

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA
MAIN DIVISION, WINDHOEK**

PRACTICE DIRECTIONS 61

Case No: HC-MD-CIV-ACT-DEL-2020/02166

In the matter between:

PHONNY VIHANGA

PLAINTIFF

and

RATURUA TJINDERE

DEFENDANT

Neutral citation: *Vihanga v Tjindere* (HC-MD-CIV-ACT-DEL-2020/02166) [2022]
NAHCMD 47 (11 February 2022)

Coram: Oosthuizen J

Heard: 21-22 September 2021 and 4 October 2021

Delivered: 11 February 2022

ORDER

1. Plaintiff's claim is dismissed with costs.
2. The matter is finalized and removed from the roll.

REASONS

OOSTHUIZEN J:

[1] Plaintiff claims delivery of a Ford Ikon motor vehicle with registration number N 168 630 W and VIN number MAJBXXMRTBEY 24671 from the defendant on the basis that he is the owner alternatively the *bona fide* possessor thereof.

[2] Defendant opposes plaintiff's claim on the basis that she is the lawful and registered owner of the aforesaid vehicle due thereto that she bought same from plaintiff at the purchase price of N\$52 000.

[3] Plaintiff testified that he bought the vehicle on a staff auction of the City of Windhoek on 30 November 2018.

[4] Defendant testified that she bought the vehicle shortly thereafter from plaintiff and paid to him two cash payments of N\$20 000 each respectively during December 2018 and March 2019, as well as additional payments during March 2019 and April 2019 amounting to N\$12 000.

[5] Defendant called a corroborating witness for the payment of N\$20 000 during December 2018 and her brother who testified about the payment of N\$20 000 during

March 2019.

[6] Defendant testified that she personally made the all payments amounting to N\$52 000.

[7] Plaintiff testified that he had no intention to sell the vehicle to defendant, denying the agreement of sale. He further testified that he laid a theft charge against the defendant with Nampol which he did not follow through due to domestic violence charges defendant laid against him.

[8] He testified that he left the vehicle in the care of defendant when he left on a journey to Okakarara and that the deregistration and roadworthy documents were in the car. He testified that when he came back from Okakarara during June 2019 he found the vehicle with a different registration number and licence in the name of defendant.

[9] Defendant testified that plaintiff left the vehicle in her possession with the necessary papers to register it in her name as she had paid the purchase price.

[10] Plaintiff had to prove that he is the owner of the vehicle in question; that the vehicle is in the possession of defendant and is still in existence.

[11] Defendant, in order to defeat plaintiff's vindicatory claim, had to prove her right to continue to hold the vehicle against the plaintiff.

[12] The court is tasked to make a finding in respect of the two diametrically opposed ownership claims in the present circumstances.

[13] The parties were in a romantic relationship when plaintiff bought the vehicle. According to defendant the vehicle was bought for her but plaintiff changed his mind and want her to pay for the vehicle to which she agreed.

[14] Plaintiff waited a year before instituting this proceedings.

[15] On all the evidence tendered the conclusion of the court is that the version of the defendant is more probable than the ownership version of the plaintiff.

[16] Cost follow the result.

[17] Plaintiff's claim is dismissed with costs

G H Oosthuizen
Judge

APPEARANCES:

PLAINTIFF(S): Mr. Lombaard
of PD Theron & Associates,
Windhoek
Namibia

DEFENDANT(S): Ms. Jason
Of Kangueehi & Kavendjii Inc.
Windhoek
Namibia