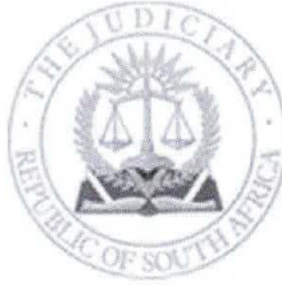


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.:054884/2023

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

Date: 2 December 2024 E van der Schyff

In the matter between:

Cartello Motors CC

(Reg No: 1993/001272/23)

Applicant

and

Koop Styger

Respondent

JUDGMENT

Van der Schyff J

Introduction

[1] The applicant sought vindictory relief against the respondent in the form of the return of a motor vehicle described as a 2012 Aston Martin Vantage V8 (the

property). It is common cause that the respondent disposed of the vehicle and that it was removed from the respondent's physical control after the application was instituted and the application served on the respondent.

- [2] The applicant's counsel submitted that the applicant could subsequently not persist with the application for delivery of the property. The respondent indicated that it is not proceeding with the counter application. The court was requested only to deal with the issue of costs.

- [3] It is common cause that when the litigation commenced, the respondent was in possession of the property. The applicant alleged it was the lawful owner of the property and sought its return. The pertinent issue that underpins the costs order that stands to be granted in this matter is the respondent's decision to relinquish possession of the vehicle with full knowledge of the application and the relief sought therein.


- [4] By removing the property from his possession and delivering it to a third party, the respondent foiled the relief sought by the applicant and deprived the applicant of its right to have a court pronounce on its vindicatory remedy. In these circumstances, the respondent acted *mala fide* and should stand in for the costs, irrespective of the applicant's initial prospects of success. In these circumstances, the applicant should not be out of pocket because the application has been launched.

- [5] It is trite that courts award punitive costs to mark their disapproval of some conduct that should be frowned upon. The respondent's conduct after the institution of the legal proceedings offended section 34 of the Constitution in that it deprived the applicant of its right to have the dispute be resolved by the application of law and a decision in a fair public hearing before a court. In these circumstances, a punitive costs order is justified.

ORDER

In the result, the following order is granted:

1. The respondent is to pay the costs of the application and counter application on attorney and own client scale.


E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant:	Adv. T.J. Jooste
Instructed by:	AL Maree Inc.
For the respondent:	Adv. C. L. H. Harms
Instructed by:	Jaco Roos Attorneys Inc.
Date of the hearing:	21 November 2024
Date of judgment:	2 December 2024