

**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2024-112065

|      |                                 |
|------|---------------------------------|
| (1)  | REPORTABLE: NO                  |
| (2)  | OF INTEREST TO OTHER JUDGES: NO |
| (3)  | REVISED: YES                    |
|      | <b>30 October 2024</b> _____    |
| DATE | SIGNATURE                       |

In the matter between:

**EXECUTIVE MOBILITY FINANCIAL SOLUTIONS (PTY) LTD** Applicant

and

**GULF OILS AND FUELS (PTY) LTD**

First Respondent

**EUGENE NEL N.O**

Second Respondent

**ABRAHAM MASANGO N.O**

Third Respondent

**TENDAYI TINASHE JACOB MAWOKO**

Fourth Respondent

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 30 October 2024.

Summary: Property – Return of property – *Rei vindicatio* -requirements established- application granted.

The applicant applied for a *rei vindicatio* against the first and second respondents. The motor vehicle, which the applicant sought to recover, had been delivered to the first respondent, Gulf Oil (in liquidation) but was in the possession of the fourth respondent, its director.

Held: On the facts, the applicant successfully established that at the time of issuing the application its ownership of the motor vehicle and that the fourth respondent was in possession thereof. The lease having expired, the fourth respondent had no basis in law to keep the motor vehicle.

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## JUDGMENT

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MUDAU, J:

[1] The applicant seeks the return of a vehicle from the fourth respondent based on a *rei vindicatio* pursuant to Rule 6 (12) of the Uniform Rules. It is common cause between the parties that the applicant is the owner of a Mercedes-Maybach GLS600 vehicle with engine number 1[...], chassis number W[...], registration number K[...] and that the fourth respondent is currently in possession thereof. The dispute between the parties turned on the limited issue whether the applicant discharged the onus of proving its ownership of the motor vehicle. After hearing submissions, I granted the following order having determined that the requirements of Rule 6 (12) were met:

“1. The fourth respondent is immediately to return the applicant's Mercedes-Maybach GLS600 with engine number 1[...] chassis number W[...] and registration number K[...] ("the motor vehicle") to the Applicant.

2. In the event that the fourth respondent fails to comply with paragraph 1, within 1 calendar day of the granting of this order, that the Sheriff of this Honourable Court is authorised to attach and remove the motor vehicle from

the possession of the fourth respondent and to return the motor vehicle to the Applicant.

3. The fourth respondent shall pay the costs of this application, including the costs of counsel, on the scale C.”

[2] The applicant, Executive Mobility Financial Solutions (Pty) Ltd, is a company duly registered and incorporated in accordance with the company laws of the Republic of South Africa. Its principal place of business at 22 Hurlingham Road, Dunkeld, Johannesburg.

[3] The first respondent, Gulf Oils and Fuels (Pty) Ltd, in liquidation ("Gulf Oils"), is a company duly registered and incorporated in accordance with the company laws of the Republic of South Africa, and having its principal place of business at 4708 Bergamot Crescent, Summerfields Estate, Centurion. It is common cause that, Gulf Oils was placed in final liquidation on 8 September 2022 by order of this court in Pretoria (per Nyathi J).

[4] The second respondent, Eugene Nel, is an adult male liquidator of Gulf Oils appointed as such on 4 July 2023.

[5] The third respondent, Abraham Masango, is an adult male liquidator of Gulf Oils appointed as such on 4 July 2023.

[6] The fourth respondent, Mr Tendayi Tinashe Jacob Mawoko (" Mr Mawoko") is an adult male businessman presently residing at [...] R[...], S[...] G[...] Estate, Kempton Park, Gauteng, 1619. Mr Mawoko is the sole director of Gulf Oils.

### *Factual background*

[7] Briefly stated, pursuant to a rental agreement entered into between the applicant and Gulf Oils, the applicant gave possession of its movable property, the Mercedes-Maybach GLS600 referred to above to a representative of Gulf Oils, Mr Mawoko. Importantly, the rental agreement between the applicant and Gulf Oils expired on 25 July 2024. In terms of the Rental Agreement, the vehicle was required

to be returned to the applicant. It is the applicant's case that, Mr Mawoko was never authorised, in his personal capacity, to have possession of the motor vehicle. The liquidators of Gulf Oils have confirmed that they were unaware of the Rental Agreement, importantly, that they have no claim against the applicant and that they will abide the decision of this Court.

[8] Mr Mawoko denied that the application is urgent. Whilst conceding that the original lease agreement is no more by effluxion of time as alleged by the applicant, he contends that "there exists another agreement concluded in series with the lease agreement which provides for the purchase of the motor vehicle. In terms of the other connected agreement, the framing of the lease agreement was intended merely for securing the debt pending the extinction of the principal debt".

[9] It is common cause between the parties that on 13 July 2022 (annexure TM1"), the applicant in written communication to Gulf Oils, advised in response, to a request for a settlement quotation advised that subject certain stipulated conditions as well as those terms stipulated in the Vehicle Rental Agreement, payment of the amount of R3,005,537,47 ("the settlement amount") on or before 20/07/2022 ("the settlement date") will discharge Gulf Oils of its obligations to the applicant arising out of the Vehicle Rental Agreement. This was followed up by another settlement quote dated 20 July 2022 ("as per annexure TM2"), in the amount of R3,088,810.70 relied upon by the fourth respondent.

[10] Mr Mawoko's solitary defence to the *rei vindicatio* claim by the applicant is that he and the applicant allegedly entered into an "oral agreement" for the sale of the motor vehicle which the applicant denied. Mr Mawoko states that, "he elected not to proceed with the terms of such settlement quotations referred to above but continued on with the monthly repayments". Importantly, the applicant admits that negotiations did ensue as regards a potential sale of the motor vehicle but those negotiations fell through and no agreement was ever reached.

[11] It is trite that in application proceedings the affidavits take the place not only of the pleadings in an action, but also of the essential evidence which would be led at a trial.<sup>1</sup>

[12] The most obvious fundamental challenge for Mr Mawoko is that he failed to plead the elements for the conclusion of a sale agreement. Mr Mawoko has not pleaded that a purchase price was agreed to, nor that he has paid the applicant such purchase price. It is the applicant's case that he cannot make such allegations because neither occurred.

[13] It is trite that, for purposes of this cause of action, a litigant in the position of the applicant has to first allege and prove, that he/she/it is the owner of the thing.<sup>2</sup> Second, possession on the part of the respondent at the time of the institution of the proceedings.<sup>3</sup> Accordingly, legal proceedings based on the *rei vindicatio* therefore always must relate to the physical control being exercised by the respondent over the object in question at the time of the institution of the legal proceedings. A vindictory relief is only open to an owner for the recovery as in this instance, its property.

[14] The applicant claims delivery of a motor vehicle on the basis that it is the owner of the motor vehicle, and that the fourth respondent is in possession of the motor vehicle. It is common cause and not contentious that the vehicle is in Mr Mawoko's possession and that he continues to drive the motor vehicle in spite of the expiry of the lease agreement with the first respondent. The proceedings were therefore instituted in respect of an act which was being performed at the time of the institution of the proceedings, viz the exercise by the fourth respondent of physical control over the motor vehicle. In the words of Jansen JA, in *Chetty v Naidoo*,<sup>4</sup> a case where:

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<sup>1</sup> See inter alia, *Radebe v Eastern Transvaal Development Board* 1988 (2) SA 785 (A) at 793E; *Transnet Ltd v Rubenstein* 2006 (1) SA 591 (SCA) at 600G; *Molusi v Voges* NO 2016 (3) SA 370 (CC) at 381F–H).

<sup>2</sup> See *Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd* 1993 (1) SA 77 (A) 82; *Concor Construction (Cape) (Pty) Ltd v Santambank Ltd* 1993 (3) SA 930.

<sup>3</sup> See *Krugersdorp Town Council v Fortuin* 1965 (2) SA 335 (T) at 336G and *Vulcan Rubber Works (Pty) Ltd v South African Railways and Harbours* 1958 (3) SA 285 (A) at 289F; *Chetty v Naidoo* 1974 (3) SA 13 (A).

<sup>4</sup> 1974 (3) SA 13 (A) at 21G.

“a plaintiff who claims possession by virtue of his ownership must *ex facie* his statement of claim prove the termination of any right to hold which he concedes the defendant would have had but for the termination. . .”.

[15] I am satisfied that applicant meets each of the legal requirements for the relief sought. The applicant's proof of ownership is attached to its founding affidavit. Mawoko has not meaningfully challenged this ownership or put up a serious defence as to his continued possession of the vehicle. In essence, the fourth respondent, by contrast, has failed to establish that he was “vested with some right enforceable against the owner (e.g., a right of retention or a contractual right)” which entitled him to continue to hold against the owner.<sup>5</sup>

[16] As regards the question of urgency, the applicant also attached as annexure “RA1”, being tracking reports of the motor vehicle for the period between 18 September 2024, being the date on which a Mr Ekeh confronted the unauthorised driver who had been driving the motor vehicle unlawfully, up to 10 October 2024. It is clear from this tracking report that: the motor vehicle has repeatedly been driven, above the speed limit, despite Mr Mawoko's attorney's undertaking that the 18 September incident was a “single incident” and that it would not occur again. In addition, the motor vehicle was being stored, over-night, at various unknown locations which are not the locations cited in the Rental Agreement for either Mr Mawoko or Gulf Oils.

[17] The applicant pointed out to my satisfaction that it will, inter alia, be unable to fulfil its obligations by delivering the vehicle to the new rentee of the vehicle, in terms of the new rental agreement which the applicant has entered into. Accordingly, the applicant as it contended will be deprived of substantial redress in due course were the matter not to be heard on an urgent basis.

[18] I remain satisfied that the fourth respondent failed to show that he has a proper defence against the applicant's *rei vindication*. The applicant was therefore

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<sup>5</sup> Id at 20B-D.

entitled to vindicatory relief. It was inter alia, for these reasons that I granted the relief.

**MUDAU J**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

#### **APPEARANCES**

|                            |                    |
|----------------------------|--------------------|
| Counsel for the Applicant: | Adv. C. Shahim     |
| Instructed by:             | Thomson Wilks Inc. |

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|------------------------------------|----------------------------|
| Counsel for the Fourth Respondent: | Adv. Matlhaba E. Manala    |
| Instructed by:                     | Paul Friedman & Associates |

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|-------------------|-----------------|
| Date of Hearing:  | 15 October 2024 |
| Date of Judgment: | 30 October 2024 |