

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

Case Number: 2024-039537

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED: YES/NO

In the matter between:

GREG SHERING Applicant
and

RENIAS MUSTHIPISI Respondent

In re:

RENIAS MUSTHIPISI Applicant

and

GREG SHERING Respondent

APPLICATION FOR LEAVE JUDGEMENT

CARRIM, AJ

[1] This is an application for leave to appeal in terms of section 16(1)(a)(i) of the Superior Courts Act, 10 of 2013. The Applicant is seeking leave to appeal, to the Full Court of this Division, alternatively, the Supreme Court of Appeal, my judgment and order handed down on 29 July 2025

[2] On 29 July 2025 I granted an order in the following terms:

- a. The application for the return of the vehicle is dismissed,
- b. The Respondent must, within 10 days of date hereof, provide the Applicant with the name, address, and contact details of the person or entity that removed the vehicle with registration number: J[...] from the Respondent's property as referred to in the letter dated, 8 April 2024, (Annexure AA1 to the Answering Affidavit at 004-11).
- c. Each party to pay their own costs.

Brief Background

[3] On 10 April 2024, the Respondent, Applicant in the main matter, brought an application (main application) seeking relief in the following terms:

- a. That an order for *rei vindicatio* be issued against the Respondent to forthwith return the vehicle to the Applicant by delivering the motor vehicle at the Applicant's residential address being, 4[...] S[...] Street, T[...], Gauteng Province, alternatively, that the Respondent provides the Applicant with an address where the motor vehicle can be collected by the Applicant on a date to be determined at the hearing of this application.
- b. That the Sheriff of the court, with the assistance of the SAPS where necessary, is empowered to do all that is necessary to assist the Applicant with collecting the motor vehicle from the Respondent and placing the Applicant in possession of the motor vehicle, hereby executing with a court order.
- c. Further and/or alternative relief.

[4] While the Applicant had initially opposed the application and engaged in technical point taking, at the hearing of the matter the Applicant conceded that the vehicle belonged to the Respondent, that the vehicle was on his premises but that it had been removed at his behest.

[5] In my judgement I do not deal explicitly with the views of the Applicant regarding this vehicle but consider it important to restate them here. In his answering affidavit in the main application the Applicant states –

- a. At para 8.2. *“I deny that the vehicle in question is worth R450 000.00. The vehicles that were on the property looked like scrap metal. The windshields were smashed in, the body work of the vehicles were battered and if I recall correctly, none of the vehicles had any number plates on them. All the tyres were also flat. I doubt that the vehicles hold any value or that they are road worthy.”*
- b. Then at para 8.3 *“As is apparent from annexure FA1 the vehicle in question was registered in 1992, which means that the vehicle is 32 years and judging by the state that the vehicle was in I deny that the vehicle is worth R450 000.00”*
- c. At para 8.10, *“Mr Mazambani failed and/or refused to move the vehicles and because of the [state] of the vehicles I believed that Mr Mazambani abandoned the vehicles.”*

[6] Thus the version before the Court, put up by the Applicant is this: the vehicle was on my premises, I concede that the Respondent is the owner, the vehicle was in my view a piece of scrap, I was under the impression, rightly or wrongly, that it had been abandoned so I had it removed.

[7] It stands to reason then that the details of who, when and how the vehicle was removed lies solely within the Applicant’s knowledge

[8] Given the Applicant’s version one would expect - if he had disposed of the vehicle in good faith as he asserts - that he would simply have asked the Respondent to make good the costs of the removal and hand over the details of who removed the scrap and *cadit quaestio*. Yet surprisingly the Applicant has gone to great cost in strenuously opposing the relief sought by the Respondent.

[9] Another inconsistency that arises from the Applicant’s version is that in the letter of demand at 004-11 the Applicant demands an amount of R59 600.00

(from Mazambani) made up of arrear rentals, cleaning up costs, reinstatement of the property and R9 000.00 (nine thousand rand) for the rubble to be removed. He then belatedly makes the following demand in his Answering Affidavit—

- a. At para 21 *“I do not know where the vehicle is or why the applicant was storing the vehicle on my property. Furthermore, the applicant never had my permission to store any of his vehicles on my property and is therefore indebted to me for storage costs in the sum of R360 000.00 (three hundred and sixty thousand rand) calculated at R200.00 per day per vehicle for 30 months.”*

[10] On his own version he could not have had an agreement for storage with the Respondent because until then he denied any knowledge of who the Respondent was or that he was the owner of the vehicle or that the vehicle was on his premises at all. Nor does he explain how he arrives at the amount of R360 000 for storage when on his earlier version all that was owed to him by Mazambani was R59 600.00.

[11] Given this it is not surprising that the Respondent formed the view that the Applicant was holding his vehicle as ransom for Mazambani's debts. The Respondent's view was conveyed not only in the Replying Affidavit but also during argument -

- a. At paras 26 -28 of the Replying Affidavit he states *“The first time the Respondent mentioned that he is no longer on possession of the motor vehicle was in his answering affidavit. ...The vehicle was further in the property because of Mazambani and was part of Mazambani's lease. ... This paragraph is the Respondent's attempt to set off returning my vehicle or payment of the value of my vehicle.”*

[12] In my judgment I assumed in favour of the Applicant, namely that the vehicle was no longer on the premises and that he did not know which scrap yard it had been taken to. On that basis I found that the whereabouts of the vehicle

became uncertain. However given the version as put up by the Applicant himself I was inclined to grant alternative relief to the Respondent.

Applicable Legal Principles

[13] The requirements for leave to appeal are set out in section 17(1) of the Superior Courts Act. Sections 17(1)(a)(i) and (ii) provide that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success in the Appeal Court; or that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[14] In **NEHAWU v University of Cape Town & Others**¹ the Constitutional Court held that the decision to grant or refuse leave to appeal is a matter for the discretion of the Court. It held that in deciding that question, the interests of justice are crucial. Whether it is in the interests of justice to grant leave to appeal is the function of a number of factors. One of such factors is the prospects of success. In that regard, the Court held that the Applicant must show that there are reasonable prospects that the Appeal Court will reverse or materially alter the decision of the Court *a quo* if permission to bring the appeal is given.

Grounds of appeal

[15] Several grounds of appeal are raised in which it is argued that I erred in law, summarised below-

- a. The central attack is the grant of the order set out in paragraph 37(b) of my judgment as quoted above. According to the Applicant I erred in law by granting such an order for lack of jurisdiction because no prayer for such an order was sought by the Respondent in the Notice of Motion.
- b. I erred in law by finding that the Applicant refused to provide information regarding the whereabouts of the vehicle when prompted to do so by me. He contends that he offered to provide an affidavit to explain why he

¹ 2003 (3) SA 1 (CC)

doesn't have the information that was *mero motu* requested by the Court which would amount to an impossibility of performance.²

- c. I permitted the introduction of a new matter in a replying affidavit when same was not raised in the founding papers, thereby offending the well-established principle of *audi alteram partem*.³
- d. I found the Applicant acted poorly when by applying the Plascon Evans Rule and having regard to paragraphs 8.5 - 8.13, 9 and 13 of the answering affidavit, I should have found that the Applicant reasonably regarded the vehicle as having been abandoned.⁴
- e. By making a credibility and probability finding against the Applicant in instances where the Court was dealing with affidavits.⁵
- f. I erred in law by not awarding the Applicant costs of suit despite the fact that the Applicant was the successful party.

[16] The lack of jurisdiction argument is based on the fact that the Notice of Motion did not specifically ask for the relief granted in my paragraph 37(b) namely the details of the who, what and where of the removal. In the Notice of Motion the Respondent asks for the return of the vehicle and in the alternative "*that the Respondent provides the Applicant with an address where the motor vehicle can be collected*". The relief sought here is simply asking "*tell me where I can find the vehicle*".

[17] Paragraph 37(b) in fact asks less of the Applicant. It does not require the Applicant himself to establish the whereabouts of the vehicle but simply to give some pointers to the Respondent. In my view the details required from the Applicant broadly fall within the relief that is sought in the Notice of Motion namely "tell me where I can find it".

[18] The details of the removal lie solely in the Applicant's knowledge or are within his control. This is his own version. If he can't recall, he can consult his records

² Para 19 of the judgment

³ Para 29 of the judgment

⁴ Para 33 of the judgment

⁵ Para 34 of the judgment

or ask any of this employees who undertook the task at his behest. Any suggestions that the might find himself in contempt of court are unfounded and exaggerated.

[19] As to the second ground, there was a suggestion by Mr Bouwer during argument that an unfairness had been meted out to the Applicant by this court *mero motu* raising an issue and then not permitting the Applicant an opportunity to respond thereto. It is important to stress here that this issue arises from the papers themselves. In fact the Respondent deals with this in the Replying Affidavit –

- a. At para 25 “. *Ad paragraph 17 The Respondent admitted to having removed the motor vehicle however seem to have forgotten the towing company he hired if any, seem to have forgotten the instructions he gave to that company if any. Therefore, I believe the contents of this paragraph is not true.*”, and
- b. At para 29: “*I humbly submit that my application satisfies the requirements of a rei vindicatio remedy or further and/or alternative relief that the court deems. WHEREFORE I pray that the above honorable court grant an order in terms of the Notice of Motion and further request that the Respondent's answering affidavit be dismissed with punitive costs for misleading the court*”.

[20] The issue flows directly from the Applicant's version – he had it removed so he must know who removed it for him. The Applicant had been cognised of this issue not only by the question I asked but also by the alternative relief sought in the Notice of Motion.

[21] As to not being given an opportunity to deal with this issue, while an offer was made by Mr Bouwer to file an affidavit “*if the court wants/likes*” no request was made by him to stand the matter down for that purpose. The Applicant elected not to put up such an affidavit. Hence, he could not have been “refused an opportunity” to file further affidavits by the Court simply because none was requested by him.

- [22] My view about the implausibility of the explanation provided by Mr Bouwer is based simply on the fact that the Applicant himself had the vehicle removed and only he was in a position to point out who had removed it even if was unaware of which scrap yard it had been taken to. That view remains unchanged.
- [23] In paragraph 29 of my judgment I simply discuss what was stated in paragraph 16 of the replying affidavit. Nothing new was raised in that paragraph.
- [24] The attack on paragraph 33 is equally without merit. Furthermore, the paragraph must be understood in context. Ms Sangweni's submission was that the Applicant had no right to remove the vehicle without a court order even if he had a claim from arrear rentals and other costs against Mazambani, the tenant. In other words even if he was exercising a landlord's *lien*, he acted poorly by removing the vehicle without an order of court. It was alleged that he had taken the law into his own hands. In the Respondent's view the Applicant was holding his vehicle ransom against Mazambani's debts or was withholding details of the vehicle's whereabouts, in violation of the Respondent's rights.
- [25] As to the attack on paragraph 34 of the judgment, I simply reiterate that it is the Applicant who removed the vehicle from the premises.
- [26] As to the issue of costs, it is trite that costs are an exercise of the court's discretion. Given this, and the facts of this case, it is my view another court would not arrive at a different view.
- [27] One other argument made by Mr Bouwer on behalf of the Applicant during the hearing was that the order in para 37(b) contravened the Promotion of Access to Information Act (PAIA) because the Applicant was a 'business' and the Respondent was required to comply with internal remedies. This ground was not raised in the Notice of Appeal, was made up on the hoof and is without merit.
- [28] Last but not least I address the order in para 37(a) and whether this raises any ambiguity. I canvassed with the parties during the hearing whether my order required variation or rectification. It was submitted by Mr Shongwe that

paragraph 37(a) was clearly understood to mean that the court had not granted the first relief sought in the Notice of Motion and there was no need for a variation. Mr Bouwer made no specific submissions on the issue of a variation but maintained his argument that the Applicant was successful and costs should follow suit.

[29] It might of course have been cleaner and preferable – given the inconsistencies in the Applicant’s version- for me to order that he return the vehicle to the Respondent. Undoubtedly, we would’ve arrived at the same point if such an order was granted. However I have assumed good faith on the part of the Applicant and have put aside all the inconsistencies in his version by requiring him to provide the details in paragraph 37(b).

[30] In conclusion, the Applicant’s stance in this matter is perplexing. On the one hand he maintains that the Respondent’s vehicle is a piece of scrap, having no or little value and which he was led to believe was abandoned by Mazambani. He had it removed seemingly in good faith. This is his version under oath. If the scrap is no longer on his premises, the Applicant cannot then - in good faith - quibble with being required to divulge the details of who removed the vehicle at his behest.

[31] In my view there are no reasonable prospects that another court would come to a different conclusion.

[32] Accordingly the application for leave is dismissed with costs.

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Heard on:

13 November 2025

Delivered on: 21 November 2025

Appearances:

For the Applicant: Adv C Shongwe

Instructed by: Enhle Ngwane Attorneys Inc

For the Respondent: Adv R J Bouwer

Instructed by: Bernard Mans Attorneys

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand down is deemed to be 21 November 2025.