

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2026-020102

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO

7 September 2026

In the matter between:

ESWATINI OILS AND MILLS (PTY) LTD

Applicant

AND

VUSI'S FARM (PTY) LTD

First Respondent

STEAM HOUSE ENGINEERING (PTY) LTD

Second Respondent

---

REASONS

---

MIA, J

*Introduction*

- [1] This urgent application concerns two industrial boilers purchased by the applicant from the first respondent. Both respondents opposed the application.

After hearing argument, I indicated that the applicant was entitled to the relief in the draft order, without a separate declarator of ownership, and directed that a revised order be submitted. These are my reasons.

- [2] The central question is whether ownership of the boilers passed to the applicant before the first respondent purported to sell the 12.5-ton boiler to the second respondent. The applicant relies principally on constructive delivery by *traditio longa manu* and, in the alternative, on *constitutum possessorium*. I consider the submissions on urgency first.

### *Background*

- [3] It is common cause that, during July 2025, the applicant purchased two industrial boilers from the first respondent: a 10-ton boiler and a 12.5-ton boiler. The purchase price was paid in full to the first applicant. Due their size, the boilers remained at the first respondent's premises pending dismantling and removal. In December 2025, before removal had been completed, the first respondent purported to sell the 12.5-ton boiler to the second respondent, who dismantled and removed it.

- [4] In response to the applicant's demand for delivery of the boilers, the first respondent contended that it had cancelled the agreement because the applicant failed to remove them within the agreed period. It tendered repayment of the purchase price.

### *Issues*

- [5] The issues are whether the application is urgent; whether the applicant is properly before the Court; whether ownership passed to the applicant; whether the first respondent's purported cancellation and tender of repayment defeat the vindicatory claim; and whether final relief may be granted on the papers.

### *Urgency*

- [6] The applicant knew by mid-December 2025, or at the latest early January 2026, that the first respondent disputed its entitlement to remove the

boilers and had disposed of at least one of them. The application was launched on 2 February 2026. The intervening delay is not insignificant and required explanation. The applicant submits it attempted to resolve the difference with the first respondent before approaching this court.

- [7] On 3 December 2025 Mr Bruce Avis, acting for the first respondent, granted the applicant access to the boilers, identified them and authorised dismantling and removal.<sup>1</sup> Dismantling proceeded from 8 to 12 December 2025 with the first respondent's knowledge and without objection. On 11 December 2025 the first respondent offered to 'buy back' one boiler for R150,000.<sup>2</sup> Thereafter, it permitted the second respondent to dismantle and remove the 12.5-ton boiler. The interference with the applicant's asserted proprietary rights was continuing, and there was a real risk of further alienation or dissipation of the machinery and its component parts. In those circumstances, the applicant could not obtain substantial redress on the ordinary timetable. Notwithstanding the delay, I am satisfied that the matter warranted urgent determination.

*Applicant's citation and security for costs*

- [8] The applicant is a foreign company and, when security for costs was demanded, it offered R200,000. After that offer was rejected, it deposited R350,000 into its attorney's trust account. The respondents' concern regarding security was therefore addressed and did not preclude determination of the application.
- [9] The respondents contended that the applicant was not properly before the Court because the founding papers described it as a company registered under South African law, whereas it is registered address in Eswatini. The applicant explained that the description was a bona fide error and sought to correct it under rule 28. Its name and identity remained unchanged and were known to all parties. The correction concerns only its description; it does not

---

<sup>1</sup> Record, Founding Affidavit, paras 33–34.

<sup>2</sup> Record, WhatsApp record, annexure E.

substitute a different litigant. No prejudice was demonstrated. The objection accordingly cannot be sustained.

#### *Ownership*

[10] The first respondent denied that it intended to give the applicant unimpeded control of the boilers. It maintained that the applicant could dismantle and remove them only with its permission and that ownership would remain with it until physical removal. This it says is reinforced by the insurance it maintained over the boilers. In paragraph 67 of its answering affidavit it stated:

*"it was not discussed nor was it agreed that the applicant would be entitled to exercise physical control over the sold items... Any arrangements that were made in relation thereto would have to occur [through me] as the representative of the first respondent."*

[11] The first respondent further averred that, without its permission, the applicant was not entitled to access the boilers and that the boilers remained its property until they were removed from the premises.

[12] Those assertions must be evaluated against the parties' conduct. The first respondent accepted the full purchase price, identified the boilers, admitted the applicant and its contractors to the premises, and allowed dismantling to proceed. Its right to supervise dismantling so as to prevent damage to its premises is not inconsistent with a transfer of ownership of the boilers themselves.

#### *Legal principles*

[13] The requirements of the *rei vindicatio* are settled. The applicant must establish ownership and possession by the respondent. Once those facts are proved, the possessor must establish a right to retain the property.<sup>3</sup> Ownership of movable property passes upon delivery pursuant to a valid real agreement, accompanied by the parties' intention to transfer and acquire ownership.<sup>4</sup>

<sup>3</sup> *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20B–D.

<sup>4</sup> *Groenewald v Van der Merwe* 1917 AD 233

- [14] Delivery need not take the form of physical handover. In the case of *traditio longa manu*, delivery is effected when the transferor identifies the thing and places it at the transferee's disposal, with the intention that the transferee assume control. *Constitutum possessorium* applies where the transferor retains physical custody but thereafter holds on behalf of the transferee.
- [15] The material facts are that the boilers were specifically identified; the applicant was given access to the premises; and dismantling commenced with the first respondent's knowledge and consent. By exercising physical control over the boilers in the course of dismantling them for removal, the applicant acted in a manner consistent with ownership.
- [16] Because final relief is sought in motion proceedings, the factual enquiry is governed by the rule in *Plascon-Evans*. Final relief may be granted on the facts admitted by the respondent together with the facts alleged by the applicant, unless the respondent's denial is not genuine or is so untenable that it may be rejected on the papers.<sup>5</sup>
- [17] Even on the first respondent's version, its permission was required only for access and dismantling. That permission was in fact given, and dismantling commenced. In the context of large industrial machinery incapable of immediate manual delivery, those acts are significant: they placed the identified boilers at the applicant's disposal and enabled it to assume effective control.
- [18] The objective conduct of the parties therefore satisfies the requirements of *traditio longa manu*. The later offer to 'buy back' a boiler provides further support for the conclusion that the first respondent had already treated the boiler as belonging to the applicant.
- [19] It is therefore unnecessary to decide whether the facts also satisfy the more exacting requirements of *constitutum possessorium*. The applicant succeeds on the primary basis on which it relies.

---

<sup>5</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

[20] Ownership of both boilers accordingly passed to the applicant when constructive delivery occurred.

[21] Once ownership had passed, the first respondent was divested of *dominium* and could not thereafter transfer ownership to another, the second respondent in this case.

[22] The maxim *nemo plus iuris ad alium transferre potest quam ipse habet* applies: no person can transfer more rights than that person has. The first respondent accepted the payment for the boilers and placed them at the applicant's disposal. Divested of ownership, the first respondent's subsequent sale to the second respondent was therefore incapable of transferring ownership as against the applicant.

[23] The first respondent's purported cancellation and tender of repayment do not answer the vindicatory claim. Once ownership has passed, cancellation of the underlying agreement may give rise to personal restitutionary claims, but it does not, without more, reverse the transfer of ownership.

[24] The applicant's right is a real right. A tender to repay the purchase price is, at best, directed at a personal claim and cannot defeat the applicant's right to recover its property.

[25] The second respondent relied on its alleged good faith. Good faith alone does not confer ownership where the seller lacked title, unless a recognised exception applies. No such exception was established. The second respondent therefore has no right to retain the 12.5-ton boiler against the applicant.

[26] The respondents' denials do not displace the objective and substantially common-cause facts concerning payment, which the first respondent received. The tender to repay demonstrates the payment made. The boilers are identifiable. The applicant had access as it entered the premises to assess what it required to do to remove the boilers and has commenced dismantling. Those

facts establish constructive delivery and the requisite intention. The legal conclusion of ownership follows from them.

[27] The property is sufficiently identified for vindicatory relief. The two boilers were distinguished by capacity, and the 12.5-ton boiler removed by the second respondent is the boiler claimed from it. The 10-ton boiler remains at the first respondent's premises.

[28] I accordingly conclude that ownership passed to the applicant by *traditio longa manu*. Following from that conclusion, the first respondent's later sale did not transfer ownership to the second respondent. The tendered repayment is not a defence to vindication. The applicant is entitled to recover both boilers without a separate declaratory order.

[29] The usual costs order that costs should follow the result is applicable. Although punitive costs were sought, the circumstances do not justify such an order. Costs on the party-and-party scale, Scale B, are appropriate.

#### Order

[30] For the reasons above the following order is made:

1. The applicant's non-compliance with the forms, service requirements and time limits prescribed by the Uniform Rules of Court is condoned, and the application is heard as one of urgency.
2. The first respondent is directed forthwith to permit the applicant access to its premises at Plot 55, Waters Edge, Oberholzer, Carletonville, to take possession of the 10-ton boiler.
3. If the first respondent fails to comply with paragraph 2 within 48 hours after service of this order, the Sheriff of the High Court is authorised, with the assistance of the South African Police Service if required, to:
  - 3.1. enter the first respondent's premises;
  - 3.2. locate and identify the 10-ton boiler and all its component parts;
  - 3.3. dismantle, if necessary, and attach the 10-ton boiler and all its component parts; and

- 3.4. deliver the boiler and its component parts into the applicant's possession.
4. The second respondent is directed forthwith to restore possession of the 12.5-ton boiler, together with all its component parts, to the applicant.
5. The respondents are ordered to pay the costs of the application on Scale B.



---

**S C MIA**  
**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, JOHANNESBURG**

**Appearances:**

|                                             |                                                                                         |
|---------------------------------------------|-----------------------------------------------------------------------------------------|
| On behalf of the applicant                  | : Adv E Ahmed<br>: <a href="mailto:Eesaahmed12@gmail.com">Eesaahmed12@gmail.com</a>     |
| Instructed by                               | : Essy Attorneys<br><a href="mailto:Legal@essylaw.co.za">Legal@essylaw.co.za</a>        |
| On behalf of the 1 <sup>st</sup> respondent | : Adv D. Vetten<br><a href="mailto:Dirke@vettenlaw.co.za">Dirke@vettenlaw.co.za</a>     |
| Instructed by                               | : VD Merwe Berg Attorneys<br><a href="mailto:Braam@vmblaw.co.za">Braam@vmblaw.co.za</a> |
| On behalf of the 2 <sup>nd</sup> respondent | : Adv C. Gibson<br><a href="mailto:Gibson@maisels.co.za">Gibson@maisels.co.za</a>       |
| Instructed by                               | : Senekal Simmonds Inc<br><a href="mailto:ewan@sesi.co.za">ewan@sesi.co.za</a>          |
| Date of hearing                             | : 10 February 2026                                                                      |
| Date of judgment                            | : 7 September 2026                                                                      |