CIV/APN/66/2012

IN THE HIGH COURT OF LESOTHO

In the matter between:

K. LU **Applicant**

And

PRO MOTORS (PTY) LTD **1st Respondent**

NEO **2ndRespondent**

Judgment

Coram: **Hon. Hlajoane J**

Date Heard: **25th September, 2012.**

Date of Judgment: **14th November, 2012.**

Summary

First Respondent having undertaken to repair Applicant's vehicle but taking it to 1st Respondent without the authorization of the Applicant. First Respondent refusing to release the vehicle to Applicant before repairs. Storage charges considered unreasonable. Applicant under

principle of unjust enrichment made to pay for labour costs and reasonable storage charges.

ANNONATATIONS

BOOKS

1. **Voet 17. 1. 19**

CASES

1. **Central Bank of Lesotho v Phoofolo (1985 – 89) LAC 253 at 259**
2. **Pretoria City Council v Meerlust Investments (Pty) Ltd 1962 (1) S.A 321 A at 325C**

[1] This Application was moved on urgent basis but the Court after going through the papers decided that there was no urgency. Service on the respondents was thus ordered and papers filed in the ordinary way.

[2] The two main prayers in this application are first the release of the applicant's vehicle from the first respondent. Also that the contract purported to have been entered into between the two respondents be declared null and void.

[3] The facts of this case as gleaned from the papers filed of record have been that towards the end of 2011 the applicant and the 2nd respondent had entered into an oral agreement. The contract was for the repair of applicant's vehicle by the 2nd respondent who represented that he knew how to repair that kind of a vehicle and that he has always been repairing similar vehicles.

[4] Applicant pointed out that he was only surprised when in January of this year was presented with a quotation from the 1st respondent. The quotation required him to pay all the money that was reflected therein.

[5] Applicant was surprised because as far as he was concerned he had never entered into any contract with the 1st respondent, but the second respondent. He had been promised by the 2nd respondent that the work to be done on the vehicle was not going to cost anything more than three thousand maluti. He was only amazed to get a quotation for payment of more than M20,000.00 (twenty thousand maluti).

[6] Applicant at paragraph 8 of his founding affidavit showed that he had approached the office of 1st respondent for the release of his vehicle but his request was turned down. According to the applicant, when he so approached the 1st respondent for the release of his car, the car had yet not been repaired.

[7] But in response to that paragraph 8 of the applicant's founding affidavit the 1st respondent in his opposing affidavit has this to say:-

"*Contents herein are denied to the extent that we threatened to tow the vehicle in our possession to South Africa and I aver none of us in this company is a South African nor do we own any company of this nature in South Africa. The rest of the contents are admitted.*"

[8] What the above meant was that the 1st respondent admitted that applicant's car had yet not been repaired at the time that applicant

approached 1st respondent's office for the release of his car after he had received a quotation from the person whom he had not entered into any contract with for the repair of his vehicle.

[9] That must have been the case because the rest of what the 1st respondent admitted in his opposing affidavit included also the statement by the applicant to the effect that when the 1st respondent refused to release the vehicle to him the vehicle had yet not been repaired.

[10] Again, in his opposing affidavit, the 1st respondent has not denied that the 2nd respondent had brought the vehicle in question to them for repairs. 2nd Respondent had thought that the vehicle only had an electrical problem. The two parties concerned were agreed that the charge for that service was going to be M250.00 only.

[11] On working on the vehicle the 1st respondent discovered that it was not an electrical problem that was causing the engine not to start but that it was low compression from the cylinder head. 1st Respondent said 2nd respondent gave him a go ahead to work on the vehicle all the same.

[12] 1st Respondent further showed that it was verbally agreed that the total labour was going to be M1,750.00 (one thousand seven hundred and fifty maluti). When the cylinder head was opened it was discovered that the valves were bend hence the low compression resulting in failure to start the engine.

[13] Applicant has attached to his founding papers registration certificate which confirms that the vehicle has been registered in his names. Also attached to the same papers is the quotation from the 1st respondent dated the 25th January though the year has not been captured.

[14] 1st Respondent has not denied that that quotation came from them, see paragraph 7 of his opposing affidavit. But looking at paragraph 3.7 of the 1st respondent's opposing affidavit he said they had expected payment which since 13th December, 2011 had not received.

[15] Applicant at paragraph 7 of his founding affidavit pointed out that he was surprised when he was given a quotation by the 1st respondent during January of 2012, requesting him to pay all the money that was reflected in that quotation. Since the quotation only came in January, it could not be correct for 1st respondent to have expected payment since 13th December, 2011 yet the quotation was yet not received by the applicant.

[16] I have shown earlier on in this judgment that 1st respondent has not denied that applicant did approach them for the release of his car after he had received their quotation. That at time the vehicle had yet not been repaired.

[17] 1st Respondent has not shown us in his papers as to why he did not release applicant's vehicle at that time but went ahead to prepare and sent the quotation to 2nd respondent yet the vehicle had yet not been repaired.

[18] In his papers, 1st respondent has shown that they had verbally agreed with the 2nd respondent that labour costs would be M1,750.00, but the quotation has reflected M2, 000.00 for labour.

[19] Again 1st respondent has shown in his papers that when they opened the cylinder head it was discovered that the valves were bend. He never said they needed to be replaced. But the quotation has reflected M4500.00 for parts not specified.

[20] On the issue of storage charge, 1st respondent said they started charging storage fee at M450.00 per day. It has not been explained as to how they came to fix the charge at M450.00 per day.

[21] 1st Respondent has shown that the car has been repaired and is ready for collection after payments for repairs and storage will have been made. He further said that applicant will be unjustly enriched if the vehicle could be released to him without paying them the amounts as reflected in the quotation.

[22] Applicant has also challenged the legality of the opposition filed by the 1st respondent. He argued that since there has been no resolution of directors attached to the opposing papers giving the deponent power to oppose the matter it must be taken as not properly opposed. He asked the Court to treat the application as unopposed.

[23] In the case of **Central Bank of Lesotho v Phoofolo**[1] **Mahomed JA** said:-

"There is no invariable rule which requires a juristic person to file a formal resolution, manifesting the authority of a particular person to represent it in any legal proceedings, if the existence of such authority appears from other facts."

[24] The 1st respondent has the opposing affidavit of one Neil Skinner, who only deposed to being co-director in the 1st respondent company. He said he was responsible for all the mechanical repairs of vehicles brought to the 1st respondent. That was all that he said. He never mentioned that he was authorized to depose to that affidavit. It can therefore not be concluded that the authority to oppose the matter appeared anywhere from any facts.

[25] It has been clearly stated in the case of **Pretoria City Council v Meerlust Investments (Pty) Ltd**[2] that, once the issue of authority has been properly raised, the party bears the onus of showing that he was authorized to represent a party suing or being sued.

[26] In *casu* it may well be that there was no such resolution but again the applicant failed to file any replying affidavit and only raised this fact of want of resolution in his heads of argument. But the 1st respondent also did not even make any attempt to respond to that point in his heads of argument. He only dealt with the relationship as between agent and principal which has been the relationship between the applicant and the 2nd respondent.

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[1] 1985 – 89 LAC 253 at 259B
[2] 1962 (1) S.A 321A at 325C

[27] Applicant had referred to **Voet**[3] where it was made clear that if an agent has made a contract in his own name the principal does not acquire any rights under the contract. The 1st respondent has shown in his opposing affidavit at paragraph 3.1 that the applicant was unknown to him as he never talked to him regarding the vehicle but the 2nd respondent.

[28] It may well be that the 2nd respondent acted on his own to take applicant's vehicle to the 1st respondent for repair hence why 2nd respondent chose not to file any papers in this case. 1st Respondent as it were may well have deposed to the opposing affidavit.

[29] Of significance in this case would be the fact that the vehicle which has been repaired by the 1st respondent belongs to the applicant. He has not denied that when he released his car to the 2nd respondent it had a problem of getting the engine to start running.

[30] In his own words the 1st respondent has shown that the agreed labour costs was M1,750.00. He has not shown in his papers that for the bend valves for the car there had to be a replacement of the same, so that the quotation for M4500.00 has not been substantiated.

[31] Again on the storage charge, the 1st respondent has not shown as to why and how he came to charge M450.00 a day for storage. Under such circumstances the Court felt that if awarded costs for

[3] Voet 17.1.19

storage it must be a reasonable charge under the circumstances of this case.

[32] Since the car has been repaired the Court is of the feeling that applicant would be unjustly enriched if the car would just be released to him without any fees paid.

[33] The 1st respondent is thus ordered to release to the applicant his Jetta 4 V.M. vehicle, but the applicant to pay the M1,750.00 for labour costs.

[34] For the storage charge, the 1st respondent as already shown above has not denied that when applicant came for the release of his vehicle, the car had yet not been repaired. So that the costs for storage must be taken to have been caused by his acts. The principle of '*volenti non fit injuria'* would apply to instances of this nature.

[35] I would however award what I consider to be reasonable in the circumstances of this case. The amount of M2,000.00 (two thousand) is awarded for storage costs. Costs of suit awarded to the applicant.

A. M. HLAJOANE
JUDGE

For Applicant: Mr Habasisa

For Respondent: Mr Potsane