



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED

FROM The Registrar, Supreme Court of Appeal
DATE 18 October 2021
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Ronel Noleen Smit v Calvin Kleinhans (case no 917/2020) [2021] ZASCA 147 (18 October 2021)

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) upheld an appeal against an order of the Eastern Cape Division of the High Court, Grahamstown (high court), and substituted the high court order by dismissing the appeal.

Ms Smit and Mr Kleinhans were in a romantic relationship. Ms Smit concluded a written instalment sale agreement with a Credit Provider for a motor vehicle. She did so, as to provide the use of the vehicle to Mr Kleinhans. In return, they orally agreed that he would pay the monthly instalments to her that she in terms of the written agreement had to pay to the Credit Provider. He was also responsible for all ancillary costs and maintenance. If he defaulted on any of these payments, Ms Smit would be entitled to the return of the vehicle. The relationship broke down and Mr Kleinhans defaulted on payment for July 2018 and refused to return the vehicle. Ms Smit successfully instituted the *rei vindatio* remedy for the return of the vehicle in the Port Elizabeth

regional court. However, the high court on appeal dismissed the application because Ms Smit was the bona fide possessor of the vehicle and not the owner.

The issue before the SCA was whether Ms Smit could rightfully invoke the *rei vindicatio* to claim the return of the vehicle, and if not whether she had established that she had a stronger right to possess the vehicle and therefore entitled to for its return as a result of the breach by Mr Kleinhans. The SCA on appeal upheld the finding that the *rei vindicatio* is not available to a non-owner. However, the SCA found that a bona fide possessor is entitled to reclaim possession of the vehicle by way of a possessory remedy. As Mr Kleinhans breached the oral agreement, Ms Smit was entitled to the return of the vehicle.

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