REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A24/10982
DOH: 24 JULY 2025 FINAL
SUBMISSIONS: 3 OCTOBER 2025

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

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SIGNATURE **DATE**

In the matter between:

PROTOTYPE (PTY) LIMITED trading as
THE MACHINING MAN **APPELLANT**

AND

FENG CHI SHEN **RESPONDENT**

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand down is deemed to be on **30 March 2026**

JUDGMENT

MALI J (Nkoenyane AJ concurring)

Introduction

[1] This appeal is against the whole judgment and order of AM Mafisa, Acting Regional Magistrate of the Regional court for Benoni, court *a quo*, granted on 19 August 2024. The court *a quo* granted an order for the return of the motor vehicle which was in possession of the appellant (the respondent in the court *a quo*) to the respondent (the applicant in the court *a quo*).

[2] The appellant is Prototype Development Limited trading as Machining Man, whose sole shareholder and Director is Mr Gary Law. The respondent

Mr Feng Chi Shen is the sole shareholder and director of Evergreen Classics Pty (Ltd) (Evergreen). The motor vehicle forming the subject of this appeal is registered in the name of Evergreen.

[3] The respondent brought an urgent *ex parte* application for a *rei vindicatio* order against the appellant, seeking the release of a motor vehicle (a rare 1987 BMW 333i valued at approximately R1 million) to an independent third party pending the outcome of litigation. The court a quo granted an interim order with a *rule nisi* returnable on 28 November 2023.

[4] On the return date, the appellant raised various points *in limine*. The court a quo dismissed these points and confirmed the *rule nisi*, granting a final order against the appellant. It is against the dismissal of these points *in limine* that the appellant now appeals.

Background facts

[5] On 25 July 2022, the motor vehicle was delivered to the appellant's premises at Unit […], B[…] H[…], Number […], D[…] Road, B[…] D[…], Midrand. The vehicle was delivered for the installation of parts to restore it to its original condition, with the purpose of resale at a greater price.

[6] A dispute subsequently arose between the parties concerning payment of two invoices in the amount of R237 894.43. The appellant refused to release the motor vehicle, claiming a *lien* over it for the amount owed. The respondent thereafter launched an urgent application in the court a quo.

The Court a quo's Findings

[7] The appellant raised three points *in limine* before the court a quo: First, that the respondent lacked *locus standi* to bring the application as the motor vehicle belonged to Evergreen Classics ("Evergreen"), a separate juristic entity. Second, the court lacked territorial jurisdiction because the services were rendered at the appellant's business premises in Kyalami, which falls outside the Benoni court's jurisdiction. Last, that the court lacked monetary jurisdiction because the vehicle was valued between R1.2 million and R1.5 million, exceeding the court's monetary jurisdiction of R400 000.

[8] The court a quo dismissed all three points. Regarding *locus standi*, it found that the respondent was the person who concluded the verbal agreement with the appellant, and that by admitting the respondent was the user of the vehicle, the appellant had implicitly acknowledged the respondent's legal capacity. The court further relied on the respondent's CIPC registration documents, filed in reply, which depicted him as the sole director of Evergreen. The court reasoned:

"It can be accepted that as the sole director and shareholder of Evergreen and the user of the Motor Vehicle, the Applicant has a direct interest in the Motor Vehicle... CIPC records are public records, and the Applicant provided sufficient information for the Respondent to verify the correctness of the averment as pleaded."

[9] Regarding jurisdiction, the court a quo accepted the respondent's evidence that a meeting was concluded on 11 July 2022 in Benoni, which fell within its territorial jurisdiction. On monetary jurisdiction, the court focused on the value of the contractual dispute (the invoices for the total amount of R237 894.43) rather than the value of the motor vehicle itself,

despite acknowledging that the vehicle's value exceeded the court's R400 00.

Grounds of Appeal

[10] The appellant's grounds of appeal are essentially threefold; first, that the court *a quo* was not empowered to hear an application for the delivery of movable property in terms of section 29(1)(a) of the Magistrates' Courts Act 32 of 1944, which limits jurisdiction to action proceedings only, not motion proceedings. Second, that the Regional Court lacked territorial jurisdiction as both the motor vehicle and the appellant's place of business were situated outside its jurisdiction. Third, that the respondent is not the owner of the motor vehicle and therefore lacked *locus standi* to bring the *rei vindicatio*.

Jurisdictional Challenge: The Respondent's Concession

[11] The respondent conceded that the court a quo lacked jurisdiction on both territorial and monetary grounds. This concession was properly made. The motor vehicle was situated at the appellant's premises in Kyalami, which falls outside the Benoni Regional Court's territorial jurisdiction. Moreover, the value of the motor vehicle (between R1.2 million and R1.5 million) far exceeded the Regional Court's monetary jurisdiction of R400 000 at the time.

[12] Section 29(1)(a) of the Magistrates' Courts Act 32 of 1944 provides:

"(1) Subject to the provisions of this Act and the National Credit Act, 2005 (Act No. 34 of 2005), a court in respect of causes of action, shall have jurisdiction in—

(a) actions in which is claimed the delivery or transfer of any property, movable or immovable, not exceeding in value the amount determined by the Minister from time to time by notice in the Gazette;"

[13] The amount determined by the Minister at the relevant time was R400 000. The *rei vindicatio* is a claim for the delivery of property, and the value of the property itself not the value of any underlying contractual dispute determines jurisdiction. The court a *quo* erred in relying on the value of

the invoices rather than the value of the motor vehicle. On this basis alone, the appeal must succeed.

<u>The Respondent's Reliance on Section 87 of the Magistrate's Court Act</u>

[14] In an effort to salvage the matter, the respondent urged this court to apply section 87 of the Magistrates' Courts Act, which confers wide powers on a court of appeal, including the power to *"take any other course which may lead to the just, speedy and as much as may be inexpensive settlement of the case."* The respondent submitted that this court should, despite the jurisdictional defect, make an appropriate order to vindicate his rights of ownership under section 25 of the Constitution. Section 25 (1) provides that, no one may be deprived of property except in terms of a law of general application.

[15] The appellant countered that the respondent had not filed a cross-appeal and could not seek to vary the order without having filed a cross- appeal.

[16] The appellant stated as follows: *"It was not possible in the present circumstances to have brought a cross-appeal. How does one notionally cross-appeal a judgment in one's favour where no amendment to the order is sought?"* This reveals a fundamental misunderstanding of appellate procedure. A cross-appeal is precisely the mechanism by which a successful party may seek to vary or amend an order in their favour. The respondent cannot make his case as he goes along.

<u>Discussion</u>

[17] The *rei vindicatio* is an action available to an owner of property to recover it from any person in possession without his consent. The requirements are well-established: the owner must allege and prove that he is the owner and that the defendant is in possession of the *res* at the time of commencement of proceedings. The onus then shifts to the defendant to establish a right to retain possession against the owner.

[18] In *Chetty v Naidoo*[1] it is held that:

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[1] 1974 (3) SA 13 (A) at 20A-C,

"It is inherent in the nature of ownership that possession of the res should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right). The owner, in instituting a rei vindicatio, need, therefore, do no more than allege and prove he is the owner and that the defendant is holding the res – the onus being on the defendant to allege and establish any right to continue to hold against the owner."

[19] The critical question is whether the respondent discharged the onus of proving ownership. The evidence establishes the following. The motor vehicle is registered in the name of Evergreen Classics. The invoices for the repairs were issued in the name of Evergreen Classics. The respondent only filed a CIPC certificate in reply (not in the founding papers) showing he is the sole director of Evergreen. At no stage did the respondent allege or prove that ownership of the vehicle had been transferred from Evergreen to himself personally.

[20] The respondent sought to rely on the abstract theory of ownership, citing *Legator McKenna Inc v Shea*[2]. The abstract theory holds that the validity of transferring ownership is not affected by whether the underlying transaction is valid. The requirements for passing ownership are twofold: first, delivery must take place; second, delivery must be coupled with a "real agreement"—the intention on the part of the transferor to transfer ownership and the intention of the transferee to become the owner.

[21] The respondent's reliance on the abstract theory is entirely misplaced for two reasons. First the argument was not raised in the founding papers and constitutes a new point on appeal. Raising a new point on appeal is not outright prohibited if doing so is not prejudicial to the other party. However, there is another fundamental reason, the respondent has not alleged or proved any act of delivery or any real agreement transferring ownership from Evergreen to himself. There is simply no evidence of a transfer of ownership.

[22] The respondent's reliance on *Chetty v Naidoo* is equally unhelpful to his case. That case affirms that the owner must prove ownership. The

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[2] [2009] 2 All SA 45 (SCA)

respondent failed to make any averment establishing a link between himself and Evergreen. He merely filed a license issued by the traffic department depicting that the motor vehicle belonged to Evergreen. The respondent must stand or fall by the averments in his founding affidavit. He failed to discharge the onus of proving ownership.

[23] The respondent further sought to rely on *Foss v Harbottle*[3] the well-known English case establishing the proper plaintiff rule in company law. The rule provides that where a wrong is allegedly done to a company, the proper plaintiff to sue is the company itself, not an individual shareholder.

[24] The respondent's invocation of this rule does not assist. The rule in *Foss v Harbottle* does not entitle a sole shareholder and director to disregard the separate juristic personality of the company for his own benefit. The position is trite and incontrovertible: once a person elects to register a company, even as a sole shareholder, he is bound to respect the company's separate legal existence. He cannot, on different occasions, assert ownership over the company's assets as if they were his own, or conversely seek to shield those assets behind the corporate veil as it suits him.

[25] The company, Evergreen Classics, is the registered owner of the motor vehicle. If any party has a right to vindicate the vehicle, it is Evergreen—not the respondent in his personal capacity. The respondent's failure to join Evergreen or to bring the application in the company's name is fatal to his claim. This is not a derivative action as contemplated in section 165 of the Companies Act 71 of 2008[4], which governs statutory derivative actions allowing shareholders to demand that a company pursue legal action to protect its interests. No such application was made.

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[3] (1843) 2 Hare 461,

[4] 165 (2) A person may serve a demand upon a company to commence or continue legal proceedings, or take related steps, to protect the legal interests of the company if the person—(a) is a shareholder or a person entitled to be registered as a shareholder, of the company or of a related company; (b) is a director or prescribed officer of the company or of a related company; (c) is a registered trade union that represents employees of the company, or another representative of employees of the company; or (d) has been granted leave of the court to do so, which may be granted only if the court is satisfied that it is necessary or expedient to do so to protect a legal right of that other person.

[26] The respondent conflates the company's distinct legal personality with his own persona as an individual. The separate identity of the company must be maintained and respected, irrespective of the degree of control exercised by its principal shareholder.

[27] Moreover, even if this court were inclined to consider section 87 *mero motu* (as sanctioned by *Southern Africa Finance v IDC*, where the court held that in the absence of prejudice, a court should not hesitate to adopt such a course to arrive at a just decision), the respondent's case is wanting on more fundamental grounds, namely the question of ownership.

[28] Having considered the evidence and the judgment of the court *a quo*, it is concluded that the court a quo misdirected itself in granting the final order. This court is at large to interfere with the decision of the court *a quo.*

[29] The powers of this court on appeal are wide. Section 87 of the Magistrates' Courts Act permits this court to take any course which may lead to the just, speedy and inexpensive settlement of the case. This is reinforced by section 19(d) of the Superior Courts Act 10 of 2013, which provides that a division of the High Court exercising appeal jurisdiction may *"confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require."* As was stated in *Miya v MatlekoSeifert* [5]2023 (1) SA 208 (GJ) at para 71, these powers are wide enough to enable the appeal court, even if it sets aside the magistrate's order for want of jurisdiction, to then make the order itself.

[30] However, in the circumstances of this case, there is no proper basis upon which this court could substitute an order in favour of the respondent. The respondent has failed to establish ownership, and the proper owner (Evergreen) is not before us. To grant any order in favour of the respondent would be to perpetuate the very confusion between corporate and personal identity that lies at the heart of this matter. In conclusion the appeal must succeed. In the result the following order is made:

[5] 2023 (1) SA 208 (GJ) at para 71,

ORDER

1. The appeal is upheld with costs, including the costs of counsel, at Scale B.
2. The order of the court *a quo* dated 23 November 2023 is set aside and substituted with the following:

   "The application is dismissed with costs."

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NP MALI

JUDGE OF THE HIGH COURT

I agree

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NKOENYANE AJ

ACTING JUDGE OF THE HIGH COURT

<u>Appearances</u>

For the Appellant:	**Adv. B Edwards**
And	**Adv. T. L Smith**
Instructed by:	**LLP Attorneys Inc.**
For the respondent:	**Adv. HP Van Nieuwenhuizen**
Instructed by:	**Gilpin Attorneys Inc.**
Date of Hearing:	**24 July 2025**
Final submission filed:	**3 October 2025**
Date of judgment:	**30 March 2026**