

IN THE HIGH COURT OF SOUTH AFRICA

NORTH GAUTENG, PRETORIA

CASE NO:20110/2014

11/9/2019

In the matter between:

ENGIGYN (PTY) LTD

PLAINTIFF

And

JOHAN MICHEL RICHTER

DEFENDANT

JUDGMENT

MOLOPA-SETHOSA J

[1] On 24 May 2019 I made the following order:

"[1] The plaintiff's claim is dismissed with costs.

[2] The defendant's counterclaim is upheld with costs, and the plaintiff is ordered to:

[2.1] Pay the defendant an amount of R936 000. 00 (Nine hundred and thirty-six thousand rand);

[2.2] Pay interest on the amount of R222 000. 00 (Two hundred and twenty-two thousand rand) at 15,5% per annum *a tempore morae*;

[2.3] Pay interest on the amount of R714 000. 00 (Seven hundred

and fourteen thousand rand) at 10,5% per annum *a tempore morae*.

[3] The agreement between the plaintiff and the defendant is declared to be extant and enforceable and the plaintiff is declared to be liable for its obligations; and:

[4] The plaintiff is ordered and directed to:

[4.1] Pay the defendant an amount of R30 000. 00 (Thirty thousand rand) per month from May 2016 up until the defendant's death;

[4.2] Grant the defendant the possession of a Toyota Hilux motor vehicle with registration number [...] until such time as the Toyota Hilux is fully paid, whereafter the plaintiff shall cause the ownership of the Toyota Hilux to be transferred to the defendant;

[4.3] Pay the monthly instalments on the Toyota Hilux until it is fully paid;

[4.4] Pay the monthly short term insurance instalments on the Toyota Hilux until the vehicle is fully paid;

[4.5] Inform the company that financed the Toyota Hilux as well as the insurers of the Toyota Hilux that the defendant is the primary driver of the Toyota Hilux;

[4.6] Do nothing to invalidate the insurance on the Toyota Hilux.

[5] The plaintiff is ordered to pay the defendant's costs."

[2] I undertook to furnish reasons at a later stage for the order. The following are the reasons for the order.

[3] The plaintiff, ENGIGYN CC (Registration No.2011/085991/23) ("the plaintiff"), instituted an action against the defendant, Johan Michiel Richter ("the defendant") on 13 March 2014, under case no. 20110/14, claiming the following relief in the particulars of claim:

- "1. An order that the defendant immediately return to the plaintiff the motor vehicle with the following particulars: TOYOTA HILUX pick-up ("bakkie") with vehicle register number [...] vehicle identification number AHTFZ29G509092703 and engine number IKDA 050549, bearing the registration number and letters [...].
2. An order authorizing the Sheriff of this Honourable High Court in the event of the defendant failing to comply with paragraph 1 of this order above, forthwith to remove the aforesaid Toyota Hilux motor vehicle from the possession of the defendant and or in the possession of any other person or entity where it may be found and wherever it may be located and to give the plaintiff possession thereof.
3. Payment by the defendant of the plaintiff's costs of suit."

The plaintiff's citation was amended from ENGIGYN CC to ENGIGYN (PTY) LTD by notice to amend dated 5 September 2016. This is after the action had already been instituted against the defendant. The registration number of the plaintiff remains the same, i.e. Registration No.2011/085991/23. [Evan Richter testified that on the advice of the plaintiff's attorneys, the Close Corporation [Engigyn CC-plaintiff] was converted into a (Pty) Ltd [Engigyn (Pty) Ltd]; but that there was no difference between the two; save that he is now Director of Engigyn (Pty) Ltd, together with his wife Diana Richter, and one Johan Booyse; as opposed to previously having been a sole member of Engigyn CC].

[4] In support of the relief claimed, the plaintiff averred the following in paragraphs **3, 4 and S** of the **particulars of claim**:

- "3. *At all relevant times the plaintiff was and remains the owner and/or the purchaser bearing the risk of loss and damage of a certain existing and*

identified motor vehicle, the title holder of which is TOYOTA FINANCIAL SERVICES SA (PTY) LTD, being a TOYOTA HILUX pick-up ("bakkie") with vehicle register number [...] vehicle identification number AHTFZ29G509092703 and engine number 1K.DA 050549, bearing the registration number and letters [...] (hereinafter called "the plaintiff's vehicle").

4. *The defendant is presently in possession of the plaintiff's vehicle.*
5. *Notwithstanding demand, the defendant fails and refuses to return the plaintiff's vehicle to the plaintiff."*

[5] The defendant admits that the plaintiff was the registered owner of the vehicle in question, however, the defendant denies that he is in unlawful possession of the vehicle due to an oral agreement he contends was reached between Evan Richter, the then sole member of the plaintiff, acting on behalf of the plaintiff, and the defendant; the terms whereof are set out in the paragraphs 4.1 to 4.2.9 of the defendant's plea and repeated in the defendant's counterclaim, set out below.

[6] The defendant instituted **a counterclaim in** terms whereof he is claiming the following relief against the plaintiff:

- "1. Payment in the amount of R936 000. 00;
2. Payment of interest on R222 000. 00 at 15,5% per annum *a tempore morae*;
3. Payment of interest on R714 000. 00 at 10,5% per annum *a tempore morae*;
4. The agreement is declared to be extant and enforceable and the plaintiff is declared to be liable for its obligations in terms of the agreement;
5. The plaintiff is ordered and directed to:
 - a. Pay the defendant an amount of R30 000. 00 per month from May 2016 up until the defendant's death;
 - b. Grant the defendant the possession of a Toyota Hilux motor vehicle with registration number [...] until such time as the Toyota Hilux is fully paid, whereafter the plaintiff shall cause the ownership of the Toyota

Hilux to be transferred to the defendant;

- c. Pay the monthly instalments on the Toyota Hilux until it is fully paid;
 - d. Pay the monthly short term insurance instalments on the Toyota Hilux until the vehicle is fully paid;
 - e. Inform the company that financed the Toyota Hilux as well as the insurers of the Toyota Hilux that the defendant is the primary driver of the Toyota Hilux;
 - f. Do nothing to invalidate the insurance on the Toyota Hilux.
6. Cost of suit."

[7] In support of the relief claimed, the defendant averred the following in paragraphs **2, 3, 4, 5, 6 and 7** of the counterclaim:

"[2.1] The defendant pleads that he is in lawful possession of the plaintiffs motor vehicle (Toyota Hilux) for the reasons set out below.

[2.2] During or about June 2013 and at shop 7, Etienne Lewis Furniture Building, 978 Veda Street, Montana Park, Pretoria, the plaintiff as represented by duly authorised Evan Richter and the defendant, acting personally, entered into an oral agreement with the following material express terms:

[2.2.1] The defendant shall retire as Chief Executive Officer (CEO) of the plaintiff (the defendant having registered the plaintiff and started its business in or about 2011) from June 2013;

[2.2.2] The plaintiff shall pay the defendant R5 000.00 per month as contribution towards the defendant's medical aid (at BEST'MED Medical Aid Fund at that stage) until the defendant's death;

[2.2.3] The plaintiff shall pay for the defendant's use of a cellular phone with number 076161 7001 for a period of 2 years from June 2013;

- [2.2.4] *The plaintiff shall pay the defendant an amount of R25 000. 00 per month from June 2013 up until the defendant's death;*
- [2.2.5] *The plaintiff shall grant the defendant the possession and use of a Toyota Hilux motor vehicle with registration number [...] (which vehicle was in the defendant's possession and use from 22 April 2013 and for which the defendant traded in his personal Toyota Land Cruiser when the plaintiff purchased the Toyota Hilux) until such time as the Toyota Hilux is fully paid, whereafter the plaintiff shall cause the ownership of the Toyota Hilux to be transferred to the defendant;*
- [2.2.6] *The plaintiff shall pay the monthly instalments on the Toyota Hilux until it is fully paid;*
- [2.2.7] *The plaintiff shall pay the monthly short term insurance instalments on the Toyota Hilux until the vehicle is fully paid;*
- [2.2.8] *The plaintiff shall inform the financing company that financed the Toyota Hilux as well as the insurers of the Toyota Hilux that the defendant is the primary driver of the Toyota Hilux;*
- [2.2.9] *Neither the plaintiff nor the defendant shall do anything or cause anything to be done to invalidate the insurance on the Toyota Hilux.*

[2.3] *During or about August 2013 and at shop 7, Etienne Lewis Furniture Building, 978 Veda Street, Montana Park, Pretoria, the plaintiff as represented by duly authorised Evan Richter and the defendant, acting personally, amended the abovementioned agreement orally by agreeing that the plaintiff shall pay the defendant an amount of R30 000. 00 per month from August 2013 until the defendant shall forthwith pay his own medical aid until the defendant's death. The balance of the terms and conditions of the agreement remained the same.*

[3] *The plaintiff initially complied, while the defendant fully complied with the terms and conditions of the agreement as amended and in the premises the defendant is in lawful possession and use of the Toyota Hi/we. In amplification of the above and in terms of the agreement:*

[3.1] *The defendant retired from the plaintiff in June 2013;*

[3.2] *The plaintiff paid R5 000. 00 per month towards the defendant's medical aid from June 2013 until July 2013;*

[3.3] *The plaintiff paid the cellular phone account of the defendant (with cellular phone number [...]) from June 2013 until December 2013,·*

[3.4] *The plaintiff paid R25 000.00 per month in June 2013 and July 2013 and R30 000.00 per month from August 2013 until October 2013 to the defendant;*

[3.5] *From 22 April 2013 and with the plaintiff's knowledge and permission the defendant took possession of the Toyota Hilux and remained in possession and use thereof from June 2013 onwards;*

[3.6] *The plaintiff paid the monthly instalment on the Toyota Hilux to the financing company that financed the Toyota Hilux on behalf of the plaintiff and the plaintiff paid the monthly insurance instalment on the Toyota Hilux;*

[3.7] *The defendant did nothing to invalidate the insurance on the Toyota Hilux.*

[4] *During or about November 2013 and in breach of the agreement the plaintiff stopped paying the defendant the monthly amount of R30 000. 00.-*

[5] *During or about December 2013 and in breach of the agreement the plaintiff stopped paying the cellular phone account with number [...].*

[6] *As a result of the plaintiffs abovementioned breaches, the plaintiff is indebted to the defendant in the amount of R936 000. 00.*

[6.1] *Monthly payment of R30 000.00 from November 2013 to April 2016: R900 000.00*

[6.2] *Cellular phone account from December 2013 up to and including May 2015 (at an average of R2 000.00 per month): R36 000. 00.*

[7] *Notwithstanding demand, the plaintiff/ails and/or refuses to pay any amount to the defendant."*

[8] The plaintiff denies the alleged agreement and the alleged amendment thereof, pleading, *inter alia* that the amounts paid to the defendant were made on an *ex gratia* basis, within the plaintiff's volition and discretion, out of pity for the defendant [by Evan Richter-the then sole member of the plaintiff, now director of the plaintiff], and to afford the defendant an opportunity to realize certain funds from the sale of immovable properties. To this effect the plaintiff pleaded as follows in paragraph 2 of the replication to the defendant's amended plea:

"2.3 The true nature of the defendant's involvement in the business of the plaintiff was that he was requested by the plaintiffs son (*sic*), its sole member, to act as a representative to bring in business and as a consultant, from time to time, due to his knowledge in the security industry. He was required to acquire contracts for Engigyn and to that end was given the use of a Toyota bakkie and a cell phone for purposes of his employment as aforesaid."

[9] Both the plaintiff and the defendant respectively called witnesses to testify during the course of the trial. The plaintiff called Evan Richter (the defendant's son and the then sole member of the plaintiff, now director of the plaintiff), as well as Johan Booyse as witnesses. On the other side, the defendant himself testified and Kobus Richter and Cornelius Du Rant ("Du Rant") also testified for the defendant.

[10] It is common cause that the bakkie is registered in the plaintiff's name; further that the defendant is in possession of the bakkie.

[11] In essence the plaintiff contends that the plaintiff was and remains the owner and/or the purchaser of the bakkie in question herein; on the other hand, the defendant contends that he is in lawful possession of the bakkie in question; that as much as the plaintiff is the registered owner, by virtue of the oral agreement he entered into with the plaintiff, duly represented by his son and sole member of the plaintiff, Evan Richter during June 2013, it was agreed that the plaintiff granted the defendant possession and use of the bakkie in question herein, for which bakkie the

defendant traded his personal Toyota Land Cruiser, until the bakkie was fully paid and the plaintiff would then cause ownership of the bakkie to be transferred to the defendant, in addition to the undertaking to make payments to the defendant as set out in paragraph [7] here above. In essence that he traded his Toyota Land Cruiser for the purchase of the bakkie, and that the bakkie would be for his use, and that he would keep the bakkie for his use even after retirement.

[12] The critical issue for determination depends largely on the existence of the oral agreement relied on by the defendant.

[13] The matter thus turns on whether or not there was an agreement concluded between the plaintiff and the defendant.

[14] In determining the existence (or non-existence) thereof, reference is to be had to the evidence adduced by the respective parties pertaining to their relationship and the formation of the plaintiff.

[15] It is thus crucial that the issues are to be determined by an interrogation of the real agreement between the parties.

[16] Evan Richter testified that he was previously the sole member of Engigyn CC-the plaintiff that instituted these proceedings against the defendant, his father, for the return of the Toyota Hilux bakkie in issue herein. Further that on the advice of the his/plaintiff's attorneys, the Close Corporation [Engigyn CC-plaintiff] was changed in 2016 [when this matter was still pending] to a (Pty) Ltd-Engigyn (Pty) Ltd. That he, together with his wife Diana Richter, and one Johan Booyse are now Directors of Engigyn (Pty) Ltd.

[17] He further testified that there was no difference between the business of Engigyn CC and Engigyn (Pty) Ltd. That Engigyn-the plaintiff is in the security industry/business, guarding premises and looking after their clients' assets.

[18] He testified that Engigyn CC started in 2012; that he/Evan Richter and his father-the defendant dealt with the registration of the Engigyn CC, and that Engigyn CC was registered in November 2011.

[19] He testified that Engigyn CC bought the bakkie in question herein; further that the bakkie is registered in the name of Engigyn CC, as depicted in the registration certificate-exhibit A1, and thus belongs to the business of Engigyn CC.

[20] He testified that the defendant came into possession of the bakkie for business purposes; that the defendant is not entitled to the possession of the bakkie

because the bakkie is for the business of Engigyn CC.

[21] He testified that the defendant was just an observer at Engigyn CC from the beginning when the business started but was not associated with Engigyn CC. Further that the defendant was no longer associated with the business of Engigyn.

[22] He further testified that prior to the registration of Engigyn CC his father, the defendant, was the **"owner"** of EJR Security Services CC ("EJR"); [emphasis added]. That E stands for Evan, his initial; J stands for Johan, the defendant's initial, and R stands for Richter, their surname. That he and his father, the defendant were the members of EJR, and that EJR provided security services to its clients, among which was Gautrain when it was in the building phase, guarding the rails. He testified that he/Evan Richter did not have much involvement in the business of EJR.

[23] He testified that the defendant was not a member of Engigyn CC because he/defendant had a bad name due to tax problems with EJR. Further that he/Evan Richter was the CEO of Engigyn CC and became such in 2011 when the company was registered. He disputed that the defendant was ever the CEO of Engigyn CC. That as CEO of the company he managed the business, ran the business and financed it, brought clients and made sure that the stuff had proper equipment to do their job.

[24] He further testified that he had a general manager, Johan Booyse ("Booyse"), who ran the guards and managed the dog school; that Johan Booyse previously worked for his father, the defendant, as the main dog handler at EJR; and that Booyse brought in most sites to Engigyn CC, **e.g.** Spar, one of their primary clients, BMW and Tamacor Trucks.

[25] He testified that the defendant has experience in security, and that when the company, Engigyn CC started, the defendant was his mentor who taught him something if he did not know; and when he needed something he would ask the defendant.

[26] Asked if he and the defendant had a meeting in June 2013 [the date alleged by the defendant to have been the date an oral agreement pleaded by him was reached], he testified that the meeting that was held *"was the meeting of you are no longer."* (sic).

[27] He testified that there was a meeting held in May 2013 **[not June 2013]** between himself and the defendant, together with Booyse and three other staff

members because there was an argument; that in an effort to save money for the company, Booyse had made a rule that their staff were no longer to be transported to the houses where they stayed at the plots, but were dropped from the site [BMW or Spar-Roodeplaat] to Moloto to utilise their own transport/taxi to the plot; that the defendant was not happy with that rule. Further that the defendant *"had a sudden burst"* and told them that **"he is the boss of the company"**; and that at that meeting he/Evan Richter told the defendant that **he/Evan Richter was the boss and the owner** of Engigyn CC; he told the defendant that the defendant must stop interfering with his staff and his clients, [emphasis added]. That Booyse was also unhappy and told him/Evan Richter to choose between the business and his father, the defendant.

Asked by his cowisel, if the defendant mentored him he testified that the defendant did not mentor him, that he taught himself through hardship.

[28] He testified that **the defendant was not an employee of Engigyn CC**; that the defendant did not bring any business for Engigyn CC, and that the defendant did not act as a consultant for Engigyn CC. Further that the defendant 'just hopped in' at Engigyn CC now and then and drove with them. He further testified that the **defendant received an income from Engigyn CC**, R2000 at times R20000 where he/Evan could assist; (emphasis added), and that the defendant was not paid a severance by Engigyn CC, and he received no other benefits from Engigyn CC. He disputed that there was an agreement as alleged by the defendant.

[29] He testified that after the meeting in May 2013 the defendant phoned him and told him that he was going to retire, and that he/Evan told the defendant that he cannot retire as he does not work for them, that the defendant was going to leave them.

[30] He further testified that he paid the defendant a *"donation **income**"* until the end of **June 2013 via Eft, and the last medical aid** payment for the defendant went out from Engigyn CC's account on 1 July 2013.

[31] He testified that Engigyn paid the amounts set out in Engigyn's statements (exhibit A2 and A3) because he felt sorry for his father/the defendant; that he stopped the payments to the defendant **because the defendant harassed and interfered**

with his staff and clients.

[32] He testified that prior to May 2013 Engigyn CC **did not** contribute to the defendant's medical aid; that **Engigyn CC made payments towards the defendant's medical aid in May, June and July 2013, (emphasis added)**.

[33] He further testified that the defendant had use of the company cellphone for business purposes; that Engigyn CC paid for the cellphone after the defendant left and the last payment was in November 2013.

[34] He testified that the Toyota Hilux bakkie was purchased on 11 April 2013 and that the bakkie was in defendant's use from then on for business purposes. That the defendant traded his Toyota Land Cruiser for the Hilux bakkie because he/Evan Richter was assisting the defendant as the defendant wanted to get rid of the Land Cruiser as he could no longer afford it. Further that the defendant had his own vehicle, a Toyota Auries.

[35] Asked if the defendant used the Hilux bakkie for business purposes, he testified that the defendant did not bring any business, so he does not know what he actually did with the bakkie. He disputed that there was any agreement between Engigyn CC and the defendant that Engigyn CC would pay the monthly instalments and short term insurance on the Hilux bakkie until fully paid up.

[36] He testified that in February 2014, after he had requested the defendant to bring back 'his bakkie' and the defendant refused, he gave spare keys to his staff and instructed them to go fetch the bakkie from the Chinese Mall and take it to the Police station, but he was advised that it was wrong to take the law into his hands.

[37] He testified that he made an affidavit to the South African Police Services on 15 January 2014-exhibit AS, in which affidavit he reported that the defendant no longer worked for Engigyn since June 2013; and that he/defendant was lent/loaned a company vehicle and **defendant must return the vehicle.** [Emphasis added]

[38] He completed his evidence in chief by stating that Engigyn has no debt towards the defendant, and that since July 2013 no monies were paid to the defendant as reflected in Engigyn's statements marked exhibit A4.

[39] Under cross examination he stated that the defendant assisted him in registering Engigyn CC.

[40] Put to him that according to the CIPC document Engigyn CC was registered

on 06 June 2011, he stated that he may have been mistaken on the date. [I may state that he repeated more than once under examination in chief, that the plaintiff-Engigyn CC was registered in November 2011; he did not give an impression of someone who was not sure of the date]

[41] He further stated that he did not know the address [of Cornelius Du Rant] used as plaintiff's registered offices; further that he did not personally know Cornelius Du Rant, who used to be his father's attorney.

[42] He stated that he cannot remember who paid for the registration of Engigyn CC, nor could he remember whether he/Evan Richter ever engaged and/or paid professionals or attorneys to register Engigyn CC. He confirmed that the registered address of Engigyn CC was the address of the defendant's attorneys, Cornelius Du Rant.

[43] He stated that of all the security companies started by his father/the defendant only EJR rang a bell. He confirmed that he was a registered member of EJR, and that he did not have much involvement with EJR. Further **that EJR was actually his father's business**. He persisted that Engigyn CC was his company; that he is the owner of Engigyn.

[44] Put to him that he did not get involved in the registration of Engigyn CC, nor in paying for such registration, he stated that the defendant was his mentor, and he/defendant was assisting him. [earlier in his evidence in chief he changed his evidence and said that the defendant , *if* did not mentor him at all].

[45] He confirmed that Booyse previously worked for the defendant at EJR; and that he probably would not have known Booyse if it wasn't for EJR.

[46] He stated that during the operation of EJR he was still at the Potch university studying Biokinetics; that he would not know why the defendant would have brought his staff from EJR when he/defendant started a new business-referring to Engigyn CC; stating that Engigyn was his/Evan Richter's business, not the defendant's.

[47] He stated that he did know about the defendant's other security businesses-Jerich and flashlight; further that he did not know that Flashlight secured the Spar groups initially and converted them to T **Rex**.

[48] He confirmed that Engigyn CC bought out T **Rex's** Spar contracts. That the deal was concluded by him and Booyse with Kobus Richter, his father's brother; and

that his father/the defendant was not involved. He disputed that the defendant facilitated this agreement between Engigyn and T-Rex.

[49] He stated that his father/the defendant did not pay his fees at 'varsity because as a professional rugby player he had a bursary, but that he thinks that his father/the defendant paid for his flat and vehicles [Chev SS and BMW M3].

[50] He reiterated that the defendant was an observer and held no position at Engigyn CC; further that the defendant did consulting for him, but spent no time at the company.

[51] Asked what he meant when he made the statement [exhibit AS] to the police stating that the defendant was an ex-employee of Engigyn CC, he stated that he used the term/word employee loosely, that he should have said observer. Further that to him reference to 'consultant' in the pleadings means observer.

[52] He stated that his father was allocated radio 2 by the company/Engigyn because they/Engigyn CC entertained him/defendant; as an observer, he liked to listen to them over the radio while sitting at home listening to the action happening out there.

[53] Put to him that from the statements of Engigyn CC stamped September 2012 there were various payments to the defendant, as well as R10 000 payment to defendant's wife, one Shigogo, he stated that the payment could have been to one of the guards and not necessarily Paulina Shigogo, his father's wife.

[54] He could not dispute that Engigyn CC paid for both the defendant's personal vehicles, the Toyota Land Cruiser and the Toyota Auries; stating that he gave the defendant an income.

[55] Referred to two entries of BMW XS's with registration letters ENG 1 and ENG 2 paid for by the plaintiff, and asked whose vehicles these belonged to, he stated that he did know whose cars these were, and that he never bought BMW XS nor driven one.

[56] He disputed that the entries on the September aforesaid reflecting payment for Diesel for JR, were payments for the defendant's diesel; stating that these payments could have been payments for another company he bought diesel from.

[57] He stated that he could not remember why Kobus Richter, the defendant's brother was paid R42 000. 00.

[58] He confirmed that nowhere on the statement stamped 25 September 2012 in question here did it reflect any salary/reference to him [E Richter]; stating that he did not take a salary, and lived on his wife's salary.

[59] Asked why would the defendant trade in his Land Cruiser, which was paid for by the company Engigyn CC, for the Hilux bakkie, he stated that the defendant could not afford the Land Cruiser therefore he wanted to get rid of it.

[60] Further under cross examination Evan Richter stated that he told the defendant, his father to leave the business-Engigyn CC, **in June 2013** stating that this was due to the rape of a staff member in March 2013. - . With such gross serious appalling allegation, one would have expected - that the defendant would have been told immediately in March 2013 to leave the company as soon as these atrocious allegations surfaced, and not wait until June 2013 and/or May 2013 to act on such serious appalling allegations; which allegations unfortunately remain hearsay.

[61] He stated that he was 23 years old when Engigyn CC started operating in 2012. Pointed to him that in the period February 2012 to February 2013 the turnover/revenue of the company-Engigyn CC was R5 000 000 (five million Rand) as reflected in the financial statements signed by him [i.e. R550 000 invoiced per month], he stated that he was not an accountant and he would not know. He stated that the company-- · Engigyn CC would not afford to pay the defendant R30 000.00 per month. He disputed that the amounts reflected from Engigyn CC, September 2012 statement aforesaid, reflecting payments to the defendant, came from the employment costs. He conceded that the employment costs which are reflected in the 2012 financial statements were R3 202 000 (three million two hundred and two thousand rand). He agreed that the company-Engigyn CC was doing very good looking at the 2012/2013 [February 2012 to February 2013] financial statements aforesaid.

[62] He reiterated that the breakdown of the relationship between himself and the defendant was because of the misconduct of the defendant of harassing his staff and his customers; allegations of rape and the defendant also threatened to shoot his staff members.

[63] He disputed that the breakdown between him and the defendant was because his father/the defendant had a love relationship with Pauline Shigogo, an African woman.

[64] He testified that he/Evan Richter was the managing director [MD] of Engigyn (Pty) Ltd since it changed to a (Pty) Ltd in 2016.

[65] In re-examination Evan Richter stated that he did draw a salary from Engigyn in 2013 as reflected in the March 2013 statement where amounts of R1 000 were indicated to have been paid to Evan. He states that wherever the statement indicates 'salary' (without mention of a name) that would be referring to his salary. If this is true, why would he not have remembered this during cross-examination, and only have an explanation the day after cross-examination, in re-examination, after he would probably have consulted with his legal team? If he was indeed in control at Engigyn as he alleges, he would have known that he paid himself a salary.

[66] Under re-examination; he stated that he engaged attorneys to register Engigyn; whereas during cross-examination he said he did not remember.

[67] The next witness to testify for the plaintiff was **Andrew Cornelius Visser**, he is merely an expert that assessed the damages to the Toyota Hilux bakkie, which damages he indicated were minor. His evidence is not relevant regard being had to my findings and therefore will not be dealt with further.

[68] The next witness to testify for the plaintiff was **Johan Martinus Booyse ("Booyse")**. He testified that he worked for EJR CC on the Gautrain project. That that on the Gautrain project at EJR they checked cables on the grounds and had guards patrolling the lines day and night. That he worked at EJR as a dog handler/master. He further testified that both Johan (defendant) and Evan Richter were the members of EJR.

[69] He testified that the Gautrain contract came to an end. That the defendant called a few managers, which included him and told them that the Gautrain project was coming to an end and that they must go and look for contracts themselves. Further that EJR was liquidated because EJR had not paid tax and there was lots of debts. That Johan Richter the defendant was in control of the management of EJR.

[70] He testified that at the second meeting called by the defendant, the defendant informed them that EJR was being liquidated and that there was a new company Engigyn CC and the owner of that company was Evan Richter; that all those that were staying behind must report to Evan Richter. That Evan Richter was the sole member of Engigyn CC.

[71] He further testified that the defendant informed them that he/defendant had

nothing to do with Engigyn and that for any queries they must go through Evan Richter. Further that they, managers must find clients/contracts for Engigyn CC.

[72] He testified that he already had sites where which he brought to Engigyn CC, being Tamacor Trucks, BMW Zambezi, Kloofsig Spar, Sutherland Spar, Sebokeng Spar Tops, Sevoyo Estate, Tsakane Spar, Midrand Spar, Bloed Spar and Alex Spar. That these sites were obtained from T-Rex.

[73] He testified that he brought Roodeplaat Spar and Tops to Engigyn CC as well as Moordrift Melle and kruisfontein Spar and Tops. He further testified that Evan Richter brought Rocklands Estate to Engigyn.

[74] He testified that the T-Rex was a security company owned by Kobus Richter, the defendant's brother. That Kobus Richter was never a member of Engigyn CC. He further testified that 'they' Engigyn CC paid Kobus Richter R300 000.00, at R50 000.00 per month for the T-Rex Spars.

[75] He testified that Evan Richter managed Engigyn CC i.e. was the CEO of Engigyn CC. That the defendant did not have any role at Engigyn; he/defendant just pitched up every morning and drove with him during the day to visit the sites. Further that to his knowledge, the defendant was not employed in the management of Engigyn CC.

[76] He testified that he/Booyse was a General Manager at Engigyn CC, and that Evan Richter, as CEO reported to no one. That he/Booyse reported to Evan Richter.

[77] He disputed that the defendant was the CEO of Engigyn CC. He testified that the defendant did not mention/say why he would still associate with the plaintiff/Engigyn CC. That the defendant drove with him to sites out of boredom, and that the defendant did no work for the defendant. He further testified that normally when he drove within the defendant to the site, the defendant would just wait for him while he did his inspection on the guards and his paper work.

[78] He testified that he had several complaints from staff members and clients e.g. one Penny Hare who worked at BMW control room complained that she had an affair with the defendant and that the defendant harassed her at work, further that a certain lady who worked at the Big Tree Moloto Mall Offices complained that the defendant assaulted and raped her. That he/Booyse had many arguments with the defendant. That he had advised the alleged rape complainant to open a case against the defendant, and he/Booyse would also investigate the defendant, but the lady left and

he Booyse did not continue with the investigation.

[79] He testified that employees of Engigyn CC stayed at plot where they had rooms for guards and kennels for dogs. That he had arranged with the day shift guards that the pick-up vehicle would pick them up , . - from BMW-Zambezi and drop them off at Roodeplaat Spar, where they would have to get their own transport/taxi back to the plot where they stayed (about 25 - 30km away). He did this to save money for the company. Evan Richter had agreed to such a change.

[80] He further testified that one of his managers, Sakkie phoned him and told him that the defendant had called him/Sakkie and instructed him to bring Penny to the plot but he/Booyse told Sakkie not to take Penny to the plot. That the next morning the defendant arrived at their offices and demanded to see him for a meeting, it was around the middle of the year 2013. The defendant was very angry because Sakkie had refused to take Penny to the plot. He/defendant confronted him asking him why did he tell Sakkie to drop staff at Roodeplaat Spar and not bring Penny to the plot; the defendant said that he/defendant was the boss of Engigyn and that they must talce orders from him. That Evan Richter then told the defendant that he/Evan was the boss of Engigyn and that Booyse was the General Manager, and that Booyse had discussed the dropping off of the guards at Moloto Spar and he/Evan had agreed to that as that will save costs for the company. He testified that thereafter he and Evan Richter stood up and told the defendant that they were happy with the decision and that the meeting was over.

[81] He further testified that Evan Richter phoned him and told him that they were going to have another meeting at 14H00 to sort out all problems. They had a meeting with the defendant and other managers. The defendant said that he was the boss of the company and Booyse's boss as well. Evan Richter told the defendant that he/Evan was the boss and owner of Engigyn. He/Booyse got angry and stood up and left the meeting. He referred to a letter exhibit A16 dated 6 March 2014 wherein he states that Evan Richter informed him that the defendant threatened to shoot him/Booyse should he come across him in street.

[81] He testified that at some stage he was called by 'Oom Jorrie' Jordaan ("Jordaan"), owner of Moloto Spar and Tops; Jordaan told him that the defendant came to see him and told him to cancel the contract with Engigyn CC. he explained to Jordaan that Engigyn belonged to Evan Richter and that the defendant had no authority to speak on behalf of Engigyn. Jordaan understood and said he would continue with the contract. The owner of Tamacor Trucks also called him with same complaint (he/Booyse said he can't remember the name of the owner of Tamacor Trucks). He phoned Evan Richter and informed him of this, and told him he cannot work like this, he would rather take his sites and do his own thing i.e. walk out of Engigyn.

[82] He testified that Evan Richter told him that he will sort out the defendant. Evan informed him that he/Evan had told the defendant not to come to the office anymore and not to bother anyone, staff and clients; and he/Booyse agreed that he would continue to work at Engigyn. That he explained to various clients who were approached by the defendant that Evan Richter was the owner/boss of Engigyn, not the defendant. He spoke to Evan Richter about these problems and Evan obtained an interdict against the defendant not to visit plaintiff's sites or **speak** to their. clients. The defendant no longer bothered them.

[83] He testified that he did not know about flashlight having sourced all Spar contracts to T-Rex. He testified that 'they'-Engigyn CC (I guess) took Spars from Kobus Richter's T-Rex a security company owned by Kobus Richter.

[84] He testified that to his knowledge, the defendant did not have money anymore since EJR was liquidated and that he/defendant could not afford to pay for his Land Cruiser so Engigyn paid for him. Further, that the defendant could not buy any vehicle in his name since his name was not very good.

[85] He testified that he does not know about any agreement that the defendant has with Engigyn regarding the Toyota Hilux bakkie. That he does not know about the agreement that Engigyn would pay the plaintiff R25 000. 00 per month for life. He said that if there was an agreement he would not have known about it as that would have been an agreement between Evan Richter and the defendant. That Evan never discussed/informed him of any agreement with the defendant.

[86] He confirmed that he and Evan Richter and Diana Richter (Evan's wife) were directors of Engigyn Pty Ltd.

[87] Under cross-examination, he stated that that his career started at , Correctional Services where he was a dog instructor. That he worked at Correctional Services for 22 years. That at that stage he did not have any personal experience in private security, and that the first time he got an opportunity to enter the private security field was in 2011/2012 when he started working for the defendant at EJR. He stated that he was aware that Evan Richter was also a member of EJR when it existed. That Evan was still at college and the defendant managed EJR.

[88] He stated that at the second meeting (at EJR) the defendant (Johan Richter) told them that EJR was going to be liquidated and that they will be placed in the new company Engigyn CC and that he/defendant told them that their new boss was now Evan Richter. He disputed that his appointment at Engigyn CC was by the defendant-Johan Richter, stating that he was appointed by Evan Richter because Evan was the new owner of Engigyn. It is important to note that Evan self testified that prior to Booyse coming over to Engigyn CC, he did not know Booyse; that Booyse was brought along to Engigyn by his father/the defendant. Clearly Booyse is at pains to dissociate the defendant from having anything to do with the plaintiff-Engigyn CC. He/Booyse was at pains to make out a case for the plaintiff that the defendant had no role whatsoever at Engigyn CC.

[89] He stated that the defendant was an observer and not a consultant as pleaded by the plaintiff, further that the defendant had no role at all in EngigynCC.

[90] He stated that he cannot explain why certain payment were made to J M Richter, the defendant, as reflected in Engigyn' s bank statements date stamped 25 September 2012.

[91] He stated that he knew about the company, Engigyn CC paying for BMW XS's. He stated that Evan Richter drove one of the BMW X5; contrary to Evan Richter denying any knowledge whatsoever about the BMWX5.

[92] He stated that he could not remember the dates when he started working for Engigyn, and became general manager of Engigyn CC; nor the dates when they had a meeting where the defendant informed them that EJR was coming to an end. He stated that he did not know about flashlight, nor that the defendant and Kobus Richter agreed to convert Spar's to T-Rex. He confirmed the Spar was the major/essential client of Engigyn and that the bulk/most of the Spar's came over from

T-Rex.

[93] He stated that he/Booyse was involved in the negotiations on T- Rex with Kobus Richter regarding taking over Spar's onto Engigyn. Booyse stated that he did not know Vito Englez.akiz, the person who introduced Kobus to Spar.

[94] That closed the case for the plaintiff.

[95] The defendant Johan Michiel Richter testified that Engigyn CC/the plaintiff was his business, which he had left to his son Evan Richter; further that on his retirement from the plaintiff' Engigyn CC, he and Evan

Richter, who now represented the plaintiff, entered into his/defendant's retirement agreement ('uittrede ooreenkoms'), in terms whereof the ... plaintiff would pay for his medical aid, cellphone contract for two years, and pay him R25 000.00 per month for life. Further, the plaintiff would pay the monthly instalment for the Toyota Hilux bakkie in question herein until the bakkie was fully paid for, and thereafter the bakkie would be transferred into his names. He stated that it was not correct that he was in unlawful possession of the Toyota Hilux bakkie in question herein.

[96] The defendant testified that prior to getting involved in security businesses he was a detective, a member of the South African Police Service. That he established a series of substantial security enterprises, to wit: -

[.1] Jorich Security Services ("Jorich");

[.2] Flashlight Security Solutions ("Flashlight");

[.3] EJR. Security Services ("EJR").

[97] That the aforesaid businesses blossomed into lucrative enterprises, by securing large contracts in respect of the Gautrain as well as the Spar Group.

[98] He testified that Jorich attended to the security of the Gautrain during 2006 to 2009. Further that Jorich devoted its attention to the Gautrain contract and entailed a substantial workforce including but not limited to guards and a K-9 unit.

[99] The CIPC document indicated that the defendant, together with one Cecilia Thebe, were the members of the Jorich, which did not involve

Evan Richter at all. The registered address of Jorich was recorded as 22 Gerrit Maritz Street, Zeerust, which address was the registered address of the defendant's former attorney, Cornelius Du Rant.

[100] The defendant further testified that once Jorich had been well established, he/the defendant further registered and paid for the registration of an entity called Flashlight Security Solutions in 2008.

[101] The CIPC search indicates that the defendant, together with one Sylvia Jabu Thebe were the members of Flashlight. Flashlight also shared the same registered address as Jorich, being that of the defendant's former attorney, Cornelius Du Rant.

[102] Flashlight's focus was on the Spar Group and secured various Spar contracts. The defendant further testified that he later caused his brother, Kobus Richter, to take over the Spar contracts in an entity named **T-Rex**.

[103] The Defendant identified a number of Spar Groups that had been eventually carried over to Engigyn CC, which came over from T- Rex, Kobus Richter's security company; and these are the Spar's mentioned in paragraph [72] hereabove, to wit Kloofsig Spar, Sutherland Spar, Sebokeng Spar Tops, Sevoyo Estate, Tsakane Spar, Midrand Spar, Bloed Spar and Alex Spar.

[104] The defendant testified that he arranged for his brother Kobus Richter to sell these contracts to Engigyn, and he/the defendant was instrumental to the transfer of the Spar contracts to Engigyn.

[105] He testified that after Flashlight he registered/established EJR. He paid for the registration of EJR and used the same address to Cornelius Du Rant.

[106] EJR rendered security services to the Gautrain prior to the formation of the Plaintiff.

[107] He testified that he brought over staff from his previous entities such as EJR. EJR was the previous employer of Booyse, who later gave evidence on behalf of the Plaintiff.

[108] The defendant testified that monies owed to his previous entity, EJR, was paid directly to Engigyn CC. That the payment of R191,200.00 reflected in the plaintiff's bank statement stamped 25 September 2012 (p418 of bundle B) was payment for work rendered by EJR in terms of the Kusele agreement.

[109] He testified that Evan Richter after school attended university at Potch University which confirmed Evan Richter's evidence; that Evan was an avid rugby player and had obtained a bursary for the university and enrolled to study Biokinetics; further that Evan did not graduate and did not complete his course; and that he/Evan sustained an injury and could no longer pursue a career as a professional rugby

player. All this was confirmed by Evan Richter's evidence above.

[110] He testified that then came to work in his business, Engigyn CC. That Evan is that he had no previous experience in the security industry.

[111] He testified that his son/Evan was registered as the sole member, only in name; that it was his business and sought to leave it to his son upon retirement from the business.

[112] He testified that he was the CEO of Engigyn CC and he managed it until his retirement. He disputed that Booyse was a General manager at any stage, stating that Booyse was just a dog handler.

[113] He testified that he traded in his Toyota Land Cruiser for the Toyota Hilux bakkie in question herein. That the Toyota Hilux bakkie was in essence his vehicle.

[114] Cornelius Johannes **Du Rant ("Du Rant")** testified that he was a long-time family friend of the Richter family and also their lawyer; that he has been involved in the registration of all of the defendant's entities previously registered in the security industry. Such entities which were registered by Du Rant included Jorich; Flashlight; EJR and ultimately the Plaintiff-Engigyn CC. That all the costs for the registration of these entities were paid for by the defendant.

[115] He confirmed that the registered address of the aforementioned entities including Engigyn was his/Du Rant's practice in Zeerust at the time; 22 Gerhard Maritz Street, P O Box 685 Zeerust.

[116] He testified that the instructions to register the Plaintiff came from the defendant and did not involve Evan Richter at all; that all queries in relation to the registration of the plaintiff were addressed to the defendant; further that the invoice for the registration of the plaintiff, Engigyn CC, was rendered to the defendant who paid for such registration.

[117] He testified that the defendant instructed him to register Evan Richter as 100% member of Engigyn CC; that the defendant said that he wanted to leave Engigyn as a legacy to his son. He cautioned the defendant that it was dangerous to do that but the defendant said that he trusted his son. He then proceeded to do as instructed by the defendant.

[118] He testified that when Engigyn had legal work to be done he/Du Rant did the legal work. That he would be instructed by the defendant who handled all the

problems and administration at Engigyn cc.

[119] He further testified that the defendant had informed him of the retirement agreement that he had reached with Evan Richter on behalf of the plaintiff (as pleaded by the defendant), and that Evan Richter had confirmed same to him/Du Rant.

[120] **Kobus Richter** also testified for the defendant. He testified that he worked with his brother, the defendant at EJR. He was approached by his long-time friend Vito Englezaquiz who had about 11 Spars to do Spar security.

[121] They housed the Spar contracts in the defendant's company, Flashlight. In 2009 they moved the Spar contracts to his/Kobus Richter's security solutions business, T-Rex.

[122] He testified that around 2012 he was approached by his brother, the defendant to buy over the Spar businesses from T-Rex for Engigyn CC. That they later at a meeting at Primi Piatti in Centurion between the defendant, Evan Richter and himself, he (Kobus Richter) agreed to sell the Spar contracts back to what he calls 'Johan's (defendant's) business' (referring to Engigyn).

[123] He testified that he agreed to transfer the Spar contracts to the plaintiff as he wanted to procure his profession as an insurance broker in Nigeria. He stated that during the negotiation Evan Richter just sat and listened to the negotiations between him/Kobus and the defendant.

[124] He/Kobus corroborated the evidence of the defendant that Booyse was not present at such meeting at all. To his knowledge Booyse was only a dog master. His evidence in this regard was never disputed. He testified that according to him; the defendant was the owner of Engigyn CC.

[125] That concluded the evidence of the defendant.

[126] From the evidence, it is common cause that the defendant had

extensive experience in the security industry. That Evan Richter had no experience at all in the security business/industry.

[127] Further it is common cause that Evan Richter had no experience at all in running any business when Engigyn CC was registered in June 2011 and when it started its business around 2012; as opposed to the undisputed extensive business

experience of the defendant.

[128] It is clear from the evidence that Evan Richter did not even know when Engigyn was registered. He did not pay for the registration of Engigyn.

[129] On a conspectus of all evidence before Court it is clear that the defendant is the main person who established the plaintiff as a legacy for his son, Evan Richter, the sole member of the plaintiff when it was still a Close Corporation. The defendant registered and paid for the registration of the plaintiff/Engigyn CC - the entity that instituted these proceedings against the defendant; the entity that the defendant contends it entered into the agreement set out in the pleadings herein with. It must be noted that at the time the plaintiff instituted this action it was still a Close Corporation, and at the time the oral agreement alleged by the defendant was entered into plaintiff was still a Close Corporation. Only later, while the matter was still pending, was the plaintiff converted to a Private Company (Pty) Ltd. This conversion in my considered view, does not have any impact on the oral agreement entered into between the plaintiff represented by its sole member at the time, and the defendant. Evan Richter confirmed that in fact there is no difference between Engigyn CC and Engigyn (Pty) Ltd; the conversion was solely on the advice of his/plaintiff's attorney. The business (security business) continues as before.

[130] Pertaining to the role of the defendant at Engigyn CC, it cannot be correct that the plaintiff played no role whatsoever and that he was merely an observer. Both Du Rant and Kobus Richter, who do not stand to gain anything, the defendant handled all problems and managed the plaintiff Engigyn CC prior his retirement in 2013. In a sense he was indeed the CEO of the plaintiff. Evan Richter himself called himself the CEO of Engigyn on the basis that he was the one that managed the plaintiff.

[131] As to the role that the defendant played in Engigyn, Evan Richter gave no less than three incompatible versions. In the plaintiff's pleaded case in the replication to the defendant's plea as set out above, the plaintiff pleaded that the defendant's involvement in the business of the plaintiff was that he/defendant was requested by Evan, to act as a representative and as a consultant for Engigyn.

[132] It was correctly submitted on behalf of the defendant that no evidence was led to support such position. It is to be assumed that an independent consultant would render invoices to the Plaintiff for such services. No such invoices were rendered to support the construction of an independent consultant.

[133] In an affidavit presented to the SAPS referred to above Evan changed his stance by stating that the defendant was an employee of the plaintiff and that he had loaned the bakkie.

[134] Evan Richter's version in the affidavit was contradicted by his evidence in chief wherein he stated that the defendant was a mere observer, not associated with the plaintiff.

[135] Evan Richter was at pains to suggest that the defendant had no participation in the business of the plaintiff. As stated above, the documents, however, suggested otherwise. a document under cover of the plaintiff's letterhead indicated the various radios designated to various parties. A perfunctory reading thereof revealed that radio 2 was allocated to the defendant. It is thus difficult to understand why the defendant would have a radio, if he had no participation in the business of Engigyn as suggested.

[136] Evan Richter's explanation that the defendant was allocated the radio merely to entertain him because he was bored is absurd to say the least. Booyse also sought to maintain that the defendant was an observer, yet, on his evidence, only at a meeting in 2013 after the defendant had allegedly said that he was the boss, did Evan tell the defendant that he/Evan was the boss and Booyse was the General manager. If the defendant had no role from the beginning why would he almost a year later assert that he was the boss at Engigyn CC.

[137] The contributions made by the defendant at Engigyn are telling. He/the defendant brought over staff from his previous companies such as EJRs; Booyse is one of the people he brought over, and both Booyse and Evan confirmed this. He caused the Spar contracts to be moved over from T-Rex to Engigyn through his brother Kobus Richter; this was confirmed by both Booyse, though Evan Richter sought to portray that the T-Rex Spar contracts were brought by Booyse, which is not correct. He caused money R 191 200. 00, that was owed to EJRs to be paid to Engigyn CC; this was never disputed.

[138] He traded his personal Land Cruiser in for the Hilux bakkie purchased by Engigyn CC and used the bakkie from when it was bought in April 2013. Evan Richter's explanation that the defendant could not afford the Land Cruiser therefore he traded it, does not make sense because the Land Cruiser itself, from what appears on the plaintiff's statements, was paid for by the plaintiff-Engigyn CC.

[139] As correctly submitted on behalf of the defendant; it is also important to note that the plaintiff's bank statements for the period June 2012 to September 2012 casts valuable light on Evan Richter and the defendant's interest in the plaintiff.

[140] As already mentioned the bank statements reveal that the plaintiff made various and regular payments to himself, to his wife (Pauline Shigogo) as well as to EJR.

[141] From the evidence tendered in Court it is apparent that the defendant contends that he was the *de facto* owner of both the plaintiff [Engigyn CC] and the Toyota Hilux bakkie, and that the plaintiff was created as a legacy for his son, Evan Richter, registered as the sole member of Engigyn CC-the plaintiff. As much as the entities were registered as Close Corporations [CC], it is clear that Evan Richter self regards his father as being the 'owner' of these entities [Jorich Flashlight, EJR]; and it is in this context that the defendant also regarded - himself as the 'owner' of these entities, including Engigyn CC.

[142] It was correctly submitted on behalf of the defendant that on the - strength of the authorities, it is plain that registration in name, *per se* is , not dispositive of the question of ownership.

[143] As submitted on behalf of the defendant, throughout the proceedings the plaintiff sought to pin its colours to the mast of being the registered owner of the bakkie and the fact that Evan Richter was recorded as the sole member of the plaintiff.

[144] Authorities are clear that mere registration is insufficient to establish ownership.

[145] In the case of **Mmore v Makhetho** (A3080/17) [2018] ZAGPJHC- 134 (26 April 2018) in a matter where the parties were in a romantic relationship from 2005 to 2011; the appellant (Plaintiff *a quo*) instituted action for return of a motor vehicle based on a *res vindication*; the evidence was that the money for the vehicle came from the respondent's inheritance which was used to first buy a Jetta motor vehicle, which was traded in and sold for the Megane; the respondent contended that it was the *de facto* owner (albeit not *de lege* owner) as he had bought and paid for the vehicle. The Court held as follows:

"[6] *The Appellant's claim of ownership was based in her Particulars of Claim on the plain assertion that she was the registered*

owner of the motor vehicle. It is trite that in terms of our law, registration of a motor vehicle in a person's name is not sufficient to establish ownership. In terms of our abstract system of transfer of ownership, it is necessary to interrogate the real agreement between all the parties involved in the transaction to determine who acquired legal ownership of the object in question. "

[146] As contended by the defendant, the logic applies with equal force in respect of the ownership of the business of the plaintiff.

[147] In *BC v CC & Others* 2012 (5) SA 562 (ECP), the Court had no difficulty that the Trust assets formed part of the estate as the defendant was the *de facto* owner of such assets.

[148] The evidence clearly shows that the defendant is the *de facto* owner of the bakkie in question herein. However, as correctly submitted by the plaintiff's counsel, the defendant did not plead this in his plea and counterclaim.

[149] The conclusion that this Court has come to is essentially based on the agreement alleged by the defendant which, on the totality of the evidence and on a balance of probabilities, this Court finds to have been concluded between the plaintiff and the defendant in May 2013.

[150] The fact that Engigyn's statements show that the defendant was paid around R22 000 does not mean that there was no agreement that Engigyn would pay the defendant R25 000 and /or R30 000 per months' salary for life. As can be seen from the 25 September 2012 statement, the defendant drew much more than R22 000 from Engigyn account in a month. In March 2013 only Engigyn statement reflects that the defendant was paid a total of R46 000. Most importantly, in May 2013, the month Evan Richter testified was the last month for the defendant at Engigyn, the defendant was paid R30000.

[151] Evan Richter says that these amounts were paid to the defendant as income how does one get paid an income without having worked for such. Evan Richter wants to portray his father, the defendant as someone who simply did nothing at all, yet just received an income out of pity by the defendant. No doubt from the evidence Evan Richter had no experience whatsoever in the security sector in 2012, yet he wants to create the impression that he taught himself the industry, to the extent that

the company would have a turnover of R5 Min the 2012 financial year. He would not even concede clear simple facts e.g. that the defendant's wife was paid R10 000 from Engigyn's account as reflected in the September 2012 statement, speculating that Shigogo could be one of the guards that may have left the company.

[152] The date of May 2013 is important because the defendant alleges that an agreement was reached in **June 2013** as pleaded by him in his plea and counterclaim; he however corrected himself and confirmed that the meeting was indeed held in May 2013. Evan Richter initially had testified that there was in May 2013 where he told the defendant to leave his company. Surprisingly from May to July 2013 there suddenly are debit orders coming out of Engigyn CCI-plaintiff's account in payment of Bestmed medical aid for the defendant; which previously did not exist; why the sudden payment of medical aid for the defendant by the plaintiff in the same month the defendant was to leave Engigyn CC!! on the probabilities, this is a clear indication that indeed an agreement was reached in terms whereof, amongst others, the plaintiff would pay for the defendant's medical aid.

[153] The explanation by Evan Richter of why the defendant was paid by Engigyn CC does not make sense since he/Evan says that already in May Engigyn had problems with the behaviour and/or conduct of the defendant, to the extent that he told the defendant to 'leave them'-why continue paying him, including his medical aid 'til July 2013, and for the cellphone 'til November 2013? Also, why only from May 2013 [the month when on Evan Richter's version the defendant was booted out of Engigyn CC], did Engigyn CC start contributing to the defendant's medical aid, whereas previously there was no medical aid contribution? It cannot be just a coincidence that the defendant would just allege an agreement in June 2013, and in the same month money continues to be paid to him together with medical aid [paid on 1 July 2013] are paid by Engigyn CC! the probabilities are that indeed Evan Richter, on behalf of Engigyn CC entered into an agreement with the defendant as pleaded by the defendant]

[154] There is no shred of evidence that Evan Richter put a cent/financed the business of Engigyn CC, as opposed to the defendant who provided proof that he indeed financed the business and also traded his personal car for the bakkie in question herein.

[155] One thing very clear from the evidence, though disputed by Evan Richter, is

that the defendant Johan Richter was in control of Engigyn prior at least May 2013. Different versions of Evan Richter as to what position and/or contribution the defendant had at Engigyn cc clearly shows that he is not taking the court into his confidence

[156] The date of May 2013 is important because the defendant alleges that an agreement was reached in **June 2013** as pleaded by him in his plea and counterclaim; he however corrected himself and confirmed that the meeting was indeed held in May 2013. Evan Richter initially had testified that there was in May 2013 where he told the defendant to leave his company. Surprisingly from May to July 2013 there suddenly are debit orders coming out of Engigyn CCI-plaintiff's account in payment of Bestmed medical aid for the defendant; which previously did not exist; why the sudden payment of medical aid for the defendant by the plaintiff in the same month the defendant was to leave Engigyn CC!! on the probabilities, this is a clear indication that indeed an agreement was reached in terms whereof, amongst others, the plaintiff would pay for the defendant's medical aid.

[157] The defendant was a very honest credible, reliable witness in my view, I watched his demeanor, he conceded when necessary and answered questions openly and honestly; as opposed to the plaintiff and Booyse who, in my considered view were not credible witnesses. They chopped and changed their evidence to suit their 'rehearsed' story I may add.

[158] Cornelius Du Rand did not appear to be biased. He came out as a person who wanted to tell the court the truth of what he knows; his name came up many times during the evidence of both Evan and Johan Richter. He seems to be truly a person well known to both of them and from the evidence he registered most of the defendant's companies, even using his office address. On all probabilities he indeed knows about the agreement between defendant and Evan Richter on behalf of the plaintiff.

[159] Kobus Richter testified that all the negotiations pertaining to the plaintiff-Engigyn CC, and taking over security contracts from T-Rex to Engigyn were done by his brother Johan Richter, the defendant. Evan Richter merely played a passive role. His brother was in charge of all the businesses including Engigyn prior to his retirement. Kobus Richter came out as an honest reliable witness. He merely came to court to give the evidence of what he knows about the plaintiff.

[160] On the totality of the evidence, the version of the defendant is more probable than that of Evan Richter who was the sole member of Engigyn/Plaintiff at the time it was established and registered; which entity on a balance of probabilities, was in fact registered by the defendant, who also paid for its registration.

[161] To sum up, Evan Richter testified that Engine CC was registered in November 2011 which is not correct, further that he is the one that registered the plaintiff/Engigyn CC, which is also not correct. The evidence of the defendant, which is corroborated by the undisputed evidence of Du Rand is that it is the defendant Johan Richter who registered and paid for the registration of Engigyn CC, using his/Du Rand's address as Engigyn's registered address, the fact which Evan Richter does not even know how that came about. He seeks to portray the defendant, his father as someone who had no role whatsoever in the CC - save as being an observer and/or consultant/representative which on the facts and on a conspectus of all evidence before this Court cannot be true. How can a person who has no role whatsoever in the company trade his personal vehicle for an entity he had no role whatsoever to play!!

[162] Booyse who is alleged to have been a general manager of Engigyn, who supposedly brought big Spar Contracts to the CC does not even know the owner of the Spar who had deals with Kobus Richter who in turn brought Spar contracts to Engigyn.

[163] In so far as meeting alleged by the defendant plaintiff testified and acknowledged that there was a meeting between himself and the defendant when he allegedly told defendant to leave his company alone, yet for at least 2 months thereafter plaintiff paid monies into defendant's

account by Eft, and Bestmed-medical aid for the defendant by debit order! This accords more with defendant's version which is more probable.

[164] After considering all the facts before me, the legal principles/ the authorities and the arguments of both parties, I am satisfied that on the facts before me and on a balance of probabilities the defendant has proved, on a balance of probabilities that an agreement, as pleaded and on the terms set out in the defendant's plea and counterclaim was concluded between the plaintiff, duly represented by Evan Richter, and the defendant.

[165] For all the above considerations, I made the order referred to above on 24

May 2019 as follows:

- [1] The plaintiff's claim is dismissed with costs.
- [2] The defendant's counterclaim is upheld with costs, and the plaintiff is ordered to:
 - [2.1] Pay the defendant an amount of R936 000. 00 (Nine hundred and thirty-six thousand rand);
 - [2.2] Pay interest on the amount of R222 000. 00 (Two hundred and twenty-two thousand rand) at 15,5% per annum *a tempore morae*;
 - [2.3] Pay interest on the amount of R714 000. 00 (Seven hundred and fourteen thousand rand) at 10,5o/o per annum *a tempore morae*.
- [3] The agreement between the plaintiff and the defendant is declared to be extant and enforceable and the plaintiff is declared to be liable for its obligations; and:
- [4] The plaintiff is ordered and directed to:
 - [4.1] Pay the defendant an amount of R30 000. 00 (Thirty thousand rand) per month from May 2016 up until the defendant's death;
 - [4.2] Grant the defendant the possession of a Toyota Hilux motor vehicle with registration number [...] until such time as the Toyota Hilux is fully paid, whereafter the plaintiff shall cause the ownership of the Toyota Hilux to be transferred to the defendant;
 - [4.3] Pay the monthly instalments on the Toyota Hilux until it is fully paid;
 - [4.4] Pay the monthly short term insurance instalments on the Toyota Hilux until the vehicle is fully paid;
 - [4.5] Inform the company that financed the Toyota Hilux as well as the insurers of the Toyota Hilux that the defendant is the primary driver of the Toyota Hilux;
 - [4.6] Do nothing to invalidate the insurance on the Toyota

Hilux.

[5] The plaintiff is ordered to pay the defendant's costs.

L M MOLOPA-SETHOSA J

Judge of the High Court

Appearances as follows:

Counsel for plaintiff: Adv: M Coetsee

Instructed by: ML SCHOEMAN ATTORNEYS

Counsel for defendants: Adv: JC Viljoen

Instructed by: LIEBENBERG MALAN LIEZEL HORN INC