

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

- (1) REPORTABLE: Yes / No
(2) OF INTEREST TO OTHER JUDGES: Yes / No

DATE

SIGNATURE

CASE NO.: 2021/47581

In the matter between:

JUSTINE GATTER

Applicant

and

GRAND TECH AUTO (PTY) LIMITED
t/a GRAND TECH AUTO BODY

First Respondent

SUSTAINABLE LIVING CONSULTANTS CC

Second Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email and is deemed to be handed down upon such circulation.

Gilbert AJ:

1. The applicant engaged one or other of the respondents to carry out repairs to her BMW motor vehicle. Various repairs were done to the vehicle. The applicant paid for some of these repairs, but not for the rest, disputing that she had agreed to those repairs and/or the cost of those repairs. The respondents then refused to return the vehicle, contending for a lien over the vehicle, both in respect of the unpaid repair charges and storage costs consequent upon them retaining the vehicle pursuant to the lien.
2. The applicant launched these proceedings seeking that the vehicle be returned to her against her establishing security in the sum of R23 325.95 to be held in her attorney's trust account pending the outcome of proceedings to be instituted by the respondents.
3. The respondents have counter-applied for an order that the applicant pay the second respondent the sum of R21 325.95. The respondents' counsel made it clear during argument that the basis of this claim for a money judgment against the applicant is that of a compromise (settlement), the respondents contending that the applicant had offered in July 2021 to compromise (settle) the disputes by offering to make payment of this amount, and as the second respondent had accepted this offer in November 2021, the matter had been settled.
4. The respondents' counsel also made it clear that as a consequence of this compromise, it also followed that any claims that the respondents

may have had for storage would also have been compromised, and so the relief sought in the counter-application provides that upon payment by the applicant of the settlement sum of R21 325.95, the vehicle is to be released to the applicant.

5. The court accordingly has to decide two primary issues. The first issue, as is the subject of the main application, is whether the court in its discretion should substitute the respondents' right of retention with the security tendered by the applicant. The second issue is whether the second respondent has established its cause of action based upon compromise. It follows that if the second respondent succeeds, then the applicant would only be entitled to the return of the vehicle upon payment of the settlement sum, and so the issue of the substitution of security would not arise.
6. After this overview, the salient facts can be more closely considered.
7. The applicant delivered her BMW 320i to one or other of the respondents for repair work to be carried out to the vehicle. There is a factual dispute whether the applicant engaged the first respondent to carry out the repairs, as contended for by her, or the second respondent, as contended for by the respondents. Both respondents conduct business from the same address in Lyndhurst, and are closely related to each other. I am unable to decide this factual dispute on the affidavits in that there is considerable evidence favouring the applicant's contention that she engaged the first respondent. On the other hand, there is also

evidence suggesting that the second respondent had been engaged by the applicant or may have carried out the repairs. But what does appear to me is that the applicant cannot be faulted for being under the impression that she was dealing with the first respondent rather than the second respondent, as it was only at a later stage in their dealings, after a dispute had arisen between the parties, that the respondents asserted with any vigour that it was the second respondent rather than the first respondent with whom the applicant had contracted and who had carried out the repairs.

8. This factual dispute does not affect the relief that the applicant seeks by way of substituted security, as the security she has tendered is in favour of both or either respondents. On the other hand, this factual dispute may impact on the money judgment that the second respondent seeks in its counter-application as it is as the applicant for the counter-relief would have to persuade the court based upon the usual *Plascon-Evans* approach that there is no *bona fide* factual dispute on this issue that precludes the money judgment being granted in favour of the second respondent. This is because it is the second respondent (rather than the first respondent) that contends for the compromise and so it has the burden of persuading the court that it (rather than the first respondent) is entitled to the money judgment based upon that its averred compromise that constitutes its cause of action.

9. For convenience I shall refer to the respondents collectively, the reference to the respondents being to one or the other, as the case may be, save where it may be necessary to distinguish between the two.
10. The respondents did carry out certain repairs to BMW with which the applicant was satisfied and made payment. Further repairs were effected to the vehicle, which at all times remained in the possession of one or other of the respondents, and which the applicant has refused to pay for on the basis that the further repair work had not been quoted for or authorised.
11. The outstanding balance claimed by the respondents for the repairs is R21 325.95. The applicant has admitted that she is liable for R2 939.94 but disputes the balance of R18 386.01.
12. The respondents argue that in light of this admission of liability for an amount of R2 939.94, it does not lie in the mouth of the applicant to insist that security be established for an admitted amount. There is merit to this argument, to which I will return later.
13. The applicant having disputed her liability to make payment of the balance of R18 386.01 lodged a complaint with the Motor Industry Ombudsman of South Africa ("the Ombuds") on 16 November 2020.
14. The applicant, having lodged this complaint with the Ombuds and appreciating that it would take some time for the Ombuds to attend to her

complaint, addressed a letter to the respondents informing them of the complaint. At the end of this letter, the applicant records as follows:

“Please ensure that my vehicle is safely stored until the case has been resolved and I will not be held liable for any storage costs as you have advised that you will not release until I make payment of a further R21 325.”

15. The respondents contend that this letter forms a basis for a tacit agreement that there would be storage costs payable by her to the respondents as she had “*voluntarily*” left her vehicle in the possession of the respondents. I do not see any scope for this letter to be read in that fashion or as being indicative of any voluntariness on the part of the applicant to leave her vehicle with the respondents. The applicant had no choice but to leave the vehicle with the respondents as they were insisting upon payment before the vehicle would be released. The applicant goes further in the letter to record that as the vehicle would not be released, the respondents were to safely store the vehicle but expressly recording that she would not be liable for storage costs.

16. Both counsel accepted for present purposes that where a lienholder exercises the right of retention, it does so for its own benefit and against the will of the owner, and therefore is not entitled to require of the owner to pay storage costs.¹ Although a lienholder may be entitled to recover

¹ Although the law is not entitled settled, see *Wessels v Morice* (1913) 34 NPD 112 where the court following the English authority in *Somes v British Empire Shipping Co* 8 HLC 338 held that where a person who has a lien elects to retain possession for purposes of enforcing the lien, he cannot claim for so retaining the property. See too *Laingsburg School Board v Logan* (1910) 27

such expenses that it incurred that the owner would in any event have had to incur had the owner been in possession of the property (such as where the lienholder in exercising a lien over horses, for example, then feeds those horses just as the owner would have had to do, the lienholder is entitled to recover the costs of that feed),² this is not such a case. There is no evidence that the applicant, if the vehicle was returned to her, would have incurred any expenses herself in storing the vehicle. There is no evidence that the applicant was enriched at the expense of the respondents through their storage of her vehicle, and so no basis to sustain an enrichment lien in relation to any storage costs.

17. On 4 December 2020 the first respondent's attorney addressed a letter to the applicant in which *inter alia* it recorded that the vehicle would remain at the first respondent's premises pending the outcome of the referral to the Ombuds. Notably, this letter is addressed on behalf of the first respondent only and does not refer at all to the second respondent. This fortifies the applicant's version that she contracted with the first respondent and not the second respondent, and that there is a factual dispute on this issue. No mention is made in this letter that the applicant would be liable for any storage costs.

SC, to which both counsel referred.

² See the Full Bench of the TPD in *Ford v Reed Bros* 1922 TPD 266, where the Full Bench declined to follow the English authority of *Somes v British Empire Shipping Company*, and so declined to follow the approach in *Wessels v Morice* as being based on English rather than Roman Dutch authority (per Mason J at 269 and the concurring judgment of Gregorowski J at 277). See also *Colonial Government v Smith and Company* 19 SC (1901) 380 at 392.

18. The applicant engaged an attorney, who acknowledged receipt of the letter and that the outcome of the complaint to the Ombuds was awaited.
19. On 14 December 2020 the first respondent's attorney wrote to the applicant's attorney that should the first respondent make payment of R21 325.95 "*plus storage costs thereon*" to the first respondent, the vehicle would be released to the applicant as was being held at the first respondent's premises.
20. Again, notably, no mention is made of the second respondent. Payment is required to be made to the first respondent and the recordal is that the vehicle is being stored at the first respondent's premises.
21. This letter is the first indication that storage costs may be payable, albeit by the oblique reference to "*plus storage costs thereon*".
22. This letter must be viewed in the context of the earlier email by the applicant in which she specifically disavowed any liability for storage costs. There is no consensus that storage costs would be payable.
23. On 15 December 2020 the applicant's attorneys expressly responded as follows:

"... our client's indebtedness to your client is disputed and your client is not entitled to charge any storage fees in relation to the vehicle as your client is insistent on retaining same in his possession and exercising his lien in this regard.

The vehicle is therefore stored on the insistence of your client and not at the behest of our client.”

24. In light of this response, there is no scope for contending that agreement was reached between the parties that storage costs would be payable. There can therefore be no debtor / creditor lien arising from any agreement to pay storage costs. And, as set out above, there is no evidence to support an enrichment lien, as distinct from a debtor / creditor lien, arising from the storage of the applicant’s vehicle.
25. The onus is on the person asserting the right of possession, in this instance the respondents relying upon a lien to secure storage charges, to demonstrate that right.³
26. One of the reasons advanced by the respondents why the substitute security is inadequate is that it did not include security for the storage charges. This reason has no merit as any right of retention that the respondents may have over the vehicle does not extend to securing any claim for storage costs, as distinct from securing the claim for the repairs to the vehicle.
27. On 10 May 2021 the Ombuds gave its recommendation that it did not agree with the applicant's complaint that she was not liable for the balance of the repairs. It is not in dispute that this was a recommendation only and was not binding upon the parties.

³ See *Wynland Construction (Pty) Ltd v Ashley-Smith en andere* 1985 (3) SA 798 (A) at 812 C-G, which specifically found that the lienholder has the onus to prove its lien as a defence against the owner's vindication of the property.

28. On 1 June 2021 and consequent upon the Ombuds' recommendation, the first respondent's attorneys, then also for the first time recording that they act for the second respondent, wrote to the applicant's attorneys, recording that that the applicant was indebted to the respondents for the balance of the repairs in the amount of R21 325.95 together with storage costs of R56, 925.00, and that upon payment thereof, the vehicle would be released.
29. In this letter the respondents' attorneys justify the claim for storage costs as follows: *"Regretfully however, your client elected to abandon her vehicle at the premises of our client, presumably pending the outcome of the [Ombuds'] findings, and as such, your client was no doubt aware of escalating storage costs"*.
30. The respondents then proceed to demand a total of R78, 250,95 (being the outstanding repair costs R21 325.95 plus R56 925.00 for storage costs), attaching an invoice for those storage costs ostensibly issued at the instance of the first respondent.
31. The applicant's attorneys responded the next day, on 2 June 2021 in which the applicant unsurprisingly disputes any liability for storage costs, reiterating her position that as the vehicle was retained at the instance of the respondents and not the applicant, they cannot look to the applicant for storage costs. The applicant's attorneys go further and request of the respondents to produce any agreement that may exist where the applicant expressly agreed to storage costs in relation to her vehicle.

32. The applicant's attorneys further in that letter request confirmation that upon payment of the amount of R21 325.00 by the applicant, the vehicle would be released.
33. Following further emails from the applicants attorneys on 14 and 22 June 2021, to which there was no response, on 5 July 2021 the applicant's attorneys addressed a further letter to the respondents' attorneys, recording that the applicant's attorneys had been placed in possession of trust funds in the amount of R21 325.00, being the asserted outstanding balance for the repairs and seeking confirmation that in the circumstances the vehicle could be collected upon payment.
34. On 6 July 2021 the respondents' attorneys reverted. For the first time, the position is adopted by the respondents that it is the second respondent with whom the applicant had apparently contracted to do the repairs and that as the second respondent leased premises from the first respondent, the vehicle actually was being stored on the premises of the first respondent. The letter continues that the second respondent has accordingly suffered damages at the instance of the applicant in that it is now liable to the first respondent for storage costs relating to the applicant's vehicle.
35. The letter continues that in the circumstances the respondents were looking to the applicant to make payment of those storage costs. The letter requires payment for both the repairs and storage, before the vehicle would be released.

36. Should the respondents at that stage have accepted the applicant's tender for payment of R21 325.00 in respect of what was then the common cause balance for the repairs and have released the vehicle, that would have been the end of the disputes between the parties in relation to the vehicle. This litigation would have been avoided. Instead, the respondents insisted that the applicant make payment for storage, which continued to accumulate daily, and which then already was more than threefold the balance for the repairs.
37. As should be already apparent from the chronology, the respondents' claim for storage on the basis asserted in their affidavit is at best tenuous. In my view, the preceding correspondence cannot be read as anything other than dissensus between the parties relating to storage.
38. On 20 July 2021 the applicant's attorneys reiterated that the applicant was not liable to pay storage costs as no agreement had been reached in relation thereto and again recording that the applicant was prepared to pay R21 325.00 in respect of repairs so that the vehicle could be released, and that should the respondents fail to release the vehicle, the court would have to be approached for relief.
39. No further correspondence followed on behalf of the respondents, and they did not release the vehicle.
40. On 5 October 2021 the applicant launched these present proceedings seeking the return of her vehicle against the establishment of substitute security. That security is in the form of monies being held in trust by the

applicant's attorneys and against which the applicant's attorneys have issued a guarantee undertaking to pay the respondents' attorneys the amount of R23 325.95 should the respondents succeed in an action to be launched by the respondents against the applicant within thirty days of the court ordering the substituted security. This guarantee is annexed as "JG33" to the founding affidavit.

41. The respondents have not raised any objection to the form of the substituted security.
42. The respondents opposed the application and launched the counter-application for the money judgment, as already described.
43. Having set out these facts, a determination can be made as to the relief sought by the parties in their respective application and counter-application.
44. It is convenient to deal first with the respondents' counter-application for money judgment. The respondents' case is that they accepted the applicant's tender to pay R21 325.95 and that therefore the applicant is bound to pay that amount. The respondents contend that the applicant had not withdrawn the tender made in July 2021 in her attorney's correspondence and therefore it was open to them, and more particularly, it would appear, the second respondent as the party seeking relief in terms of the counter-application, to accept the tender. That acceptance takes place in paragraph 119 of the answering affidavit delivered in November 2021.

45. There is clearly a dispute between the parties on this issue. The applicant contends that any tender that she may have made in July 2021, to the extent that it could be construed as a tender, lapsed and was no longer open for acceptance by the time the respondents purported to accept that tender in the answering affidavit in November 2021. The respondents' response is that the tender was not withdrawn and therefore remained open for acceptance even after the launch of these proceedings.
46. The respondents did not seek a referral to oral evidence on this issue and were content that the matter be decided on the affidavits. There is no genuine triable issue in this regard. To the extent that the applicant did make a tender which may have been open for acceptance in July 2021, that tender was no longer open for acceptance once she had launched these proceedings. The applicant in these proceedings contests her liability to the respondents, as is evidenced by her tendering substituted security which is payable to the respondents if they succeed in proceedings that they are to institute against her within a specified period of 30 days. The respondents having refused to release the vehicle, notwithstanding having been requested to do so on three occasions, and so compelling the applicant to launch these proceedings, rejected the tender. The respondents' belated change of heart in November 2021, after the applicant instituted these proceedings, in seeking to accept the tender that had been made by the applicant some four months previously is, in my view, opportunistic.

47. In the circumstances, I find that the respondents have no claim against the applicant based upon their purported acceptance of a tender giving rise to a compromise or settlement of the dispute. In making this finding, I do not do so only on the basis that the respondents as the applicants in their counter-application have not in motion proceedings sufficiently made out a case for their relief based upon the usual *Plascon-Evans* test, but rather as a determinative finding. I do so deliberately so that in the context of any further proceedings as may be brought by the respondents against the applicant, this particular cause of action cannot feature again, being *res judicata*.
48. In contrast, I do not decide whether the applicant is indebted to the respondents for the balance of the repairs in an amount of R18 386.01, which the respondents remain at liberty to pursue in the further proceedings and which will be the subject of the action to which I will refer in my order below.
49. Insofar as the applicant's application for the release of her vehicle against substitute security is concerned, the respondents contend that the security is inadequate. The applicant's counsel argued that this allegation of inadequacy was limited to the contention by the respondents that the security amount was not large enough to include the respondents' claim for storage costs, and that accordingly it was not open to the respondents to go beyond that in contesting the adequacy of the security. Whether this is well-founded, I do not decide in that I am prepared to assume in

favour of the respondents that they are able to go beyond this ground in contesting the adequacy of the substitute security.

50. The respondents also contest the adequacy of the security on the basis that it would not be appropriate for the court to substitute security where the applicant has admitted liability in an amount of R2 939.94 for the repairs but does pay that admitted liability and instead insists that such admitted indebtedness still forms part of an action to be launched by the respondents.
51. There is merit in this argument.
52. Neither parties dispute that the court has the discretion to order the release of the vehicle against the establishment of substitute security. This Division held in *Sandton Square Finance (Pty) Limited v Vigliotti and Another* 1997 (1) SA 826 (W) that the court has such a discretion notwithstanding the type of lien being advanced.
53. De Villiers J referred⁴ to Voet 16.2.21 (Gane's translation):

“But is one who has a right of retention held liable to restore the thing to his opponent whenever the latter tenders sound security for the refund of expenses or the payment of wages? It appears that that ought to be left to the discretion of a circumspect judge according as it shall have become clear from circumstances either that he who ought to restore is deliberately aiming at holding back possession of the thing too long under cover of

⁴ At 831 D-F.

expenses or wages; or on the other hand that the person owing the expenses has it in mind to recover the thing under security, and then by lengthy and pettifogging protraction of the suit to make the following up of the expenses, wages and the like a difficult matter for his opponent.”

54. De Villiers J also referred⁵ to an early decision of this Division in *Ford v Reed Bros* 1922 TPD 266⁶ where Mason J, also citing Voet 16.2.21 said:

“The apparent hardship of giving a lien for continuous keeping such cases as these is much mitigated, if not obviated, by the rule that the owner can obtain his property upon giving security according to the discretion of the court, which is to see that the owner is not kept unreasonably out of his property, nor the claimant for expenses harassed by prolonged and unnecessary litigation.”

55. To permit the applicant to hold back on making payment of the admitted portion of the indebtedness in an amount of R2 939.94 and require of the respondents nonetheless to institute action in relation to that admitted indebtedness while still requiring that the vehicle be released to her would amount to pettifogging, to use the phraseology from the translated Voet. But, in my view, this should not translate into the applicant failing in her application. Rather, given the equitable nature of the remedy to order

⁵ Cited in *Sandton Square* at 831I-832A.

⁶ At 272-3.

substituted security, the applicant is to pay this admitted amount to the respondents before she can obtain the release of her vehicle.

56. As to the respondents' contention that the extent of the security is inadequate because it does not cover the storage costs, in *Sandton Square*,⁷ with reference to *Buzzard Electrical (Pty) Limited v 158 Jan Smuts Avenue Investments (Pty) Limited en 'n Ander* 1996 (4) SA 19 (A),⁸ the court affirmed a right of retention cannot exist in a vacuum but is to be supported by an underlying claim, such as in unjustified enrichment, in respect of an enrichment lien, or in contract, in respect of a debtor / creditor lien.⁹
57. As described earlier in this judgment, the respondents have, on the evidence before me, failed to establish an agreement that the applicant would pay for storage, and therefore such storage costs cannot not fall within the ambit of a debtor / creditor lien. Further, as appears above, the respondents too have not set out a sustainable basis on the evidence before me that either of them have a claim in unjustified enrichment to sustain an enrichment lien in respect of the storage costs.
58. In the circumstances, I find that the security is not inadequate insofar as it does not extend to cover the storage costs. Although the applicant has included a nominal amount in respect of storage costs in her tendered security, being the difference between the tendered amount of

⁷ Above.

⁸ At 29I-J.

⁹ At 830H-831B.

R23 325.95 and the outstanding amount for repairs of R21 325.95, I do not view this as being destructive of the overall tenor of the applicant's challenge that she is not liable for storage costs.

59. The applicant has not engaged in conduct of such a nature that would lead me to find that she should be refused the equitable remedy of establishing substitute security. Once the Ombuds had made a recommendation against the applicant, her attorneys on three separate occasions tendered on her behalf to pay the outstanding amount for repairs against the release of the vehicle. The respondents refused that tender and instead sought to seek storage costs which were then already threefold the outstanding balance for the repairs. Having forced the applicant to approach the court for relief, the respondents cannot be heard to complain that the applicant now insists on seeing through the present proceedings rather than reverting to her tender in July 2021 to make payment of the balance for the repairs against release of the vehicle.
60. The applicant is being kept out of her possession and use of her vehicle which by all accounts is worth considerably more than the outstanding balance for the repairs.
61. Should further legal proceedings be instituted, it will take many months if not years before those proceedings are finalised and where it appears that the respondents continue to assert that the applicant is to pay for

storage that accumulates on a daily basis. A substitution of security would halt this claim from continuing to increase.

62. In *Real Security Law*,¹⁰ Reghard Brits argues that:

“Since the acceptance of alternative security would be less invasive to the owner’s right to freely enjoy and exploit his property than the continued exercise of the lien, it seems that there is also a constitutional imperative that favours the release of the lien if at all possible. After all, the suspension of the owner’s right to vindicate his property amounts to a deprivation of property for purposes of section 25(1) of the Constitution. Although this kind of deprivation should generally be justifiable due to the equitable considerations surrounding the owner’s enrichment at the retentor’s expense (or the legitimate contractual debt), the impact on the exercise of the owner’s property rights should also not be arbitrary. It should not go further than what is necessary to achieve the equitable purpose. In this regard, the possibility of releasing the lien in exchange for alternative security is a useful mechanism for courts to ensure that the exercise of a lien does not have disproportionate or arbitrary consequences.”

63. Without necessarily endorsing the view that there is a constitutional imperative that favours the release of the lien “if at all possible”, it reinforces the exercise of my discretion that in all the circumstances

¹⁰ Juta (2016) at p 554.

substitute security should be ordered, subject to the applicant paying the undisputed amount of R2 939.94 to the respondents.

64. For purposes of clarity, I do not find definitively that the respondents are not entitled to storage costs and the respondents are liberty to institute action for the recovery of those costs. Rather I find that the respondents have adduced insufficient evidence in these proceedings in relation to a claim for storage to enable me to exercise my discretion in their favour insofar as the substitute security is to include security for such a claim.
65. A possible action by the respondents in relation to storage costs must not be confused with the action to which reference is made in my order that will follow. The substitute security is in relation to an action for the balance for the repairs, and whether or not the respondents elect to also claim for storage does not affect the implementation of the order.
66. Insofar as costs are concerned, the respondents have failed in their counter-application and therefore it follows that they should pay the costs of that application. In relation to the applicant's application, I in my discretion find that the respondents should pay the costs. Had the respondents accepted the R21, 325.95 tendered in July 2021, that would probably have been the end of the dispute. To the extent that the respondents were insistent that they were entitled to storage costs, they could have instituted proceedings for those costs (and still can). Instead the respondents held out for storage costs before releasing the vehicle, and having forced the applicant to bring these proceedings, which the

respondents opposed, the outcome is that the respondents have gained no more than what there were offered in July 2021.¹¹

67. The amounts involved, at least in relation to the repairs, are not substantial. I have nonetheless delivered a detailed judgment in the hope that the parties would be able to reach agreement with each other and so avoid the need for further litigation, notwithstanding the further litigation as envisaged between the parties and as referred to in the order.

68. The following order is made:

68.1. The first and/or second respondents, as the case may be, are ordered to return possession to the applicant of the BMW vehicle 3 series 320i Sportline (F 30) with VIN Number: WBA3B16010NP41455, Engine Number: A7890159 with registration number CG 63 HT GP (“the vehicle”) within five days of the applicant paying to the respondents’ attorney the amount of R2 939.94 and of the applicant’s attorneys furnishing to the respondents’ attorneys the original guarantee in the form annexed as “JG33” to the founding affidavit (“the security”).

68.2. The sheriff and/or deputy sheriff is authorised to recover and assist the applicant in being placed in possession of the vehicle, wheresoever as the vehicle may be situated should the vehicle not be returned as provided for in the preceding paragraph.

¹¹ See the reasoning to this effect in *Lamontville African Transport Co (Pty) Ltd v Mtshali* 1953 (1) SA 90 (N) at 94B.

- 68.3. The security will remain in place subject to the first and/or second respondents, as the case may be, instituting action against the applicant in the Magistrate's Court within thirty days of this order in which the first and/or second respondents, as the case may be, claim for the repairs to the vehicle, failing which the security is to be released to the applicant.
- 68.4. The first and second respondents are to pay the costs of the application, jointly and severally.
- 68.5. The counter-application is dismissed, with costs to be paid by the first and second respondents, jointly and severally.

Gilbert AJ

Date of hearing: 20 July 2022

Date of judgment: 8 August 2022

Counsel for the applicant: Advocate R Kriek
Instructed by: Strydom M & Associates

Counsel for the first and
second respondents: Advocate K Naidoo
Instructed by: Gavin Simpson Attorneys