IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 2025-034141

DATE HEARD : 28 JULY 2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

.....29 July 2026.... ....[redacted]
DATE SIGNATURE

In the matter between:

MARIO COETZEE	**Applicant**

and

PIETER JOHANNES NEETHLING N.O.	**First Respondent**
FRANCOIS MARTHINUS VENTER N.O.	**Second Respondent**
ANDRIES JOHANNES NEL N.O.	**Third Respondent**
PIETER JOHANNES NEETHLING	**Fourth Respondent**
57 PONTIAC (PTY) LTD	**Fifth Respondent**
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	**Sixth Respondent**

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 29 July 2026.

JUDGMENT

DU PLESSIS, AJ

INTRODUCTION

1.

1. The applicant, Mr Mario Coetzee, seeks an order directing the first to fourth respondents to restore to him a number of classic motor vehicles, alternatively to pay their value, together with the repayment of various cash amounts and credits. The claim is advanced in unjustified enrichment: the applicant contends that the first to fourth respondents were enriched at his expense through performance which he says he rendered towards the purchase of the Soshanguve Plaza Shopping Centre, a purchase that was never carried into effect by transfer to the intended purchaser.
2. The first to third respondents are the trustees for the time being of the Pieter J Neethling Beleggings Trust ("the Trust"). The fourth respondent, Mr Pieter Johannes Neethling, is the first respondent in his personal capacity and deposed to the answering affidavit of the first to fourth respondents. The fifth respondent, 57 Pontiac (Pty) Ltd ("Pontiac"), is the company which the applicant caused to be incorporated and of which he claims to be the sole shareholder; its sole director is the applicant's brother, Mr Etienne Coetzee, who resides in the Netherlands. The sixth respondent, the National Director of Public Prosecutions, is cited as an interested party only and has taken no part.
3. The application is opposed by the first to fourth respondents jointly. An answering affidavit was also filed in the name of the fifth respondent by Mr Jaco Koster of Koster Attorneys, on the instructions of Mr Etienne Coetzee. In addition to opposing the relief, the first to fourth respondents brought an application under rule 6(15) of the Uniform Rules of Court to strike out portions of the founding affidavit. At the hearing before me, Mr B Reynders appeared for the first to fourth respondents. There was no appearance for the applicant or for the fifth respondent.
4. Being satisfied that the applicant and the fifth respondent were duly served with notice of the hearing and elected not to appear, I heard Mr Reynders. For the reasons that follow, the applicant's application against the first to fourth respondents falls to be dismissed.

THE PAPERS AND PROCEDURAL HISTORY

5. The application was launched as one of urgency in March 2025 and set down for 22 April 2025. All the affidavits, and all three sets of heads of argument, date from April 2025. On 23 April 2025 the matter was struck from the urgent roll, with costs, by Yende AJ. Thereafter it was the first to fourth respondents — and not the applicant — who applied for a date

on the opposed motions roll; the matter was set down, on their initiative, by notice of set-down dated 26 June 2026, and came before me in the ordinary course.

6. The relief sought is final relief. The applicant filed a founding affidavit and a replying affidavit; the first to fourth respondents filed an answering affidavit deposed to by the fourth respondent; and an answering affidavit was filed in the name of the fifth respondent by its attorney. The replying affidavit, so far as it goes, is directed largely at the alienation of the vehicles and confirms that the property was sold at auction and transferred to Danny Gunn Properties (Pty) Ltd. It does not answer the central factual disputes to which I refer below.

SERVICE, NON-APPEARANCE AND THE PRACTICE DIRECTIVES

7. A court may determine a matter in the absence of a party who has had due notice of the hearing. Service of a notice of set-down may be effected by email under rule 4A, at the address a party has nominated for service. The applicant and the fifth respondent each nominated an email address for service in these proceedings, at which their attorneys of record accepted service; the notice of set-down of 26 June 2026 was transmitted to those addresses, and its delivery appears from the electronic file as paragraph 6.3 of the practice directive requires. I am satisfied that both the applicant and the fifth respondent were duly served with notice of the hearing and have elected not to appear, and that I may properly proceed to determine the matter in their absence.

8. The conduct of opposed motions in this Division is governed by the consolidated Practice Directive 1 of 2024. It requires, among other things, that the parties hold a pre-hearing conference and prepare a joint practice note (paragraphs 25.17 and 25.18) and, where an opponent fails to cooperate, that the aggrieved party file a unilateral practice note and declare the opponent in default (paragraph 25.19). No practice note, joint or unilateral, was filed, and it was for the first to fourth respondents, as the party that applied for the date, to have attended to this. Paragraph 6.9, however, empowers the court to condone non-compliance, and the court in any event retains a discretion in such matters. In the present case the issues are adequately defined by the affidavits and the heads of argument already filed; Mr Reynders was able fully to address me upon them; and no prejudice results from the absence of a practice note, the more so as the applicant elected not to appear. I therefore condone the non-compliance with paragraphs 25.17 to 25.19 and proceed to deal with the matter.

THE STRIKING-OUT APPLICATION

9. The first to fourth respondents seek, under rule 6(15), to strike out paragraphs of the founding affidavit that make allegations of municipal-clearance fraud, threats, and criminal conduct. Two requirements must be met before matter is struck out: it must be scandalous, vexatious or irrelevant; and the party seeking the relief must be prejudiced if it is not struck.[1] Much of the impugned material bears on issues genuinely raised in the papers — in particular the treatment of the municipal charges and the deductions from the sale proceeds — and could not be struck as irrelevant merely because it is discreditable;[23] nor does the requisite prejudice, in the sense required, appear to be established.[4] Since the application falls to be dismissed on the grounds set out below, it is unnecessary to decide the striking-out application, and I would in any event not have been inclined to grant it. I record only that I have had regard to the impugned material solely to the limited extent that it bears on the civil issues, and I attach no weight to the untested allegations of criminality as such. I make no separate order as to the costs of that application.

LOCUS STANDI

10. The applicant accepts, in his heads of argument, that he was not a party to the sale agreements and has no contractual claim; his claim is one in unjustified enrichment, which he identifies as the *condictio ob causam finitam*. Its elements are settled: enrichment; impoverishment; that the enrichment was at the applicant's expense; and that it was unjustified.[5] A presumption of enrichment arises on payment or delivery, and the recipient bears the onus of disproving it;[6] the defence of non-enrichment is narrow.[7]
11. The difficulty for the applicant lies in the requirements that the enrichment be at his expense and unjustified. It is common cause that each of the agreements — the sale of 26 October 2019, the agreement of 9 October 2020, the addendum of 29 January 2021, the settlement addendum of 8 March 2021, and the memorandum of understanding of 3 November 2021 — was concluded between the Trust and Pontiac, and not with the applicant. The first agreement preceded Pontiac's incorporation, and to that extent the applicant contracted for a company to be formed under section 21 of the Companies Act 71 of 2008; but

[1] Beinash v Wixley [1997] ZASCA 32; 1997 (3) SA 721 (SCA) at 733.

[2] Vaatz v Law Society of Namibia 1991 (3) SA 563 (Nm) at 566C-E.

[3] Fisheries Development Corporation of SA Ltd v Jorgensen 1979 (3) SA 1331 (W) at 1339E-F.

[4] New Salt Rock City (Pty) Ltd v Kilken Platinum (Pty) Ltd 2024 JDR 2407 (GP) at para 8.

[5] Kudu Granite Operations (Pty) Ltd v Caterna Ltd [2003] ZASCA 64; 2003 (5) SA 193 (SCA) at para 17.

[6] Id at para 21.

[7] General Council of the Bar of South Africa v Geach 2013 (2) SA 52 (SCA) at para 201.

Pontiac neither rejected nor failed to ratify that agreement and is regarded as having ratified it,[8] and the remaining agreements were concluded by Pontiac in its own name. The performance in issue — whether the payments or the delivery of the vehicles — was rendered in discharge of Pontiac's obligations under those agreements. A debt may be discharged by a third party even without the debtor's authority,[9] and the fact that the funds or the vehicles may have been the applicant's does not convert Pontiac's performance into the applicant's. The authorities on which the applicant relies concern the recovery of a payment made without an underlying obligation;[10] they do not assist a party who accepts that the performance was rendered under valid agreements to which he was not party.

12. Where there is a *causa* for the transfer — here, the agreements between the Trust and Pontiac — the transfer is not made without cause, and the right to cancel for repudiation and to reclaim performance vests in the contracting party, Pontiac, and not in the applicant. On the facts as they must be accepted, the applicant is not the party in whom any restitutionary claim vests. He has not established his *locus standi* to claim the relief sought, and the application fails on that ground alone.

THE DEREGISTRATION OF PONTIAC

13. The conclusion just reached is reinforced by a further matter. It is common cause on the papers that Pontiac was incorporated on 8 June 2020 and was finally deregistered on 21 January 2024. A company that has been finally deregistered ceases to exist as a juristic person; it can neither sue nor be sued, nor be represented, nor validly oppose. The answering affidavit filed in the name of the fifth respondent is, for that reason, of no effect, quite apart from the applicant's unresolved challenge under rule 7(1) to the authority of those purporting to act for it. More importantly, if the right to reclaim the performance vests in Pontiac, as I have held, that right cannot presently be pursued by anyone, because Pontiac does not exist and has not been restored to the register. The applicant's attempt to assert the claim in his own name cannot cure that difficulty.

DISPUTE OF FACT

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[8] Section 21(5) of the Companies Act 71 of 2008.

[9] Absa Bank Ltd v Moore [2016] ZACC 34; 2017 (1) SA 255 (CC) at para 33.

[10] Besselaar v Registrar, Durban and Coast Local Division 2002 (1) SA 191 (D) at 196-7; African Diamond Exporters (Pty) Ltd v Barclays Bank International Ltd 1978 (3) SA 699 (A) at 713.

14. There is a further and independent obstacle. The applicant seeks final relief. Such relief may be granted on motion only if the facts admitted by the respondents, together with the facts they allege, justify it, unless the respondents' version is bald, uncreditworthy, or so far-fetched as to be rejected on the papers.[11] The affidavits are both the pleadings and the evidence, and the applicant must make out his case in the founding papers.[12]

15. The answering affidavit of the fourth respondent is not a bald denial. It sets out a detailed version: that no agreement was ever concluded with the applicant personally; that all performance was rendered by Pontiac under the agreements; that Pontiac short-paid the deposit and fell into arrears with the municipal charges; that the memorandum of understanding recorded the parties' final arrangement, under which the Trust would retain the performance already made and pay the net proceeds of the auction to Pontiac in full and final settlement of all claims; and that the Trust performed its obligations and did not repudiate. On that version — which, the applicant not having appeared to displace it, must be accepted — the applicant has established no basis for restitution. The fifth respondent's alternative request for a referral to oral evidence[13] was not pursued and does not arise: the applicant, who bears the onus, sought final relief and did not appear, and the disputes fall to be resolved against him on the papers.

Non-joinder of Mr Etienne Coetzee

16. Finally, the applicant failed to join Mr Etienne Coetzee, who has a direct and substantial interest in the matter — a legal interest that may be prejudicially affected by an order.[14] He is the sole director of Pontiac, the contracting purchaser; he concluded several of the agreements relied upon; he and his father are said to have contributed to the purchase price; and it is his complaint that founds the criminal proceedings referred to in the papers. His non-joinder is a further reason why the applicant's application, as constituted, cannot succeed. The dismissal of the application grants no relief against Mr Etienne Coetzee and does not prejudice him; it is therefore no impediment to the order I make.

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[11] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634I-635C; *Masipa v Masipa* 2020 JDR 1054 (GP).

[12] *Minister of Land Affairs and Agriculture v D & F Wevell Trust* 2008 (2) SA 184 (SCA) at para 43; *Bayat v Hansa* 1955 (3) SA 547 (N) at 553D.

[13] Rule 6(5)(g) of the Uniform Rules of Court.

[14] Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A) at 659; Gordon v Department of Health, KwaZulu-Natal [2008] ZASCA 99; 2008 (6) SA 522 (SCA) at paras 9 and 11.

CONCLUSION

17. For these cumulative reasons — the applicant's want of *locus standi*, the deregistration of Pontiac, the genuine disputes of fact that preclude final relief on the papers, and the non-joinder of Mr Etienne Coetzee — the applicant has not made out a case for the relief sought, and the application against the first to fourth respondents must be dismissed. No relief was sought against the fifth or sixth respondents, and the order is confined accordingly.

COSTS

18. Costs follow the result. The applicant has been unsuccessful and must pay the costs of the first to fourth respondents, who alone appeared to oppose the application. Having regard to the nature, complexity and volume of the matter, I consider it appropriate, in accordance with rule 67A, that those costs be allowed on scale C. The fifth respondent did not appear, has been finally deregistered, and its opposition was in any event advanced while its representation was in dispute; it would not be appropriate to make any costs order in its favour or against it. The costs occasioned by the striking-out application are subsumed in the costs of the application.

COSTS

In the result, I make the following order:

1.The applicant's application against the first to fourth respondents is dismissed.

2. The applicant is ordered to pay the first to fourth respondents' costs of the application, such costs to include the fees of the legal practitioner who appeared, on scale C.

3. There is no order as to the fifth respondent's costs.

[redacted]

DU PLESSIS AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
29 JULY 2026

APPEARANCES

Date of hearing:	28 July 2026
Date of judgment:	29 July 2026
For the applicant:	No appearance
For the first to fourth respondents:	Mr B Reynders A L Maree Incorporated, Pretoria
For the fifth respondent:	No appearance
Sixth respondent:	No appearance (no relief sought)