

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 38989/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE: 11/02/2026

SIGNATURE

In the matter between:

AFRIKAANS IS GROOT (PTY) LTD

Plaintiff

and

EWALD BERNARDUS COLESKE

Defendant

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] The plaintiff instituted an action against the defendant claiming the return of a vehicle that was made available to the defendant whilst the latter was still in the employ of the plaintiff. The action was defended and a counterclaim was pled.
- [2] The plaintiff's claim related to a Toyota Prado vehicle for which the plaintiff claimed the return as well as the payment of an amount that related to alleged insurance costs and registration fees during a specified period. In the counterclaim, the defendant sought the transfer of ownership in the said vehicle.
- [3] The plaintiff led the evidence of two witnesses. The first witness was one Brendan Hargroves, who was a director of the plaintiff and who oversaw operations and finances. The second witness was one Arnold Coleske, who was a director of the plaintiff and the brother of the defendant. Arnold Coleske was the driving force behind the plaintiff. The defendant was the creative brain behind the plaintiff until he left the plaintiff during 2018.
- [4] The vehicle concerned, was one of seven Toyota vehicles that were handed to the plaintiff in terms of a sponsorship agreement entered into between the plaintiff and Toyota SA. Each of the Coleske brothers received a sponsored vehicle. Of the remaining vehicles, one was handed to Hargroves and three were handed to regular musicians who were used by the plaintiff during musical events arranged by and on behalf of the plaintiff. The remaining vehicle was sold off a few days after receiving the vehicles from Toyota. The sponsored vehicles were to be used by the plaintiff for a period of three years during which the sponsorship would endure. Should the sponsorship be ended during that three-year period, the vehicles had to be returned to Toyota in terms of the written sponsorship agreement. After the elapse of the three-year sponsorship period, the plaintiff would retain the vehicles.

- [5] The crux of the matter relates to an alleged oral agreement entered into between Arnold Coleske and the defendant on the receipt of the sponsored vehicles and the allocating thereof to the defendant and the other recipients. It was alleged that in terms of the said oral agreement between the brothers, the defendant would retain the vehicle as his own subsequent to the elapse of the sponsorship agreement. The defendant would become the owner thereof.
- [6] The evidence of Hargroves leaves much to be desired. He was evasive on many issues and in particular during cross-examination. He testified in a refrain that he either cannot remember, or that he was not a party to a particular issue or circumstance. Despite stating that he was in the financial section, he could not readily explain why the amounts received in respect of the vehicles sold, subsequent to the lapsing of the sponsorship agreement, were not entered into the financial statements at the appropriate time.
- [7] Further in that regard, it was testified that the board of the plaintiff had apparently delegated its authority to deal with the vehicles, and any disposal thereof, to a committee. No evidence of the MOI or the delegation of the authority was introduced into evidence. The evidence revealed that in terms of the sponsorship the vehicles were not dealt with in the same manner when they were disposed of, but in a random manner. This highlighted the apparent discrepancy in the financial records of some of the vehicles.
- [8] Hargroves confirmed that a strained relationship existed between the Coleske brothers. During or about 2021, a protection order was taken out by Arnold Coleske against his brother, the defendant. That protection order is still in existence. The relevance of that evidence was not explained, other than that it was a mere attempt to create atmosphere.

- [9] In terms of the aforesaid oral agreement, made shortly after receipt of the Toyota vehicles in terms of the sponsorship agreement, the defendant could retain the vehicle allocated to him when the three-year period of the sponsorship elapsed. It would become the defendant's property. Arnold Coleske denied the alleged oral agreement concluded between the two brothers. The defendant further alleged that a similar agreement was entered into between Arnold Coleske and one Johan Vorster in respect of the vehicle that was allocated to the said Johan Vorster. However, Johan Vorster left the plaintiff in the second year of the sponsorship and was obliged to return the vehicle to the plaintiff; the three years of sponsorship not having elapsed.
- [10] Prior to the defendant leaving the plaintiff in 2018, the defendant was approached by Arnold Coleske stating that they were to sing at a show known as the Versnit Show. They were to participate in the show for free. Toyota would also have a presence at the show. The defendant was further told by his brother that they could negotiate a recommitting of the sponsorship with Toyota. Arnold Coleske further told his brother that Toyota promised delivery of two new Toyota Landcruiser vehicles. Each of them would receive one. Arnold Coleske confirmed the participation at the Versnit Show for free and that a recommitting of sponsorship was in the offing and that it would be negotiated with Toyota. He further confirmed that Toyota offered the two Landcruiser vehicles. However, Arnold denied that each of the brothers would receive one. He further confirmed that the vehicles were duly delivered by Toyota. Arnold Coleske further confirmed that the sponsorship was subsequently re-negotiated. It is to be noted that a copy of that recommitted sponsorship agreement was not introduced into evidence. The evidence testified to by Arnold Coleske was surprisingly short of stating that the Landcruiser vehicles were to be supplied in terms of a sponsorship agreement. The impact of the evidence leaned towards a hint that the vehicles were in lieu of the free of charge participation at the Versnit event.

- [11] The defendant confirmed that whilst negotiating his departure from the plaintiff, he was offered a deal in terms of which he could purchase his vehicle at a discounted price. He declined the offer as he had an agreement with his brother in respect of the ownership of that vehicle. The defendant further confirmed that he was part of the meeting between Arnold Coleske and Johan Vorster when the latter was told that he could not retain his vehicle due to the fact that the three-year sponsorship had not run out and he was thus obliged to return the vehicle. After that meeting the defendant stated that Johan Vorster confirmed that he had a similar agreement with Arnold Coleske to receive ownership of the vehicle after the elapsing of the sponsorship period.
- [12] After receipt of the Toyota Landcruiser vehicles, one was not handed to the defendant as promised. However, Arnold Coleske took one and the other was given to Hargroves. At that time, the latter had already received a vehicle supplied to him by the plaintiff as replacement of the Toyota vehicle he had been allocated in terms of the original sponsorship agreement. Consequently, he had been provided with two vehicles from the plaintiff. No explanation for that was provided. Hargroves had no knowledge of the Versnit Show and the discussion surrounding it, but confirmed that a recommitted sponsorship agreement was subsequently concluded. In this regard, he was cautious in his evidence not to state that the Toyota Landcruiser he had received was in terms of the renegotiated sponsorship agreement. Surprisingly, the evidence of Arnold Coleske and Hargroves made no reference to the supply of vehicles by Toyota in terms of a sponsorship agreement. The absence of such evidence is startling.
- [13] A further curious fact is the absence of evidence that the Landcruiser vehicles were only delivered after the re-negotiating of a sponsorship. The evidence leaned towards delivery prior to any negotiations.

[14] From the foregoing, there appears to be direct contradictory evidence on two material issues. The circumstances surrounding the fate of the initial delivery of the sponsored vehicles after the lapse of the sponsorship agreement, and the circumstances surrounding the supply of the two Landcruiser vehicles.

[15] The approach to be taken and the test to be applied is set out in *Stellenbosch Farmers' Winery Group Ltd v Martel et Cie*.¹ A three pronged test is to be applied:

(a) The credibility of the witnesses:

(b) Their reliability; and

(c) The probabilities.

[16] It is recorded earlier in this judgment that the evidence of Hargroves left much to be desired. He admitted that he was not privy to any of the two oral discussions and subsequent agreements between the two brothers. Furthermore, he was unable to explain the apparent discrepancy in the financial statements of the plaintiff, despite him being in charge of the financial department of the plaintiff. His evidence is also to be considered against the background that he could not explain the divergent and haphazard approach followed in respect of the disposal of the initial sponsored vehicles, and in particular that of the one disposed of shortly after receipt of the vehicles from Toyota. That disposal was clearly in contravention of the term of return of the vehicles, should the sponsorship end within a tree-year period. His evidence is of no assistance.

[17] The evidence of Arnold Coleske is of primary bias against the defendant. He has a domineering attitude and is clearly the alter ego of

¹ 2003(1) SA 11 (SCA)

the plaintiff. His managerial approach is one of “do as I say”. This is supported by his admitted autocratic managerial style. What is of importance is his evidence relating to the two alleged oral agreements that follows closely on that of his brother, the defendant, however differing at the crucial part, resulting in a blatant denial.

- [18] The defendant’s evidence was given in a consistent manner. There was no hesitation in conceding where required and is to be seen, against a confirmed background of a non-harmonious filial relationship close to one of open animosity. His version was closely confirmed by Arnold Coleske, but for the crucial admission of ownership being denied.
- [19] The defendant was not tripped up during cross-examination and gave a consistent version. It is to be noted that the cross-examination of the defendant was curt and not to the point. In particular, the defendant was not cross-examined on the alleged agreement between the defendant and his brother.²
- [20] In view of the foregoing, applying the three pronged test, the following is apparent, namely that the credibility of the plaintiff’s witnesses were impugned and placing any reliability there upon would result in an eschewed view. The probabilities favour the version of the defendant on the material disputed issues.
- [21] In view of all the aforesaid, the plaintiff has failed to prove its claims for the return of the vehicle and payment of the costs associated with the monthly instalments of the short-term insurance on the vehicle. In respect of the latter, the plaintiff failed to prove an obligation on the part of the defendant to pay such amounts.

² See in this regard, *President of the Republic of South Africa et al v South African Rugby Football Union et al* 2000(1) SA 1 (CC) at par [61]-[65]

[22] It follows further, where the plaintiff failed to prove its claim for return of the vehicle and where the defendant's version of the agreement in respect the ownership of the vehicle is found to be more probable, the defendant proved his right to transfer of the vehicle registration into his name as pled in the counterclaim.

[23] On the issue of costs, there is no reason why costs should not follow the event.

I grant the following order:

1. The plaintiff's action is dismissed;
2. The plaintiff is to pay the costs of its failed action to be taxed on scale C;
3. The plaintiff is ordered to effect transfer the ownership in the Prado vehicle with registration no. F[...] 2[...] [...] and Vin no. J[...] into the defendant's name and to take all steps to give effect to such transfer within 10 days of the date of this order;
4. The plaintiff is to pay the costs of the counterclaim on scale C.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT
PRETORIA

On behalf of Plaintiff:	C Gibson
Instructed by:	Senekal Simmonds Attorneys
On behalf of Defendant:	D N Hinrichsen
Instructed by:	Couzyn Hertzog & Horak Attorneys
Date of hearing:	11-12 November 2025
Date of Judgment:	11 February 2026