

AKOJEE v SIBANYONI AND ANOTHER
[1976] 3 All SA 542 (W)

Division: Witwatersrand Local Division
Judgment Date: 11 May 1976
Case No: not recorded
Before: Nicholas J
Parallel Citation: [1976 \(3\) SA 440](#) (W)

• [Keywords](#) • [Cases referred to](#) • [Judgment](#) •

Keywords

Motor vehicle - Owner - Registration of ownership - Retention of registration certificate and licence - Effect

Motor vehicle - Registration of vehicle - Registration certificate - Document of title to motor vehicle

Ownership - Movables - Delivery - For purposes of sale - Private restriction on terms of sale - Estoppel

Cases referred to:

Bold v Cooper and Another [1949 \(1\) SA 1195](#) (W) - Referred to

Electrolux (Pty) Ltd v Khota and Another [1961 \(4\) SA 244](#) (W) - Applied

United Cape Fisheries (Pty) Ltd v Silverman [1951 \(2\) SA 612](#) (T) - Referred to

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Judgment

NICHOLAS, J.: This is an application for an order authorising and directing the Deputy-Sheriff to remove from the possession of the first respondent or the second respondent a 1974 Volkswagen "Kombi Vehicle", registration number TG 1348, and to hand it over to the applicant.

In his founding affidavit the applicant alleges that he is the owner of the vehicle, which was registered and licensed in his name in terms of the Road Traffic Ordinance, 21 of 1966 (T). On 20 October 1975 he delivered the vehicle to Power Filling Station (Pty.) Ltd. ("Power"), a motor dealer of Germiston, with instructions to sell it on the applicant's behalf for R2 900. Power was represented by a director, one Limberis. The applicant says that he did not hand the licence or registration papers relating to the vehicle over to Power, nor did he sign a notice of transfer of ownership such as is referred to in sec. 42 (3) (a) of the Ordinance. He says that he agreed with Limberis,

". . . that if and when he was able to find a purchaser for the vehicle he would advise me and against payment to me of the purchase price of R2 900, I would hand over to the purchaser of the vehicle the relevant licence and registration certificates and I would sign the necessary forms in order to effect registration of the change of ownership thereof into the name of the purchaser and that the vehicle would simultaneously then be delivered to the purchaser by the said Power Filling Station (Pty.) Ltd. on my behalf. Such sale was accordingly to be a cash sale".

Although this is not clear, I shall assume for the purposes of the present matter that the applicant is here saying that Power was instructed not to deliver the vehicle to the purchaser until the applicant had been paid the purchase price.

Limberis subsequently advised the applicant that he had found a purchaser for the vehicle and he handed to the applicant a cheque drawn by Power Development (Pty.) Ltd. for R2 900. This cheque was dishonoured on presentation and the applicant accordingly refused to hand over the licence and registration papers and demanded the immediate return of the vehicle.

Not getting the vehicle back, he reported that matter to the police and learned later that Power Developments had been placed in liquidation and Limberis had been arrested on charges of fraud.

As a result of enquiries he ascertained that the vehicle was in the possession of the first respondent, who told the applicant that he was driving it with the permission of the second respondent, who was the owner.

The applicant then launched this application.

In his answering affidavit, the second respondent says that he bought the

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vehicle from Power which carries on business, *inter alia*, as a dealer in new and second-hand motor vehicles in Germiston. During the second half of October 1975 he saw the vehicle among at least 10 other second-hand vehicles which were exhibited for sale in an open lot adjoining the building where Power carried on its business. There was no indication of any kind that the second-hand motor vehicles, which were exhibited for sale, were not the property of Power. The second respondent bought the vehicle for the sum of R3 300, of which he paid the sum of R2 000 in cash. In respect of the balance he entered into a hire-purchase agreement with Santam Huurkope Bpk. which paid the sum of R1 300 to Power. The second respondent signed a number of documents, the nature and contents of which he did not, however, remember. He says that he accepted that there had been a compliance with the formalities associated with the purchase of a motor vehicle. The Kombi was then delivered to him.

This is therefore another of those cases in which the Court is called upon to decide which of two *prima facie* innocent parties is to suffer for the fraud of a third person.

The belief of the applicant that he was protecting himself by retaining the possession of the registration certificate and annual licence issued under the Road Traffic Ordinance, 21 of 1966 (T), was illusory. Such documents do not constitute documents of title to the motor vehicle. Delivery of them to another does not constitute an implied representation of a power to dispose of the vehicle: it takes the matter no further than the delivery of the vehicle itself (see *Bold v. Cooper and Another*, 1949 (1) S.A. 1195 (W) at pp. 1200-1). And, conversely, the fact that a person disposing of a motor vehicle is not in possession of these documents is not inconsistent with his power to dispose. Compliance with the provisions of sec. 42 (3) (a) of the Ordinance, in terms of which a transferor of a motor vehicle is required to deliver to the new owner a notice of transfer of ownership, together with a registration certificate and a licence, is not a prerequisite to the passing of the ownership in the vehicle, which is governed by the common law.

On the applicant's own case, he delivered the vehicle to Power, a firm of motor dealers, for the purpose of selling it, and he must have contemplated that Power would exhibit the vehicle for sale at its business premises with its other stock-in-trade. Power therefore dealt with the vehicle with the applicant's consent in such a manner as to proclaim that the *dominium* or *jus disponendi* was vested in it. In these circumstances, the applicant is estopped from vindicating the vehicle from the second respondent who is an innocent third party (see *Electrolux (Pty.) Ltd. v. Khota and Another*, 1961 (4) S.A. 244 (W) at p. 247, and cases there cited). The applicant clothed Power with the apparent authority to sell the vehicle as if it were part of Power's own stock and he cannot set up his private instructions that Power was not to deliver the vehicle to a purchaser until the applicant had been paid the purchase price (see *United Cape Fisheries (Pty.) Ltd. v. Silverman*, 1951 (2) S.A. 612 (T)).

The application is accordingly refused with costs, including the costs of the postponements on 23 February 1976 and 10 March 1976.

Appearances

AI Katz - Advocate/s for the Applicant/s

JC Labuschagne - Advocate/s for the First and Second Respondent/s

Ivor Trakman and Sweidan - Attorney/s for the Applicant/s

Le Roux, Mathews and Du Plessis - Attorney/s for the First and Second Respondent/s

