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

Case Number: 2025-115808

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

19 June 2026 _____
Date SIGNATURE

In the matter between:

DYLAN JOHN WILLIAM SMITH Applicant

and

ABSA BANK LIMITED Respondent

Neutral Citation: *Dylan John William Smith v Absa Bank Limited (115808-2025) [2026] ZAGPJHC ------ (19 June 2026)*
Coram: Khaba AJ
Heard: 29 April 2026
Delivered: 19 June 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date for hand-down is deemed to be 19 June 2026.

Summary: *Rei vindicatio* – ownership – abstract theory of transfer – requires valid real agreement (*animus transferendi*) and delivery – Instalment sale agreement reserving ownership in credit provider – original NATIS certificate retained by credit provider –

points *in limine* – non-joinder – dispute of fact – foreseeable dispute - application dismissed.

ORDER

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1. The application is dismissed.

2. The applicant is ordered to pay the respondent's costs including costs of counsel on scale C.

JUDGMENT

KHABA AJ:

Introduction:

[1] The applicant seeks an order compelling the respondent, Absa Bank Limited, to return a motor vehicle described as a 2021 Alfa Romeo Giulia 2.0T Veloce, with chassis number Z[…], engine number 5[…], and registration number K[…] ("the vehicle"). The applicant invokes the remedy of *rei vindicatio*, claiming that he is the owner of the vehicle and that the respondent is in unlawful possession thereof.

[2] The respondent opposes the application. It raises two points *in limine*: first, non-joinder; and second, the existence of a foreseeable dispute of fact that renders motion proceedings inappropriate. On the merits, the respondent contends that ownership never lawfully passed to the applicant because the respondent never

intended to transfer ownership, and that any purported transfers are accordingly *void ab initio*.

The factual background:

[3] On 14 April 2022, the respondent entered into a written instalment sale agreement with one Ms. Lenetia Pacston Phillips in respect of the vehicle. A copy of that agreement was attached to the respondent's answering affidavit. In terms of the agreement, ownership of the vehicle would remain vested in the respondent until all instalments were paid in full, with the final instalment due on 28 April 2028. The respondent retained possession of the original NATIS registration certificate

[4] On 04 May 2022, Ms. Phillips caused the vehicle to be registered in her name as owner. Six days later, on 10 May 2022, she sold the vehicle to Randpark Auto. Thereafter, the vehicle changed hands on multiple occasions. It was financed and re financed by various financial institutions, including Wesbank and MFC, a division of Nedbank.

[5] On 26 November 2022, the applicant purchased the vehicle from Arnold Chatz Cars for a total price of R670,000. A deposit of R500,000 was paid, and the balance was financed through MFC. In October 2023, the applicant discharged his finance obligations in full and was recorded on the NATIS system as both owner and titleholder.

[6] Ms. Phillips defaulted on her obligations to the respondent. On 14 April 2025, the respondent obtained default judgment against Ms. Phillips. The judgment confirmed the cancellation of the instalment sale agreement and ordered the return of the vehicle to the respondent. A warrant for delivery was issued.

[7] On 06 May 2025, the Deputy Sheriff attached the vehicle at the applicant's workplace and handed it over to the respondent's agent. Despite the applicant producing his NATIS certificate, the attachment proceeded. The present application followed.

The significance of the default judgment:

[8] Before addressing the points *in limine* raised by the respondent, it is necessary to consider a critical piece of evidence that the applicant attached to his own founding papers: the default judgment granted against Ms. Phillips.

[9] The applicant seeks to dismiss this judgment as 'wholly irrelevant' on the basis that he was not a party to those proceedings and bears no legal connection to Ms. Phillips. This submission is, with respect, misguided.

[10] The applicant cannot simply ignore the existence of this judgment. It is direct evidence that the respondent holds a court order confirming its ownership of the vehicle. If the applicant wishes to challenge that ownership, the proper course would be to seek to have the default judgment set aside or to demonstrate that he is not bound by it because his title was acquired independently and in good faith. The applicant has done neither.

[11] More fundamentally, the applicant's chain of title derives from Ms. Phillips. Ms. Phillips sold the vehicle to Randpark Auto on 10 May 2022. If Ms. Phillips never had lawful ownership to transfer – and the default judgment confirms that she did not, because ownership remained vested in the respondent – then no subsequent purchaser, including the applicant, could acquire valid title. A person cannot pass a better title than she possesses.

[12] The default judgment therefore significantly undermines the applicant's *rei vindicatio* claim. It demonstrates that the respondent is not in unlawful

possession; to the contrary, the respondent is in possession pursuant to a court order that has not been set aside. The applicant's claim that the respondent's possession is unlawful cannot stand in the face of a valid court order entitling the respondent to that possession.

[13] The respondent's counsel correctly submitted that the default judgment remains binding and that the applicant has not taken any steps to challenge it. I agree. The existence of this judgment is a substantial hurdle that the applicant has failed to overcome.

The original NATIS certificate:

[14] There is another piece of evidence, attached to the respondent's answering affidavit, that is equally significant. The original NATIS registration certificate for the vehicle remains in the possession of the respondent.

[15] The scheme of the National Road Traffic Act 93 of 1996 is clear, a change in the registration of a titleholder and owner can only take place if the person effecting such change has in his or her possession the original NATIS certificate, together with proof from the titleholder 'usually the financier' that the vehicle has been fully paid for. The system is designed to prevent the very situation that has occurred in this case, the purported transfer of a vehicle without the consent or knowledge of the registered titleholder.

[16] The respondent has never relinquished the original NATIS certificate. That certificate still names the respondent as the titleholder. The applicant has never possessed the original certificate. How, then, could the vehicle have been lawfully transferred into his name? The answer, on the respondent's version, is

that it could not have been. Any transfer that was effected without the necessary documentation and is therefore a nullity.

[17] This point is not addressed by the applicant in his replying affidavit. The applicant does not explain how the vehicle came to be registered in his name without the original NATIS certificate. The applicant does not challenge the respondent's assertion that it has never relinquished that certificate. On the papers as they stand, the inference is inescapable that the registration was effected irregularly, and possibly fraudulently, without the respondent's knowledge or consent.

The ownership history attached by the applicant:

[18] The applicant attached to his founding affidavit the eNatis ownership history of the vehicle. That document reveals that the vehicle changed hands no fewer than five times within a short period following Ms. Phillips's sale of the vehicle. It passed through multiple dealerships and financiers. This rapid succession of transfers is, on the respondent's version, indicative of an irregular or fraudulent scheme. The applicant cannot complain that the respondent raises this point; the applicant himself placed the evidence before the court. The ownership history supports the respondent's contention that the purported transfers were not legitimate and that the respondent never consented to any of them.

The points in limine Non – Joinder:

[19] The respondent submits that the application is fatally defective because the applicant has failed to join numerous interested parties, namely the previous owners and titleholders of the vehicle. The respondent contends that the relief sought will directly affect the interests of those parties.

[20] The ownership history attached by the applicant reveals that the vehicle changed hands multiple times. To determine whether ownership validly passed from Ms. Phillips to subsequent purchasers, and ultimately to the applicant, those prior parties must be before court. Their interests are directly affected.

[21] The applicant argues that in a *rei vindicatio* the only necessary party is the person in possession. That proposition is generally true where the dispute is between two parties with competing claims. However, this case is materially different. The respondent does not claim possession through a recent transaction with the applicant. It claims that all transfers after Ms. Phillips were a nullity. The prior owners and financiers have a direct and substantial interest in the outcome of these proceedings. An order granted in their absence may cause them prejudice and may prove unenforceable.

[22] The non-joinder is not a technical formality. A court should not make an order that may affect the interests of a party who has not been joined, unless that party's rights are purely consequential or the party is merely nominal. In this matter, the ownership chain involves multiple parties. The applicant seeks a declaration that he is the owner. That declaration, if granted, would necessarily impact the rights of those prior parties. They are necessary parties.

[23] Accordingly, the first point *in limine* is accordingly upheld. The application is defective for want of proper joinder.

The Foreseeable dispute of fact:

[24] The respondent contends that the affidavits reveal a fundamental and foreseeable dispute of fact that cannot be resolved on the papers without oral evidence. That contention is well founded.

[25] The applicant's case rests on the NATIS records showing him as owner and titleholder. The applicant argues that he purchased the vehicle in good faith, paid value, and settled all finance obligations. The respondent's case is that it never intended to transfer ownership, that the original NATIS certificate remains in its possession, and that any registration of the vehicle in another person's name was procured without its consent.

[26] Counsel for the respondent, in his heads of arguments, correctly highlights that the applicant does not show, and does not even attempt to show, an agreement to transfer ownership from the respondent to any party, any intention from the respondent to transfer ownership, or any physical or symbolic delivery from the respondent to any purchaser. These are essential elements for the valid transfer of ownership. Their absence creates a material dispute of fact.

[27] Motion proceedings are designed for the resolution of legal issues based on common cause facts. Where a real and material dispute of fact arises on the affidavits, a final order can only be granted if the facts alleged by the applicant, together with the facts admitted by the respondent, justify such an order. That is the well-known *Plascon-Evans*[1] rule. Applying that rule to the present matter, I am satisfied that a real and material dispute of fact exists and that the applicant has not established a clear right to the relief he seeks on the papers as they stand. The application cannot succeed in motion proceedings.

[28] The applicant has acknowledged, through the ownership history that he attached, that the vehicle had undergone multiple changes of ownership. The complexity of the ownership chain should have made it apparent that factual disputes were inevitable. This is not a straightforward matter. It is a contest between two parties each claiming ownership based on competing chains of title. The respondent's claim is supported by a court order that has not been set aside.

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[1] *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd [1984] ZASCA 51; [1984] 2 All SA 366 (A).*

[29] The second point *in limine* is accordingly upheld. The dispute of fact was foreseeable, and motion proceedings are not the appropriate vehicle for resolving it.

The merits:

[30] The points *in limine* are dispositive of this matter. No consideration of the merits is strictly required. Nevertheless, it is appropriate briefly to address the merits to demonstrate that, even if the points *in limine* were decided against the respondent, the applicant would nonetheless fail to establish a clear right to the relief that he seeks. I now turn to the merits.

[31] The respondent's opposition is founded on the abstract theory of transfer, as explained by the Supreme Court of Appeal in *Legator McKenna Inc and Another v Shea and Others.*[2] The court held that the abstract theory of transfer in relation to the passing of ownership of both movable and immovable property. The abstract theory requires two distinct elements for the valid transfer of ownership: firstly, a valid real agreement (*animus transferendi dominii*) between the transferor and transferee, secondly, the essentials elements of this agreement are the intention to transfer and the legal competence to do so.

[32] When the foregoing principles are applied to the facts of the present matter, the conclusion is inescapable. The respondent contends and the evidence confirms that it never intended to transfer ownership of the vehicle to any person. The instalment sale agreement entered into with Ms. Phillips expressly reserved ownership in the respondent. The original NATIS certificate remains in the respondent's possession and has never been relinquished. In these circumstances, any purported transfer of ownership effected after the agreement with Ms. Phillips was a nullity, devoid of any legal effect.

[2] [2008] ZASCA 144; 2010 (1) SA 35 (SCA) at [18] – [23].

[33] The applicant relies on his NATIS certificate as proof of ownership. The legal position is well settled: registration on the NATIS system is not conclusive proof of ownership. It creates a rebuttable presumption only. That presumption is rebutted where evidence establishes that the registered owner never intended to transfer ownership and that the original registration certificate was never relinquished. Such evidence is present in this matter. Accordingly, the NATIS record cannot be accepted as conclusive proof of the applicant's ownership.

[34] The default judgment, which the applicant himself placed before this court, constitutes a judicial determination that the respondent is the owner of the vehicle, and that Ms. Phillips had no right to retain possession. The default judgment has not been challenged by the applicant. It remains binding and enforceable. The applicant cannot simply ignore its existence or its findings.

[35] In these circumstances, the applicant has not made out a clear case for the relief that he seeks. Even if the points *in limine* were not upheld, the application is devoid of merit and would accordingly fail.

Costs:

[36] The respondent seeks an order that the applicant pay the costs of the application. There is no reason to depart from the ordinary principle that costs follow the result. The applicant elected to proceed by way of motion in circumstances where motion proceedings are not appropriate, and the respondent has been compelled to oppose the application. An award of costs on scale C is appropriate.

Order:

[37] Accordingly, the following order is made:

1. The application is dismissed.

2. The applicant is ordered to pay the respondent's costs including the costs of counsel on scale C.

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KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the Applicant:	Adv. H Bucksteg
Instructed by:	Kietzmann & Weideman Attorneys Inc
For the Respondent:	Adv. CJ Welgemoed
Instructed by:	Straussdaly Inc Attorneys
Date of Hearing:	29 April 2026
Date of Judgement:	19 June 2026