

Hon Mofokeng S

CIV/T/277/81

IN THE HIGH COURT OF LESOTHO

In the matter of :

S. J. MARAIS Plaintiff

v

T. E. TSOAKO Defendant

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 20th day of September
1982

The plaintiff sued defendant for the arrears of instalments amounting to M3400 on an Isuzu bus Reg. No. OB 50526 bought by defendant on hire purchase terms. The bus in question had been attached by the sheriff in terms of a clause of the hire purchase agreement. Default Judgment was granted in favour of the plaintiff on the 7th June 1982.

The Isuzu bus had in the meantime been valued by a "sworn appraiser", Mr. C.D. Househam, an architect by profession, who is the only sworn appraiser in Lesotho according to Mr. Koornhof. He valued the bus at M1500 and Mr. Koornhof moved the Court to enter judgment against the defendant for the balance, viz, M1900 damages which the plaintiff allegedly suffered.

The Administration of Estates Proclamation (s.11) makes provision for the appointment of "sworn appraiser" by the Master of the High Court for the valuation of estates and property. Such a valuation is for the purpose of probate death duties and distribution of assets to beneficiaries. No doubt such an estate may include a vehicle but that kind of property usually forms only a small part of the assets and quite frankly I do not know, and have not been told, what is Mr. Househam's experience in the valuation

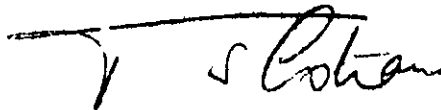
/of buses,

of buses, though no doubt he may have general experience.

The Hire Purchase Acts of both the Republic of South Africa and Lesotho (see infra) introduce the concept of an "appraiser" other than a "sworn appraiser" under the Administration of Estate laws. He can be any person who, by virtue of his experience knowledge or skill, as well as ability and reputation, is competent to determine the value of goods of the relevant kind. (See Claassen's Legal Words & Phrases Vol. I 1975 Butterworths pp. 120 and 121).

An "Appraiser" for the valuation of vehicles is provided for in ss. 2 and 18 of the Hire Purchase Act 1974 (Vol. XIX 1974 Laws of Lesotho). Admittedly the Act does not apply to hire purchase agreements in excess of M4000 (and this one seems to be in excess of that) but I see no difference in principle if the object of the exercise is the same, viz, to ascertain the value of the vehicle in the best manner the law could contrive for the safeguard of the interests of all. Indeed it would seem from the text of s.18 that this course should be adopted not only in transactions relating to vehicles subject matter of the Act but "in connection with any agreement" etc.....

I therefore decline to enter judgment in the amount as prayed based on that valuation and direct that the provisions of s.18 of the Hire Purchase Act 1974 be pursued in this case. Mr. Kolisang seems still to be the attorney of record of defendant though he says he is unable to contact his client. The report should be in the form of affidavit specifying the credentials of the deponent.



CHIEF JUSTICE

20th September, 1982

For Plaintiff: Mr. Koornhof } with copy of Judgment
For Defendant: Mr. Kolisang }