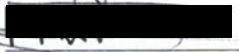


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case No: 2025-159155

(1)	REPORTABLE: <i>NO</i>
(2)	OF INTEREST TO OTHER JUDGES: <i>NO</i>
(3)	REVISED: <i>NO</i>
<i>2026/06/10</i>	
DATE	SIGNATURE

In the matter between:

**GRANDEUR AUTO (PTY) LTD**

Applicant

and

**WESBANK, A DIVISION OF FIRSTRAND BANK LIMITED**

Respondent

---

**JUDGMENT**

---

**MOTHA, J**

*Introduction*

- 1) The 2015 Bentley Continental GT, sold for R3 667 434.74, is front and center in this application. When this motor vehicle began its arduous journey, Westbank was its titleholder. In its short history, it has been owned by more than eight people and institutions, as recorded in the NaTIS certificate, and mostly fraudulently. By hook or by crook, it seems everyone wants a Bentley

Continental GT. Having come full circle, it is currently parked at its first home, Westbank.

*The facts*

- 2) On 12 August 2015, Mr. Sello Joseph Radebe ("Mr. Radebe") applied to the respondent for financing to purchase a 2015 Bentley Continental GT (subject vehicle), which the respondent approved. The subject vehicle was brand new and displayed for sale on the showroom floor of Pearl Automotive (Pty) Ltd, trading as MG Rover Johannesburg ("the dealership").
- 3) In terms of the finance transaction, as is customary, the respondent purchased the subject vehicle from the dealership for on-sale to Mr. Radebe. Pursuant to a written installment sale agreement, the respondent on-sold the subject vehicle to Mr. Radebe for R3 667 434,74, on 12 August 2015.
- 4) Importantly, under the installment sale agreement, the respondent was registered as the title holder of the subject vehicle on 31 August 2015 and would remain the owner until Mr. Radebe had paid the purchase price in full.
- 5) Consequently, the dealership had the requisite *animus transferandi dominii* to transfer ownership of the subject vehicle to the respondent and the respondent had the requisite *animus accipiendi dominii* to receive ownership from the dealership and thereby became the legal owner of the subject vehicle.
- 6) On the NaTIS certificate, the respondent was reflected as the "Title Holder" and Radebe as the "Owner". It is worth pointing out that "in terms of section 1 of the National Road Traffic Act, 93 of 1996, "(lxxiii) "title holder", in relation to a vehicle, means-

(a) the person who has to give permission for the alienation of that vehicle in terms of a contractual agreement with the owner of such vehicle; or

(b) the person who has the right to alienate that vehicle in terms of the common law, and who is registered as such in accordance with the regulations under section 4; (lxviii)

and

under (xlv) "owner", in relation to a vehicle, means-

(a) the person who has the right to the use and enjoyment of a vehicle in terms of the common law or a contractual agreement with the title holder of such vehicle; (b) any person referred to in paragraph (a), for any period during which such person has failed to return that vehicle to the title holder in accordance with the contractual agreement referred to in paragraph (a); or

(c) a motor dealer who is in possession of a vehicle for the purpose of sale, and who is registered as such in accordance with the regulations under section 4, and "owned" or any like word has a corresponding meaning; (xiv)

- 7) Having taken possession of the vehicle, Mr. Radebe defaulted in payment of the monthly installments, with the arrears accumulating to the sum of R179 469,60 during March 2020. The full outstanding debt under the installment sale agreement was R2 484 040,40.
- 8) On 19 March 2020, the respondent instituted legal action against Mr. Radebe for the cancellation of the installment sale agreement, repossession of the subject vehicle, and damages.
- 9) In an unexpected turn of events, Mr. Radebe got entangled in the Free State asbestos corruption scandal case, and his company, Mastertrade 232 (Pty) Ltd, was alleged to have received R36 483 597,90 of the proceeds of fraudulent criminal activity.

- 10) Following an application by the National Director of Public Prosecutions ("the NPA") in the Free State High Court against, amongst others, Mr. Radebe for an order securing and seizing, *inter alia*, the subject vehicle and for the appointment of a *curator bonis* to take possession of the subject vehicle and preserve it pending the outcome of the criminal trial and asset confiscation hearing, the court granted the order on 30 September 2020.
- 11) Subsequently, Mr. Radebe (along with six other accused) was arrested during October 2020 by the HAWKS and charged with fraud, corruption and money laundering. Mr. Radebe is out on bail, and the criminal trial is pending in Bloemfontein.
- 12) On 26 April 2021, the respondent obtained a default judgment against Mr. Radebe from this court, for, amongst others, cancellation of the installment sale agreement and return of the subject vehicle ("the repo order").
- 13) On 7 May 2021, the respondent issued out of this court a warrant of delivery of goods. On 3 June 2021, the sheriff attempted to execute the warrant of delivery but could not do so as Mr. Radebe informed the sheriff that he had sold the subject vehicle to Thami Ndlala.
- 14) Mr. Radebe had no right to sell the subject vehicle, and he could not validly transfer legal title/ ownership in the subject vehicle to anyone since the respondent remained the lawful owner thereof. This sale set in motion several fraudulent transfers of the vehicle. To avoid prolixity, I will not mention them.
- 15) After the repo order, the respondent struggled to locate the motor vehicle. Having failed to execute the warrant of delivery of goods, the respondent liaised with the HAWKS and was informed that the NPA order restraining and seizing the subject vehicle would be executed with the assistance of the HAWKS and the South African Police Service ("SAPS").
- 16) On 1 November 2024, indeed, the sheriff, acting on instructions of the appointed *curator bonis* and with the assistance of the HAWKS and SAPS, seized and attached the subject vehicle from Peter Mofolo at the applicant's

address and handed it over to Mr. Hyman of W J Legal & Collection Services, who received possession of the subject vehicle on behalf of the respondent, on instructions and request of the *curator bonis*.

17) It is common cause that the subject vehicle was seized by the sheriff, with the assistance of the HAWKS and SAPS, on instructions of the *curator bonis* pursuant to the NPA order, and not by the respondent pursuant to the repo order.

### *Issues*

18) The essence of the applicant's case is set forth in paragraphs 24 and 25 of the founding affidavit, which state:

"In any event, the disposition of the vehicle by the Respondent was unlawful and even if the Applicant was not the owner, which it is asserted that it is, it has been spoliated of the vehicle.

The cause of action is based both on a *rei vindicatio* on the basis that the Applicant is the owner of the vehicle. It is also based on a spoliation by virtue of the invalid Warrant of Execution having been executed and the Respondent obtaining the vehicle that way."

19) Therefore, this court is called upon to examine two legal concepts, namely: *rei vindicatio* and *mandament van spolie*.

### *Rei vindicatio*

20) The principle that an owner cannot be deprived of her property against her will is well-established in our law. This means that "an owner is entitled to recover property from any person who retains possession of it without his or her consent. This rule was considered in *Chetty v Naidoo*<sup>1</sup> where Jansen JA explained that one of the incidents of ownership is the entitlement of an

---

<sup>1</sup> 1974(3) SA 13 (A) at 20B

exclusive possession of the *res*, with the necessary corollary that the owner may claim his property whenever found, from whomsoever holding it.”<sup>2</sup>

21) This is in accordance with the maxim: “wherever I find my property I assert my claim to it” (*ubi rem meam invenio ibi vindico*).

22) It is trite that *rei vindicatio* is applicable in respect of movables and immovables and an owner who institutes *rei vindicatio* to recover his or her property is required to allege and prove the following:

(a) The owner must adduce undeniable evidence that he or she is the owner of the thing.

(b) The thing was in possession of the defendant at the commencement of the action, who possessed it without the consent of the owner.

(c) The thing which is vindicated is still in existence and clearly identifiable.

23) In the absence of an admission of ownership in the pleadings, as is the case here, the vindicator bears the burden of proving it.

#### *Mandament van spolie*

24) As succinctly stated by the authors of the Law of Property textbook<sup>3</sup>: “The purpose of the *mandament van spolie* is to restore unlawfully deprived possession at once (*ante omnia*) to the possessor, in order to prevent people from taking the law into their own hands, to foster respect for the rule of law and to encourage the establishment and maintenance of a regulated society.”<sup>4</sup>

25) In the matter of *Yeko v Qana*<sup>5</sup>, the court held:

---

<sup>2</sup> The law of property Silberberg and Schoeman’s 6th edition page 269.

<sup>3</sup> The Law of Property, Silberberg and Schoeman’s 6th Edition,

<sup>4</sup> Supra at page 326.

<sup>5</sup> 1973 (4) SA 735 (A) see also *Nino Bonino v De Lange* 1906 TS 120.

"The *onus* is on respondent to establish (a) that he had free and undisturbed possession... (b) that there was illicit deprivation against his consent... The onus is on the applicant for a spoliation order to satisfy the Court, on admitted or undisputable facts, by the same balance of probabilities as is required in every civil case, that he was in peaceful and undisturbed possession of the property."<sup>6</sup>

26) Referring to the Roman-Dutch scholar, the court in *Fredericks and another v Stellenbosch Divisional Council*<sup>7</sup> held:

"For as Voet, 41.2,16, says, the injustice of the possession of the person despoiled is irrelevant as he is entitled to a spoliation order even if he is a thief or robber. The fundamental principle of the remedy is that no one is allowed to take the law into his own hands. All that the *spoliatus* has to prove, is possession of a kind which warrants the protection accorded by the remedy, and that he was unlawfully ousted."<sup>8</sup>

#### *Submissions and analysis*

27) The applicant was represented by the senior and junior counsel. Addressing the court, both counsel for the applicant submitted that they relied on the doctrine of estoppel. However, estoppel was not pleaded. Citing the matter of *Oriental Products (Pty) Ltd v Pegma 178 Investments Trading CC and Others*,<sup>9</sup> counsel referred the court to what Justice Shongwe said:

"It is generally accepted that an owner of movable property is estopped from asserting his right to his property only where the person who acquired his property did so because the negligence of the true owner misled him into the belief that the person from whom he acquired it was the owner and was entitled to dispose of it. (See *Oakland Nominees (Pty) Ltd v Gelria Mining & Investment Co (Pty) Ltd* 1976 (1) SA 441 (A); *Electrolux (Pty) Ltd v Khota & another* 1961

---

<sup>6</sup> Supra para 736

<sup>7</sup> 1977 3 SA 113 K" 1978 (C.P.D.)

<sup>8</sup> Supra page 117A

<sup>9</sup> (2011 (2) SA 508 (SCA); [2011] 3 All SA 173 (SCA)) [2010] ZASCA 166; 126/2010 (1 December 2010)

(4) SA 244 (W)). There seems to be no reason why this principle cannot be applied to immovable property. The possessor raising estoppel must prove that:

(a) There was a representation by the owner, by conduct or otherwise, that the person who disposed of his property was the owner or was entitled to dispose of it;

(b) The representation must have been made negligently in the circumstances;

(c) The representation must have been relied upon by the person raising the estoppel, and

(d) Such person's reliance upon the representation must be the cause of his detriment."<sup>10</sup>

28) Upon ventilating the matter with the court, counsel failed to set out where estoppel was in the pleadings. The high watermark of the submission was that estoppel was implicit in paragraphs 19 and 20 of the founding affidavit. Nothing could be further from the truth. These paragraphs read:

"The Court Order against Mr Radebe dates back to the 7th May 2021 and from May 2021 until the 1st November 2024 Wesbank have allowed the vehicle to be in the public domain with, one of the consequences, the Applicant having purchased the vehicle for R1.6 million.

Wesbank is not the owner of the vehicle. At the hearing of the application legal argument will be advanced that the Applicant has acquired ownership of the vehicle and is entitled to vindicate the vehicle from Wesbank."

29) As the argument continued, counsel submitted that they relied on *rei vindicatio* and asserted ownership because Peter Mofolo intended to sell the vehicle to them. Westbank lost ownership through negligence, so the argument went. This submission was at odds with the junior counsel's concession that ownership

---

<sup>10</sup> Supra para 19.

was contested. The absence of ownership is fatal to any application for *rei vindicatio*.

30) The doctrine of estoppel is one of the restrictions on the owner's entitlement to vindicate his or her property.<sup>11</sup> "Although in Roman Dutch law an owner cannot, as a general rule, be deprived of his or her property without consent, the owner will nevertheless, in appropriate circumstances, be estopped from vindicating it, whether it be movable or immovable, when he or she placed it in the hands of another person in circumstances which may lead third parties to believe that such other person is in fact

- (a) the owner of the thing that has been entrusted to him or her; or
- (b) that he or she has been duly authorized to dispose of it on the owner's behalf."<sup>12</sup>

31) The following requirements must be met before estoppel can succeed:

"(a) there must be a presentation by the owner, by conduct or otherwise, that the person who dispose of his or her property was the owner of it was entitled to dispose of it.

(b) the representation must have been made negligently in the circumstances

(c) the representation must have been relied on by the person raising the estoppel

(d) his or her reliance on the representation must be the cause of his or her acting to his or her detriment."<sup>13</sup>

32) The applicant's reliance on estoppel is unmeritorious and faces insurmountable hurdles. Firstly, estoppel was not pleaded. As already traversed, only *rei vindicatio* and *mandament van spolie* were pleaded. Having mentioned these

---

<sup>11</sup> Supra Par 273.

<sup>12</sup> Supra page 274.

<sup>13</sup> Supra page 274.

legal concepts by name in the founding affidavit, the applicant did not mention estoppel. To me, estoppel is a convenient afterthought.

33) On the issue of pleadings, the court in *Gelyke Kanse and Others v Chairperson, Senate of the University of Stellenbosch and Others*<sup>14</sup> held:

“This is not to stump Gelyke Kanse on technical points. It is to insist that a litigant should stick to the case it has set out in its challenge, and that it does not ambush its opponent in reply with a new case and new evidence entirely.”<sup>15</sup>

34) There is a plethora of cases on this point, for example: *Esau and Others v Minister of Co-Operative Governance and Traditional Affairs and Others*<sup>16</sup> and *Betlane v Shelly Court*<sup>17</sup> to name but a few. In this matter, the case for estoppel is simply not made out.

35) The doctrine of estoppel is not there for the taking. The applicant must plead that the owner acted negligently by entrusting its property to another person who subsequently disposed of it to a third party. Further, negligence must be alleged and proved. To illustrate this point, I can do no better than to refer to *Johaadien v Stanley Porter (Paarl) (Pty) Ltd.*<sup>18</sup>

36) Finally, what is bizarre is that estoppel is a restriction that is raised against, not by, an owner. In this instance, the applicant argues ownership; hence, it pleaded and relied on *rei vindicatio*. Rather strangely, it raises estoppel, which is a defense to *rei vindicatio*. On this point alone, the argument of estoppel must fail.

37) This is not the applicant's first rodeo. In November 2025, the applicant launched an urgent application, a carbon copy of this one, seeking the return of the

---

<sup>14</sup> [2019] ZACC 38; 2020 (1) SA 368 (CC); 2019 (12) BCLR 1479 (CC).

<sup>15</sup> *Supra* para 19.

<sup>16</sup> (611/2020) [2021] ZASCA 9; [2021] 2 All SA 357 (SCA); 2021 (3) SA 593 (SCA) (28 January 2021)

<sup>17</sup> CC (CCT 14/10) [2010] ZACC 23; 2011 (1) SA 388 (CC) ; 2011 (3) BCLR 264 (CC) (24 November 2010)

<sup>18</sup> 1970(1)SA 394 (A).

Bentley. Paragraphs 25 and 26 of that founding affidavit are mirror images of paragraphs 24 and 25 of this application (see paragraph 18 *supra*).

38) For the sake of completeness, paragraphs 25 and 26 are included and read:

“25. In any event, the disposition of the vehicle by the Respondent was unlawful and even if the Applicant was not the owner, which it is asserted that it is, it has been spoliated of the vehicle.

26. The cause of action is based both on a *rei vindicatio* on the basis that the Applicant is the owner of the vehicle. It is also based on a spoliation by virtue of the invalid Warrant of Execution having been executed and the Respondent obtaining the vehicle that way.”

39) After receiving a letter from the respondent threatening fire and brimstone if the urgent application proceeded, the applicant withdrew its application by agreement in December 2025. It must have dawned on the applicant that *rei vindicatio* did not apply to these facts, let alone *mandament van spolie*, which has not been mentioned even in these proceedings.

40) Little wonder the resurrected application is dressed as an estoppel. However, dressing the application in borrowed robes does not increase its chances of survival. This application was dead on arrival.

41) As if all that were not enough, it is common cause that the applicant has instituted an action against Peter Mofolo. The particulars of claim state:

“11. When the Defendant concluded the first and second agreements, he knew he was not the owner of the Bentley and knew that he could never give title to the Plaintiff

12. The Defendant intentionally misrepresented that he owned the Bentley when to his knowledge, he was not the owner and intended to defraud the Plaintiff.”

42) In my view, the application should be dismissed. Although the applicant is skating on thin ice, I am not inclined to mark my disapproval of the applicant's conduct by imposing attorney and client costs. In the result, the application is dismissed with costs on scale C.

*Order*

1. The application is dismissed with costs on scale C



**MP MOTHA**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

## Appearances

For the Applicants	:	Adv SS Cohen Sc
With		Adv N Pama
Instructed	:	Larry Marks Attorneys
For the Respondent	:	Adv WG Pretorius
Instructed	:	Rossouw Leslie Incorporated
Date of hearing	:	12 May 2026
Date of Judgement	:	10 June 2026