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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: **074260/2023**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

16/2/2026

In the application between:

**ABANDONED VEHICLE AND TRUCK
SOLUTIONS (PTY) LTD
REGISTRATION NO. 2020/577413/07**

First Applicant

**SALVAGE GENIE (PTY) LTD
REGISTRATION NO. 2018/107676/07**

Second Applicant

**KEITH ALEXANDER ROUELL
IDENTITY NO. 6[...]**

Third Applicant

**KERRY JANE LOVE-SMITH
IDENTITY NO. 8[...]**

Fourth Applicant

**ERINN JEMMA ROUELL
IDENTITY NO. 9[...]**

Fifth Applicant

ROBERT JOHN HENDERSON

Sixth Applicant

IDENTITY NO. 6[...]

and

NEDBANK LIMITED

Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

GROBLER AJ:

1. The Applicants apply for leave to appeal in terms of Section 17(1)(a)(i) of the Superior Court Act, 10 of 2013 to the Supreme Court of Appeal, alternatively to the Full Court against the whole judgment and order granted in the above matter on 21 July 2025.
2. I have had regard to the established principles relating to the court's duty in applications for leave to appeal as set out in *inter alia* ***Shinga v The State & Another (Society of Advocates (Pietermaritzburg Bar intervening as Amicus Curiae); S v O'Connell & Others*** 2007 (2) SACR 28 (CC) at [53], ***S v Smith*** 2012 (1) SACR 567 (SCA), ***Mont Chevaux Trust v Goosen*** 2014 JDR 2325 (LCC) and ***Tecmed Africa v Minister of Health*** [2012] 4 All SA 149 (SCA). It is not necessary to re-state the well-known principles referred to in the aforementioned authorities here.
3. As stated in ***MEC Health, Eastern Cape v Mkhitha*** (2016) ZASCA 176 (25 November 2016), leave to appeal may only be granted if there truly is a reasonable prospect of success, or if there is some other compelling reason why it should be

granted. Leave to appeal should not be granted unless there is a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.

4. The Applicants do not dispute the correctness of the declarator that was granted in paragraph 1 of the order, which reads as follows:

“1. It is declared in terms of Section 21(1)(c) of the Superior Courts Act (Act 10 of 2013) that:

1.1. A salvage and/or improvement lien (collectively referred to as ‘enrichment liens’) cannot be ceded, sold or transferred.

1.2. Any purported cession, sale and transfer of an enrichment lien is null and void;

1.3. Any document purporting to transfer, cede or sell the possessor’s right of possession of the property forming the subject of the lien without proper legal process, or without the consent of or an agreement with the owner / consumer is null and void.”

5. It was submitted on behalf of the Applicants that this court erred in not finding that the Applicants obtained a (new / separate / original) right of retention at the very least when it paid the primary salvage company and obtained possession of the motor vehicles from the primary salvage companies.
6. It was submitted that the payment made by the Applicants to the primary salvage company means that the Applicants “expended money on another’s property” as referred to in *Pheiffer v Van Wyk* (267/13) [2014] ZASCA 87 (30 May 2014) at par. 12. Further it was submitted that the payment made by the Applicants to the primary salvage companies enriched the Respondent and that the continued control and storage of the motor vehicles preserved and protected the motor vehicles, which enriched the Respondent further. In my view there is no

reasonable prospect that another court would find in favour of the Applicants on this point.

7. A clear distinction must be drawn between an enrichment claim and a lien. In terms of ***Brooklyn House Furnishers (Pty) Ltd v Knoetze & Sons*** 1970(3) SA 264 (A), a salvage lien only arises if the expenditure is necessary for the preservation or protection of the thing, and an improvement lien only arises when the expenditure improves the thing and increases its market value. It is common cause that the Applicants do not rely on an *ex contractu* / debtor creditor lien.
8. The Applicants do not in the application for leave to appeal attack the factual findings in par. 32 and 33 of the judgment of this court *a quo* – firstly that there is no evidence that the motor vehicles were at risk for loss or damage (diminution in value) at the time when the Applicants obtained possession of the motor vehicles and secondly that there is no evidence that the Primary Salvage Companies were at the brink of abandoning the motor vehicles when the Applicants entered the fray.
9. The expenditure by the Applicants was manifestly not expenditure incurred by the Applicants to preserve or protect the motor vehicles against loss or damage, it was on the facts of the matter expenditure incurred by the Applicants to obtain possession of the motor vehicles from the primary salvage companies.
10. Furthermore, and on the facts of the matter, the continued control and storage of the motor vehicles by the Applicants did not preserve and protect the motor vehicles. The Applicants either sold the motor vehicles to defray costs, or failed to disclose the whereabouts of the motor vehicles to the Respondent. The Applicants can accordingly not argue convincingly that they obtained possession and continued to store and keep possession of the motor vehicles to preserve and protect the motor vehicles.

11. It was also submitted on behalf of the Applicants that this court erred in granting the interdict contained in par 4 and 4.1 of the order, which reads as follows:

4. *The First to Third and Fifth to Eighth Respondents and/or any person, entity or association who may act for or on their behalf, directly or indirectly are interdicted and restrained from:*

4.1. *Entering into or concluding any agreement or participating in any business practice regarding the acquisition, sale, transfer, cession of any lien over and/or in respect of any motor vehicle.*

12. It was submitted that this court erred by including the word “acquisition” in par 4.1 of the order. The inclusion of the word “acquisition”, so it was argued, is an all-inclusive term that interdicts the mentioned respondents from acquiring any lien under any circumstances in future, whether in the normal course of business, or otherwise and restricts the Applicants’ constitutional right to free participation in commerce.

13. As was stated in ***Natal Joint Pension Fund v Endumeni Municipality*** 2012 (4) SA 593 (SCA) at par [18], interpretation should have regard to the context provided by reading the particular provision of the document in light of the document as a whole and in the circumstances attendant upon its coming into existence.

14. Having regard to the aforesaid authority, there is in my view no reasonable prospect that another court would find in favour of the Applicants on their wide interpretation of the meaning of the word “acquisition” contained in par 4.1 of the order.

15. Having carefully considered the papers filed in the Application for Summary Judgment, the Judgment dated 21 July 2025, the Application for leave to Appeal, the Heads of Argument filed by the Applicants and the Respondent respectively

and after having carefully considered the oral submissions, I am not persuaded that an appeal, should leave be granted, would have a reasonable prospect of success.

16. In the premises, the application for leave to appeal is hereby dismissed with costs, the costs of Senior Counsel to be taxed on scale C.

DATED AND SIGNED AT PRETORIA ON THE 16TH DAY OF FEBRUARY 2026.

JF GROBLER

Acting Judge
High Court of South Africa
Gauteng Division
Pretoria

Counsel for Applicants: Adv I Mureriwa
Instructed by: CSM Attorneys

Counsel for Respondent: Adv J.P. Van den Berg SC
Instructed by: VHI Attorneys