

KARIBA CHRISTIAN CENTRE T/A MOST HIGH HOTEL
versus
LESSLEY ANNE SEILER

HIGH COURT OF ZIMBABWE
KAMOCHA J
HARARE 19, 25 AND 31 MARCH AND 7 APRIL 2004

URGENT CHAMBER APPLICATION

Ms J. Wood, for applicant
Mr E. Morris, for respondent

KAMOCHA J: The interim order being sought in this application is that the respondent be ordered and directed to deliver motor vehicle registration number 654-635 J and the registration book of the Venter trailer registration number 697-421 Q to the applicant or to the Deputy Sheriff pending the confirmation or discharge of the order.

Briefly, the circumstances leading to this application are these. Brian Keith Seiler was married to the respondent. The two parted ways in January 2003 and respondent took the vehicle in question at separation. The two have since divorced.

The history of the said vehicle is that it was purchased using the applicant's funds and was registered in the name of the applicant in May 2001. It is not disputed that it was only registered in the respondent's name in December 2002. According to the applicant's version the vehicle was for the use of the two directors i.e. the respondent and her ex-husband. It was later registered in the name of the respondent for tax purposes.

Respondent, however, contends that although the money used to purchase the vehicle belongs to the applicant the vehicle was bought for her as her personal property. If that is true respondent and her ex-husband must have cheated the applicant. They used the applicant's funds improperly.

The respondent seemed to be contending that even if she were to dispose of the vehicle applicant had a remedy. It could sue her for the value of the vehicle. It is not disputed that she is about to go overseas for holiday.

On her return she will relocate to South Africa. Respondent even revealed that she had sold the vehicle to a third party for S.A.R50 000 on 11 March 2004. She has done so despite the fact that she knew that the vehicle was the subject of litigation.

In my view, it is only fair to resolve the dispute over the ownership of the vehicle before she can be allowed to sell it.

To allow her to dispose of the vehicle because the applicant can sue her for its value wherever she will be will create unnecessary hardship for the applicant. Assuming she relocates to neighbouring South Africa she will then be a *peregrinis* and will have no property in this country to attach in order to found/confirm jurisdiction. She will have disposed of or removed any assets she had in this country.

In the circumstances I am not at all persuaded by the argument that the applicant has a remedy of suing for the value of the vehicle. I prefer a situation where the question of ownership is first resolved before the vehicle is disposed of.

In the result, I would grant the provisional in terms of the draft.

Byron, Venturas & Partners, applicant's legal practitioners

Messrs Gill, Godlonton and Gerrans, respondent's legal practitioners