REPUBLIC OF SOUTH AFRICA

REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: A99/2018

In the matter between:

NOELLA KABUNDA LUANGA Appellant

and

PERTHPARK PROPERTIES LTD Respondent

Coram: Papier J et Davis AJ
Heard: 8 June 2018, 31 August 2018

JUDGMENT DELIVERED ON 20 SEPTEMBER 2018

DAVIS, AJ

Introduction

1. This is an appeal against an eviction order in respect of residential property occupied in terms of a written lease. The appeal turns on the proper

interpretation of s 5(5) of the Rental Housing Act 50 of 1999 ("the Act"), which reads as follows:

> *"If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease."* [Emphasis added]

2. The question which arises is whether the notice period of one month referred to in s 5(5) of the Act must be understood as expiring at the end of a month, i.e., what is the meaning of one month's notice in the context of s 5(5) of the Act.

3. The Wynberg Magistrates' Court granted an order on 6 December 2017 under case number 9330/17, in terms whereof the appellant, and all those occupying through her, were ordered to vacate the residential property being Apartment 511, 42 Broad Road, Wynberg ("the premises") on or before 13 January 2018.

4. The respondent was the applicant and the appellant the second respondent in the eviction application. The first respondent in the eviction application was one Ngoyi, who was a co-signatory with the appellant to a lease in respect of the premises but did not reside there. The City of Cape Town was cited as third respondent, and all persons occupying the premises through the appellant were cited as fourth respondent.

5. Only the appellant opposed the eviction application, but it is clear from the papers that she represented the interests of her household who resided in the premises with her, being her husband and three minor children, as well as her mother and three adult brothers.

The facts

6. On 19 April 2016 the respondent ("the lessor") concluded a written lease agreement with the appellant and Ngoyi ("the lessees") in terms whereof the lessor leased the premises to the lessees for a period of twelve months, commencing on 1 March 2016 and expiring on 28 February 2017.

7. Clause 9 of the lease stipulated that:

> *"If the lease is not cancelled by either the Lessor or the Lessee before the Lease expires, the lease will automatically continue on a month to month basis and may be cancelled by either party on at least 20 (twenty) business days' notice to the other party."*

8. On 19 July 2016 the lessor notified the lessees in writing that all the apartments in the Broad Road Medicentre building, including the premises, were being sold, that current leases would not be renewed, and that notices to vacate the apartments would be sent in due course. In terms of that letter the lessees were also given the option to purchase the property, and the appellant expressed some interest in buying the premises, but nothing came of it.

9. After the lease expired on 28 February 2017 the appellant remained in occupation of the premises.

10. On 4 May 2017 the lessor's attorneys delivered a letter to the lessees in terms whereof they were informed, with reference to clause 9 of the lease (quoted above) that the lease was immediately cancelled and that they were required to vacate the property by no later than 5 June 2017.

11. The appellant failed to vacate the property, however, and the lessor applied to the Wynberg Magistrates' Court in September 2017 for an order evicting the lessees and all other occupants of the property. The application was brought in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE").

12. The appellant opposed the eviction application and was represented in the proceedings by Mr Gavin Langenhoven, who also appeared for the appellant in the appeal.

13. In the court a quo Mr Langenhoven challenged the validity of the notice to cancel the lease dated 4 May 2017. It was further contended that there was insufficient information before the court for the Magistrate to conduct a proper enquiry into all relevant circumstances for the purposes of ss 4(6) and (7) of PIE.

14. The Magistrate however held that the lease had been duly cancelled, and was satisfied that it would be just and equitable in the circumstances to grant an eviction order.

The issues in the appeal

15. The first issue is whether or not the notice of termination of the lease dated 4 May 2017 duly complied with s 5(5) of the Rental Act, as read with the common law requirement that notice of termination of a monthly lease must run concurrently with a period of the lease and expire at the end of a month. It was submitted that because the notice ran for a broken period and did not expire at the end of a month, it was invalid and devoid of legal force and effect, with the result that the appellant's right of occupation of the property had not validly been terminated.

16. An unlawful occupier for purposes of PIE is one who occupies the land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land.[1] Therefore if the notice of termination of the lease was invalid, that would afford the appellant a complete defence to the eviction application, for it is trite that the onus rests on a landlord to prove a lawful termination of a lease (see *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20 C - H; *ACSA v Airports Bookshops (Pty) Ltd* [2016] 4 All SA 665 (SCA)).

17. The second issue is whether or not there was sufficient information before the Magistrate to allow for a proper enquiry into all the relevant circumstances as required in ss 4(6) and (7) of PIE, and accordingly whether or not he erred in granting an eviction order in the absence of sufficient information.

[1] An "unlawful occupier" is defined in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 as "*a person who occupies land without he express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land ….*"

The interpretation of "one month's notice" in s 5(5) of the Rental Housing Act

18. The provisions of s 5(5) of the Act with regard to termination of a periodic lease are peremptory: at least one month's written notice must be given of the intention by either party to terminate the lease. It is clear from the wording of s 5(5) that the provisions of the lease cannot override the notice requirements laid down in that subsection. Therefore the lessor could not rely on the notice provisions in clause 9, which requires 20 business days' notice, to justify a departure from the notice requirements laid down in s 5(5) of the Rental Act.

19. Section 5(5) of the Rental Act requires at least one month's notice of intention to terminate the lease. Section 2(vii) of the Interpretation Act 33 of 1957 defines the term "month" as a "calendar month".

20. In *Subbulutchmi v Minister of Police and Another* 1980 (3) SA (D&CLD) the Court was called on to interpret of s 32(1) of the Police Act 7 of 1958, which required that written notice of any civil action against the State be given "*one month at least before the commencement thereof*." James JP observed that:

> *"According to the Interpretation Act 33 of 1957 a month means a calendar month. In the absence of any clear indication to the contrary to be found in the words used in any particular legislation a calendar month running from an arbitrary date expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts. Thus, if a calendar month commences on the 10th of one month, it will expire at the end of the 9th day of the succeeding month. … This is in accordance with the ordinary civilian method of calculating periods of time in which the first day is excluded and the last day included."* [Emphasis added]

21. There is no definition of month or calendar month in the Act. Nor is there any express indication that a calendar month is to be calculated otherwise than in accordance with the civilian method, which would mean that a month's notice need not necessarily run from the beginning of a month to the end of a month.

22. However, one needs to examine the relevant common law, since there is a well-established presumption that the legislature does not intend to alter the common law unless such intention appears clearly from the language of the statute. Where a statute does not explicitly provide for the repeal or modification of the common law, it must be assumed that the relevant common law remains intact. Thus legislation must be construed in the light of the common law. (See, in these regards, J R de Ville *Constitutional and Statutory Interpretation* § 2.2.1, pp 171 - 172.)

23. There is a long line of cases dealing with the period of notice required to terminate a monthly lease, starting with *Fulton v Nunn* 1904 TS 123. In that case Innes CJ observed in regard to a month to month lease that:

> *"It was clearly a tenancy terminable on reasonable notice, but running from month to month, not for broken periods. I should have thought there was no authority required for the proposition that when a house is taken from month to month it is taken by the month, and not for any broken portion of the month. … The question is simple. The notice must run concurrently with some term of the lease, and must expire at the end of that term… "* [2]
> [Emphasis added]

[2] *Fulton v Nunn* 1904 TS 123 at 125.

24. The learned Chief Justice went on to refer to Voet, who states that where a lessor is entitled to put an end to a lease, he should give a reasonable notice to vacate at the end of a current term of the tenancy. He concluded as follows:

> *"…I think the same principle should be adopted in the case of notice by a lessee. Reasonable notice in the case of a monthly lease should be so given as to expire at the end of a month unless there is custom or agreement to the contrary. It seems to me that no custom is required to support this principle; but proof of a contrary custom would be necessary to overrule it."* [3] [Emphasis added]

25. A year later in *Pemberton N.O. v Kessel* 1905 TS 174, Innes CJ extended the principle laid down in *Fulton v Nunn (supra)* to contracts of hire:

> *"I think it is impossible to distinguish this case from Fulton v Nunn…I think the same principle should be applied. When the hiring is not for menial or domestic service, and is for an indefinite period from month to month, it appears to me that, in the absence of custom to the contrary, it should only terminate at the end of one of the monthly periods, and that the reasonable notice should be so given as to run to the end of a month … Reasonable notice, it is admitted, is a month's notice. It follows that if it is to run with the monthly period it must be given at the end of the preceding month …"* [4] [Emphasis added]

26. The principles laid down in *Fulton v Nunn (supra)* and *Pemberton N.O. v Kessel (supra)* were affirmed by the Appellate Division in the case of *Tiopaizi v Bulawayo Municipality* 1923 AD 317, in which Innes CJ said the following:

---

[3] *Ibid* at 126.

[4] *Pemberton N.O. v Kessell* 1905 TS 174 at 178.

> *"In Fulton v Nunn 1904 TS 123 the rule of Roman-Dutch law regulating the lease of a house, which required due notice to extend to the end of one of the customary terms, was applied to monthly leases in South Africa. And it was held that the necessary reasonable notice should, in the absence of custom or agreement to the contrary, expire at the close of a monthly period. That principle was extended to contracts of service in Pemberton N.O. v Kessell 1905 TS 174 and it has been repeatedly applied by South African Courts. (Paruk v Hayne & Co 27 NLR 380; Sitterding v Hermon Lime Co 1921 CPD 439). Indeed it is not challenged by the present appellant and may be regarded as established."* [Emphasis added.]

27. This principle was also affirmed in the more recent case of *Stocks and Stocks Holdings Ltd and Another v Mphelo* 1996 (2) SA 864 (TPD), in which the Court was dealing with termination of an employment contract which included a provision stating that the contract would continue for an indefinite period and be subject to termination on one calendar month's written notice by either party. Notice of termination of employment had been given on 13 October 1995 purporting to be effective on 15 November 1995, and the question was whether the notice period had to be computed according to the civil method of computation or whether it had to expire at the end of a calendar month.

28. Botha J distinguished various cases, not involving contracts of lease or employment, in which it was held that time periods, including time periods expressed in months, had to be calculated according to the civil method of computation.[5] But he held in regard to contracts of employment that:

> *"The rationale for the rule in Fulton v Nunn and Pemberton N O v Kessell is still good in our time. Leases and service contracts are commonly entered*

[5] *Stocks and Stocks Holdings Ltd and Another v Mphelo* 1996 (2) SA 864 (TPD) at 868 A – B.

> *into with effect from the beginning of a calendar month. Vacancies arise at the end of a month. In that way the practice of filling them at the beginning of the month is perpetuated. It is therefore clear that the period of notice had to expire at the end of November."* [6]

29. Thus it may be regarded as well-established at common law that indefinite period contracts of lease and employment from month to month can only be terminated by way of one month's notice expiring at the end of a month.

30. The Act must be interpreted in the light of the common law. There is no indication in the wording of s 5(5) that the Legislature intended to alter the common law rule that notice to terminate a monthly lease must expire at the end of a month. This rule is in line with Constitutional values as it affords protection to both landlord and tenant, since it is easier to find replacement tenants and accommodation respectively from the beginning of the month as opposed to an arbitrary date in the middle of the month. It also serves to create desirable legal certainty.

31. Therefore the words "one month's notice" in section 5(5) of the Rental Act must, to my mind, be interpreted to mean one calendar month running from the first day of the month and expiring on the last day of the month, as was held in *Tiopaizi v Bulawayo Municipality (supra).* It follows that the notice of 4 May 2017 did not comply with the requirements of s 5(5) of the Rental Act, and was accordingly invalid and of no force and effect. Instead of requiring the lessees to vacate the property on 5 June 2017, the lessees should have been afforded until 30 June 2017 to vacate.

---

[6] *Ibid* at 869 B.

32. The short notice cannot be cured by interpreting the notice as only taking effect from the 30 June 2017, since it was invalid *ab initio* for failure to comply with a mandatory statutory provision (see *Kingdom Caterers (KZN) (Pty) Ltd v The Bids Appeal Tribunal and Others* [2007] ZAKZHC 54 (11 October 2007)). The purpose of a notice of termination in terms of s 5(5) is to establish with certainty when the rights and obligations under the lease come to an end. If the notice stipulates a termination date which is not in accordance with the prescripts of the section, it cannot achieve that purpose.

33. Nor was the Magistrate correct to regard it as relevant that the appellant was in fact afforded more than one month's notice to vacate since the respondent only launched eviction proceedings three months later on 16 August 2017. That fact had no bearing on the legal question of whether or not the notice of termination duly complied with the requirements of s 5(5).

34. Since the notice of termination of the lease was invalid for failure to comply with s 5(5) of the Act, the lessor failed to discharge the onus resting on it of proving a valid termination of the lease. The appellant had therefore not been shown to be in unlawful occupation of the premises, and the magistrate accordingly erred when he granted an eviction order.

<u>The duty on legal practitioners representing respondents in eviction matters</u>

35. The conclusion that the notice of termination of the lease was invalid renders it unnecessary to deal with Mr Langenhoven's contention that the magistrate did not properly discharge his duty under s 4 of PIE to consider all relevant

circumstances because he did not have all the necessary information before him.

36. However it is regrettably necessary to comment on the unhelpful manner in which Mr Langenhoven presented his client's case in the court *a quo*, and his apparent misconception of his duty as an officer of the court in eviction matters, more particularly in the context of ss 4(6) an (7) of PIE which requires a court to take into account all relevant circumstances and make a just and equitable determination.

37. The answering affidavit prepared by Mr Langenhoven on behalf of the appellant in the eviction application is a study in bald assertions and failure to engage on relevant issues. Relevant details which one would reasonably expect the appellant to know were not placed before the court. One is told, for instance, that the appellant is unemployed. However, not a word is said about her husband, save that he is a pastor and that he resides with her at the premises. No details are furnished regarding the church with which her husband is associated, whether or not he receives financial support from the church, and if so the extent of his income. No explanation is put up as to how the appellant, despite her lack of employment, managed to pay the rental on the premises before she stopped paying and fell into arrears. The appellant admits that at a certain point she temporarily ceased residing at the premises but baldly state, without explanation, that she currently resides in the premises. No explanation is furnished for the appellant's failure to disclose obviously relevant information, which should fall within her knowledge and which is vital to an assessment of her *bona fides*.

38. One is also told in the answering affidavit that the appellant's three adult brothers reside in the premises. One is not told their ages and state of health, whether or not they are employed, and if so, the extent of their income and whether or not they contribute towards the rental. Given the close familial relationship between these occupants and the appellant, one would expect her to have at least some knowledge of their employment and financial circumstances. At the very least she could be expected to disclose the basis on which they share the premises with the appellant, i.e. whether and to what extent they contribute towards the rental, and if not, why not. Again, no explanation is furnished for the appellant's silence on these material matters which should lie within her knowledge.

39. The terse statement is made in the papers that the appellant and her family would be rendered homeless and *"effectively on the streets"* in the event of an eviction order, because it is alleged that none of the occupants of the premises can afford to pay a deposit at new premises. In the absence of any details about the employment status and income of the appellant's husband and three adult brothers, it is difficult to attach any weight to these bald assertions.

40. This Court was disturbed by the failure of the appellant, who had had the benefit of legal representation, to provide obviously relevant details of the ages, employment status and incomes of the occupants of the property. These were details which Mr Langenhoven should have been able to ascertain with relative ease, and his unexplained failure to do so gave rise to

serious questions. Mr Langenhoven was therefore directed by this Court to file an affidavit explaining the reason for the absence of these details in the appellant's answering affidavit. It was considered only fair to give him an opportunity to ventilate any difficulties he might have had in procuring the necessary information.

41. It is disappointing that Mr Langenhoven did not see fit to answer directly the question actually posed by this Court, which was a simple, factual question. Mr Langenhoven instead recast the question posed by this Court as requiring an explanation as to *why he believed that it was not necessary for him, as the appellant's representative, to place before court the relevant circumstances of all the occupants of the premises*.

42. One gathers from his response that Mr Langenhoven did not see it as his responsibility to place before the court facts relating to the other occupants of the premises because a) they were not his clients and b) the applicant bore the onus to place sufficient relevant information before the court to justify an order and c) it was the court's responsibility to satisfy itself that it had sufficient information before it, failing which it could not grant an eviction order.

43. The first answer, namely that Mr Langenhoven only represented the appellant and that it was not incumbent upon him to obtain details of the other occupants of the premises as he had no mandate to act for them and that doing so would increase the appellant's costs, does not bear up under scrutiny in the particular circumstances of this case. This was not a case

involving a large number of unrelated persons with disparate needs and interests. This was essentially one extended family unit or household comprised of 6 adults and 3 children living in one flat. It was therefore disingenuous for Mr Langenhoven to hide behind a limited mandate and to suggest that it was not feasible for him to acquire information about the other adults occupying the premises. The information pertaining to the other occupants of the property – including the appellant's husband – was inextricably bound up with the case which the appellant herself advanced, namely that she and her (extended) family would be left homeless on the streets if an eviction order were granted.

44. To my mind it is incumbent upon a respondent in eviction proceedings who is legally represented and who avers that an eviction order will render her and her family homeless, to explain to the court why that is so. Where a respondent facing an eviction application has the benefit of legal representation, she and her legal representative must engage fully on the relevant issues. Facts must be put up to demonstrate that there is indeed a risk of homelessness, and that the assertion is made in good faith. Details regarding the employment status and income of adult members of the household are obviously relevant to substantiate the assertion of a risk of homelessness, and must be provided. And if there is good reason for why the information cannot be furnished, that should be disclosed in the affidavit.

45. Respondents in eviction proceedings who have the benefit of legal representation cannot be permitted to content themselves with bald, unsubstantiated averments of homelessness. They must be made to

understand that if they do, they run the risk that the court may infer that the assertions regarding inability to afford alternative accommodation and the risk of homelessness are not genuine and *bona fide*, and may be rejected merely on the papers (see *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 620 (A) at 635 C; *cf Wightman t/a J W Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) paras 12 and 13).

46. As to Mr Langenhoven's second answer, namely that the lessor, as applicant, bore the onus of placing sufficient information before the court to justify an eviction order, that is undoubtedly correct. An applicant for an eviction order bears the onus of placing before the court information which, if unchallenged, is sufficient to satisfy the court that it would be just and equitable to grant an eviction order (see *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others* 2012 (6) SA 294 (SCA) paras 30 and 34). The extent of information required will differ from case to case, depending on the particular circumstances. Particularly where eviction applications are unopposed, it is vital that the applicant adduce sufficient information in the founding affidavit to enable the court to discharge its duty to enquire into the relevant circumstances for purposes of the enquiry into justice and equity.

47. But where an eviction application is opposed and the respondent is legally represented, the legal practitioner representing the respondent is under a positive duty, as an officer of the court, to ascertain the relevant facts and place them before the court. As the Constitutional Court recently affirmed in *Occupiers, Berea v De Wet NO and Another* 2017 (5) SA 346 (CC) at para 47, the obligation to provide the information relevant to the justice and equity

enquiry envisaged in s 4 of PIE rests first and foremost on the parties to the proceedings, and attorneys and advocates, as officers of the court, must furnish the court with all relevant information in their possession in order for the court to properly interrogate the justice and equity of ordering an eviction.

48. There is therefore a duty on legal representatives in eviction proceedings, as officers of the court, not only to advise their clients of the obligation to make full disclosure of all relevant personal circumstances, but to actively seek and assist their clients to present the necessary information. Legal practitioners representing respondents in eviction applications cannot hide behind the onus to justify bald, unsubstantiated averments regarding unemployment, impecuniosity and the risk of homelessness. Nor can an officer of the court deliberately withhold relevant information in order to benefit his or her client by causing the eviction proceedings to be delayed because the court does not have sufficient information before it. Even less so can he or she studiously avoid acquiring relevant information in order to avoid the obligation to disclose it to the court. Where the affidavits are silent on matters which the respondent should be able to address with relative ease, a satisfactory explanation should be provided for the omission. In the absence thereof, a court may well be justified in drawing the inference that a bald assertion of impecuniosity or homelessness is not genuine and credible.

49. As to Mr Langenhoven's third answer, that it is the responsibility of the court to ensure that it has sufficient information before it to discharge its duty to consider all relevant circumstances, that is undoubtedly correct. The court is required and expected to take a proactive role in ensuring that it has all the

necessary information before it. But the Constitutional Court made it clear in *Occupiers, Berea v De Wet NO and Another* 2017 (5) SA 346 (CC) at para 47 that courts are entitled to look for assistance to the attorneys and advocates for the parties, who have a duty as officers of the court. Courts must be astute not to allow eviction proceedings to be delayed through the deliberate failure to furnish relevant information which falls within the peculiar knowledge of a respondent, and which can reasonably be expected to form part of the answering affidavits where the respondent is legally represented.

50. Courts need to be able to rely on the integrity and assistance of the parties' legal representatives for the purpose of discharging their duties in terms of PIE. The just and equitable determination of eviction matters envisaged in s 4 of PIE cannot be permitted to be thwarted by the deliberate withholding of relevant information for tactical reasons. It is unthinkable that legal practitioners should be able, by withholding relevant information or failing to acquire readily accessible information, to engineer delays in eviction matters because the court is forced to call for further information, or to set up points to be taken on appeal, as was done in this case.

51. Given the many questions which cried out for answer in the answering affidavit, and the appellant's bald, unsubstantiated averments regarding homelessness coupled with the absence of any explanation for her failure to disclose relevant information about the extended family's financial situation, it seems to me that this was a case where the magistrate was entitled to regard the appellant's averments regarding homelessness as unfounded and to

conclude, as he did, that it would be just and equitable in all the circumstances to grant an eviction order.

52. For these reasons I would not have upheld the appeal in respect of the second issue.

Condonation and costs

53. The appellant's heads of argument were filed nine court days late on 1 June 2018. The appeal was set down for hearing on 8 June 2018. No application for condonation was delivered with the heads of argument. Instead, Mr Langenhoven informally requested condonation in his heads of argument. A tender was made for payment by the appellant of any wasted costs occasioned by the late filing of the heads, which rang hollow in the light of Mr Langenhoven's explanation that the reason for the delay in filing the heads of argument was the appellant's alleged impecuniosity.

54. The respondent took the point in its heads of argument delivered on 6 June 2018, that there had been non-compliance with Uniform Rule 50(9). It was contended that, in the absence of a reasonable explanation advanced on oath for the default, condonation ought not to be granted and that the appeal ought to be struck from the roll with costs.

55. On the morning of 8 June 2018, just before the appeal was due to be heard, Mr Langenhoven delivered a formal application for condonation of the late filing of the appellant's heads of argument. A tender was once again made, on behalf of the appellant, to pay any wasted costs arising out of the appeal.

56. In the first instance, it was improper for Mr Langenhoven to request condonation in the heads of argument. Condonation is not to be had for the asking; it is not a mere formality.[7] Secondly, it was discourteous to wait until the morning of the appeal to deliver an application for condonation which should have accompanied the appellant's late heads of argument.

57. It also has to be said that the tender made by Mr Langenhoven that the appellant would pay the respondent's wasted costs was cynical in the extreme given that the appellant, on her version, is unemployed, has no source of income, and evidently owes the respondent in excess of R 200 000.00 in respect of unpaid rental.

58. In the event the matter had to be postponed as the respondent was not ready to proceed with the appeal. It sought an opportunity to deliver an affidavit opposing the condonation application, and it also required time to prepare its heads of argument on the merits, which had been delayed by the appellant's late filing of its heads.

59. Given the strong merits of the appeal based on the invalidity of the notice of termination of the lease, it seems to me that the interests of justice require that condonation be granted and the appeal dealt with on its merits.

60. The appeal succeeds on the first issue. In the exercise of my discretion as to costs, I do not consider that it would be appropriate to award the appellant the whole of her costs in the appeal, since a significant portion of the costs were

---

[7] *General Accident Insurance Co South Africa Ltd v Zampelli* 1988 (4) SA 407 (C) at 410 I.

occasioned in respect of the second issue, which failed. In addition, this Court wishes to mark its disapproval of Mr Langenhoven's cynical conduct in pursuing a point of appeal based on his own failure to place relevant information before the court. It seems to me that it would be appropriate to limit the costs which the appellant may recover from the respondent to half the costs of the appeal, save in respect of the cost of the record which she should be entitled to recover in full.

61. To my mind it would also be appropriate to prevent Mr Langenhoven from recovering any costs from the appellant in respect of the preparation of his affidavit dated 14 August 2018, in which he was asked to explain himself as an officer of the court, and his supplementary heads of argument dated 28 August 2018, which arose therefrom. The appellant should not have to bear these costs which arose as a result of Mr Langenhoven's conduct.

Conclusion

62. In the circumstances I would make the following order:

1. The appeal is upheld.

2. The order granted on 12 December 2017 under case number 9330/2017 in the Wynberg Magistrates' Court is set aside and replaced with the following order:

The eviction application is dismissed, with costs.

3. The appellant shall pay the respondent's wasted costs of the day on 8 June 2018.

4. The respondent shall pay the appellant's costs of the appeal, which costs shall be limited to half of the costs of the appeal, save in respect of the cost of the record which the appellant shall be entitled to recover in full, and which shall exclude any costs for the appearance on 8 June 2018.

5. The appellant's attorney may not recover from the appellant or the respondent any costs for preparing his affidavit dated 14 August 2018 and his supplementary heads of argument dated 28 August 2018.

_____

D M DAVIS

Acting Judge of the High Court

I agree and it is so ordered.

_____

T D PAPIER

Judge of the High Court

For the appellant: Mr Gavin Langenhoven of Langenhoven Attorneys Inc

For the respondent: Adv Paul Eia instructed by Ms F Darries, Toefy Attorneys