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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable
Case no: 2026-184974

In the matter between

MATSOKOLO LYDIA SOTYO **APPLICANT**

and

KENALEMANG KGASAPANE **FIRST RESPONDENT**

BEVAN BARNES **SECOND RESPONDENT**

Neutral citation: *Sotyo v Kgasapane and Others* (2026-184974) [2026] ZAFSHC 495 (30 October 2026)
Coram: MOLITSOANE J
Heard: 29 October 2026
Delivered: 30 October 2026
Summary: Rei vindication – respondent resisting application on the basis of non-contractual performance and *lien* – application dismissed with costs.

ORDER

The application is dismissed with costs, which include costs of counsel on scale A.

JUDGMENT

Molitsoane J

[1] The applicant seeks a final order in the nature of a *rei vindicatio* for the return of a motor vehicle bearing registration number FMS[…] (the vehicle), together with ancillary relief. The applicant is the vehicle's registered owner. The first respondent is a mechanic who undertook repairs to the vehicle. The second respondent is alleged to have been in possession of the vehicle at its premises.

[2] The first respondent opposes the application and raises a right of retention, namely *ius retentionis* or a *lien*, in respect of repairs effected to the vehicle and parts installed therein. The first respondent denies that the vehicle was in the possession of the second respondent and avers that it remained under the lock and key of his son, Mr Barry Barnes.

[3] According to the applicant, during or about December 2025 the vehicle required certain repairs. The applicant's son, with the applicant's consent, interacted with the first respondent and concluded the relevant agreement on the applicant's behalf.

[4] The first respondent provided a quotation in the amount of R16 450, inclusive of parts and labour. The applicant accepted the quotation and delivered the vehicle to the first respondent for repair. The applicant alleges that it was agreed that, upon collection of the vehicle, the first respondent would show the son the old parts removed from the vehicle and produce receipts for the parts installed. The applicant's son also supplied a water pump as one of the parts to be installed.

[5] On 14 February 2025, the applicant's son attended the first respondent's premises after being informed that the vehicle was ready for collection. He requested to inspect the replaced parts and to be furnished with the receipts. The first respondent allegedly failed to do so. The applicant's son consequently refused to pay and left the premises. On 27 February 2025, the applicant's son returned to the first respondent's

premises in the company of members of the South African Police Service and delivered a letter of demand. This too was unsuccessful.

[6] The applicant thereafter saw the vehicle in the yard of the second respondent. On that basis, the applicant launched the present application against both respondents, seeking restoration of the vehicle to him.

[7] The first respondent's version is materially different. He avers that on 14 February 2025 he informed the applicant that the vehicle had been repaired and was ready for collection against payment of the agreed amount of R16 450. The first respondent further avers that, on the same day, he provided a diagnostic report demonstrating that the vehicle was operational and had been repaired. The applicant, however, failed or refused to pay the agreed amount. On 2 March 2026, the first respondent informed the applicant that storage charges of R250 per day would be levied in respect of the vehicle.

[8] The first respondent denies that the vehicle was ever in the possession of the second respondent. He avers that the vehicle remained under the lock and key of his son, Mr Barry Barnes. He accordingly denies that the second respondent has any possession of, or interest in, the vehicle. The first respondent asserts that he has a *lien* over the vehicle for the services rendered and the parts installed. He contends that the applicant is not entitled to the return of the vehicle without payment of the amount due in respect of the repairs.

[9] The *rei vindicatio* is the remedy by which an owner seeks to recover possession of his or her property from another person who retains it without the owner's consent. To succeed, the applicant must establish that he is the owner of the vehicle and that the respondent against whom relief is sought was in possession of the vehicle when the proceedings were instituted.

[10] However, an owner's right to recover possession is not absolute. A person in possession of another's property may resist a *rei vindicatio* where that person has a right enforceable against the owner, including a right of retention or lien.

[11] A *lien*, or *ius retentionis*, arises where a person in possession of another's property performs work upon, or expends money in relation to, that property. The lienholder is entitled to retain possession of the property until he or she is reimbursed for the work done or expenditure incurred. A *lien* is essentially a defence to a *rei vindicatio*. It does not confer ownership upon the lienholder, nor does it ordinarily constitute an independent cause of action. Its function is to secure payment of the debt owed to the person who performed the work or incurred the expense.

[12] Where the *lien* arises from a contract between the parties, it is a debtor-and-creditor *lien*. In such circumstances, the lienholder may retain the property until payment of the contractual debt.

[13] The application is brought by notice of motion and final relief is sought. It is trite that, where genuine disputes of fact arise on the affidavits in motion proceedings, the applicant's version must generally be accepted only to the extent that it is admitted by the respondent. Where the respondent's version is bona fide and not far-fetched or clearly untenable, the respondent's version must be accepted for purposes of determining whether the applicant has made out a case for final relief.[1] The Supreme Court of Appeal restated the *Plascon-Evans* rule as follows in *National Director of Public Prosecutions v Zuma*[2] as follows:

> 'Motion proceedings, unless consent with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities… A final order can be granted only if the facts averred in the Applicant's affidavits, which have been admitted by the Respondent together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bold or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers….'

[14] In the present matter, there are material disputes of fact concerning whether: the first respondent was obliged to produce the old parts and receipts before payment

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[1] *Plascon-Evans Paints v Van Riebeeck Paints* 1984 (3) SA 623 at 635C.
[2] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA) para 26.

became due; the vehicle was properly repaired; the vehicle was in the possession of the second respondent; and the first respondent is entitled to retain the vehicle pending payment.

[15] *Room Hire Company (Pty) Ltd v Jeppe Mansions (Pty) Ltd*[3] identified the principal ways in which a dispute of fact arises. *Hyprop Investments Ltd v NCS Carriers and Forwarding CC and Another*[4] summed up these as follows:

> 'Where the respondent denies all material allegations *and produces or will produce, positive evidence by deponents or witnesses to the contrary"*. It is accepted that the illustrations given suggest that the affidavit itself will explain why evidence cannot be readily obtained;
>
> Although admitting the applicant's evidence, the respondent may allege other facts which the former disputes;
>
> Where the respondent claims lack of knowledge and puts the applicant to the proof, but produces evidence, or indicates that he intends leading evidence, to demonstrate the unreliability of the applicant's averments and that certain essential facts are untrue.'

[16] The first respondent's version is neither far-fetched nor clearly untenable. He has provided a coherent account: the vehicle was repaired; a diagnostic report was furnished; the agreed amount was payable upon collection; and the applicant refused to pay. The applicant, for his part, makes no tender of the amount claimed by the first respondent and relies on an unsupported allegation that the vehicle was not properly repaired. The first respondent has thus tendered a plausible version which the applicant denies.

[17] The first respondent denies that the vehicle was in the possession of the second respondent. He avers that the vehicle remained under the lock and key of his son, Mr Barry Barnes. On the respondent's version, the second respondent therefore had no possession or control of the vehicle.

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[3] *Room Hire Company (Pty) Ltd v Jeppe Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163.
[4] *Hyprop Investments Ltd and Another v NCS Carriers and Forwarding CC and Another* [2013] ZAGPJHC 58; 2013 (4) SA 607 (GSJ); [2013] 3 All SA 449 (GSJ) para 78.

[18] The applicant has not established, on the papers, that the second respondent was in possession of the vehicle at the time the application was launched. The allegation that the vehicle was seen in the yard of the second respondent does not, without more, establish possession by the second respondent, particularly where the first respondent, in light of *Plascon-Evans*, explains that the vehicle remained under the control of his son.

[19] Accordingly, the applicant has failed to establish the requisite possession by the second respondent for purposes of the *rei vindicatio*. The claim against the second respondent must therefore fail.

[20] The first respondent performed repair work on the vehicle and installed parts therein. It is, however, common cause that the son of the applicant purchased the water pump to be installed by the first respondent. The applicant does not dispute that the vehicle was taken to the first respondent for repairs, that a quotation of R16 450 was accepted, and that the quotation included both parts and labour. The applicant's complaint concerns the first respondent's alleged failure to produce the old parts and receipts. Even on the applicant's own version, however, the first respondent had completed the repairs and informed the applicant that the vehicle was ready for collection against payment. The applicant has not made any tender of the amount due in respect of the repairs. Nor has the applicant established that the amount claimed is not owing, or that the first respondent is not entitled to payment for the work done and parts installed.

[21] On the first respondent's version, which must be accepted for purposes of these proceedings, the first respondent was in possession of the vehicle and had performed work upon it at the applicant's request. The first respondent is therefore entitled to rely on a debtor-and-creditor *lien* in respect of the agreed repair costs. The applicant's assertion that the vehicle was not repaired is unsupported by any expert evidence, diagnostic evidence, or other tangible material. It stands against the first respondent's diagnostic report and his express averment that the vehicle was repaired and operational.

[22] During the hearing, it seemed that the attack on the diagnostic report was based

on issues like it was not signed, it appears that the person who generated it was a ‘technician’ not a mechanic. It is strenuously argued that the first respondent is a mechanic and not a technician. Aspersions and doubts are therefore cast on the authenticity and reliability of the diagnostic report. In my view, this should have raised a red flag to the applicant that motion proceedings would be non-suited as a cause of action in these proceedings.

[23] In these circumstances, the applicant has not discharged the onus of establishing that the first respondent has no lawful right to retain the vehicle. The first respondent’s *lien* constitutes a valid defence to the applicant’s *rei vindicatio*. The applicant has failed to establish that the second respondent was in possession of the vehicle. The claim against the second respondent must therefore be dismissed.

[24] In respect of the first respondent, the applicant has failed to establish that the first respondent has no right of retention. On the respondent’s version, the first respondent performed the repairs, the vehicle was ready for collection against payment, and the applicant refused to pay. The first respondent is accordingly entitled to retain the vehicle until payment of the amount due in respect of the repairs.

[25] The application must therefore fail.

[26] I accordingly make the following order:

The application is dismissed with costs, which include costs of counsel on scale A.

P MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances

For the applicant:	T Thulo Thulo Attorneys, Bloemfontein
For the respondent:	GSJ van Rensburg
Instructed by:	Phatsoane Henney Inc. Bloemfontein.