the plaintiff states that it did not send any men to collect the vehicle and that it could not have done so without an order from the court. If the vehicle has been handed over to men unknown to the defendant, it is likely that the defendant was a victim of a scam. This is so, so contends the plaintiff, because the tracking device that was fitted to the vehicle, was disabled on the same day.

[6] There is no basis for contending that the plaintiff has no *locus standi* in the litigation because its *locus standi* is borne out by the cession it concluded with Potpale when it bought the agreement. There is also no basis set out by the defendant that the termination of the agreement cannot be sought as relief in summary judgments. Rule 32 of the Uniform Rules of Court provides as follows:

**"Summary judgment**

- (1) The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only—
  - (a) on a liquid document;
  - (b) for a liquidated amount in money;
  - (c) **for delivery of specified movable property** (*my emphasis*); or
  - (d) for ejectment, together with any claim for interest and costs."

[7] Clause 25.1.1 of the Standard Terms of the Agreement states that the defendant will be in breach of the agreement if she fails to make payment of the instalment. I am satisfied that therefore that the defendant is in breach of the agreement. In terms of the agreement, the ownership of the vehicle remained with the plaintiff until the full repayment of the amount funded for the acquisition of the vehicle.

[8] Having considered that papers and the submissions by counsel, I am satisfied that the plaintiff has made out a case in terms of Rule 32 of the Uniform Rules.

*Order*

[9] Having considered the papers and the submissions made, the following order is issued:-

- (a) the termination of the agreement is confirmed;
- (b) the defendant is ordered to return the 2020 TOYOTA QUANTUM/HIACE 2.5- D-4D SESFIKILE 16S with engine number 2[...] and chassis number A[...] (“the vehicle”) to the Plaintiff forthwith;
- (c) the defendant is ordered to pay the expenses incurred for the removal, evaluation and storage of the vehicle and sale of the vehicle; and
- (d) the defendant is ordered to pay the costs on the scale as between attorney and client.

**ML SENYATSI**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be **18 September 2024**.

Appearances:

For the applicants: Adv R Stevenson

Instructed by Marie-lou Bester Inc

For the first respondent: Adv R Bekker

Instructed by Beneke Gantley Incorporated

Date of Hearing: 14 February 2024

Date of Judgment: 18 September 2024