

REPUBLIC OF SOUTH AFRICA



**GAUTENG LOCAL DIVISION
JOHANNESBURG**

CASE NO: 14201/16

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
DATE

.....
SIGNATURE

In the matter between:

**GUMEDE: NYANGENI SAUL (ID NO: ...) N.O. in his
capacity as Trustee of MERGENCE AFRICA PROPERTY
INVESTMENT TRUST (IT 11263/2003)**

First Plaintiff

**DE BRUYN: BRIGITTE (ID NO: ...) N.O. in her capacity
as Trustee of MERGENCE AFRICA PROPERTY
INVESTMENT TRUST (IT 11263/2003)**

Second Plaintiff

**PETERSEN: ISAK SMOLLY (ID NO: ...) N.O. in his
capacity as Trustee of MERGENCE AFRICA PROPERTY
INVESTMENT TRUST (IT 11263/2003)**

Third Plaintiff

**AZIZOLLAHOFF: BRIAN HILTON (ID NO: ...) N.O. in his
capacity as Trustee of MERGENCE AFRICA PROPERTY
INVESTMENT TRUST (IT 11263/2003)**

Fourth Plaintiff

and

MAQUBELA: SAKHUMZI LUNGELO
(ID NO: ...)

Defendant

JUDGEMENT

CARSTENSEN AJ:

1. The Plaintiffs seek summary judgement in the amount of R819 903.68 together with interest and costs in respect of arrear monthly rental and charges which arise out of an agreement of lease concluded between, the Plaintiff states, the Plaintiff and Defendant.
2. The Defendant raises a number of defences, including:
 - 2.1. That he never authorised Johannes Jurgens Bezuidenhout to represent him in concluding the lease. (This appears to be irrelevant as it is common cause that the Defendant signed the lease and was not represented by Bezuidenhout).
 - 2.2. Secondly, the Plaintiff states that the Plaintiff seeks to mislead the court by using the words “trading as” in the summons and particulars of claim. (I do not believe that this constitutes a *bona fide* defence as the signed agreement of lease also used the words “trading as”).
3. However, the Defendant states Safana Panel Beaters and Spray Painters is not his alter ego, but is actually a legal persona and

attaches the CIPC certificate indicating that there is a company registered in the name of Safana Panel Beaters and Spray Painters (Pty) Ltd with registration number 2011/136859/07 and which has three directors.

4. The Defendant states that on the 21st January 2015 he approached the Plaintiff to reopen the business which resulted in the Defendant signing a proposal to JHI in re institution of the lease agreement between Safana Panel Beaters and Spray Painters (Pty) Ltd and JHI.
5. This proposal, which appears on page 70 of the papers, indeed states that it is a “re institution” of a lease agreement between “Safana Panel Beaters and Spray Painters (Pty) Ltd and JHI”. The document is also signed by the Defendant “as director”, and “duly authorised representative”, as set out in the preamble and where the Defendant signs he also signs for and “on behalf of” Safana Panel Beaters and Spray Painters (Pty) Ltd.
6. He also states, however, in paragraph 7 that he will be running Safana as a “sole proprietor”. Despite THE CONTENTS OF paragraph 7, it is my view that the proposal is clearly made in the name of the company and to reinstate the lease in the name of the company.
7. The Defendant states that he “ ... *did not conclude the lease agreement in his personal capacity. I have at all times acted as a director in the company*”. This is contradicted by the lease

agreement which records the Defendant's name, ID number trading as Safana Panel Beaters and Spray Painters without the designation "(Pty) Ltd". In addition, in paragraph 3 the tenant is defined as the Defendant personally. It is also noted that annexure C, being the suretyship, annexure D being the resolution are all deleted indicating that there was no intention to conclude the lease agreement on behalf of the company.

8. Nevertheless, I must bear in mind that if it turns out that the Defendant did not conclude the lease agreement personally but in the name of the company, that would constitute a defence at the trial. Arend v Astra Furnishers (Pty) Ltd, 1974 (1) SA 298 (C) at 303 H to 304 A.
9. At present, I am faced with a conflict between the proposal and the lease agreement and I am of the view that evidence would be required to show why the proposal was made in the name of the company, but the lease agreement was purportedly signed by the Defendant personally.
10. In the premises, I am not inclined to grant summary judgement.
11. Consequently, I make the following order:
 - 11.1. the Defendant is granted leave to defend the Plaintiffs' action and the costs of the application for summary judgement are reserved for determination by the trial

court.

**P L CARSTENSEN
ACTING JUDGE OF THE
HIGH COURT**

HEARD: ____ JUNE 2016
DELIVERED: 24 JUNE 2016

COUNSEL FOR PLAINTIFFS: J G DOBIE
INSTRUCTED BY: REAAN SWANEPOEL ATTORNEYS

COUNSEL FOR DEFENDANT: T J MACHABA
INSTRUCTED BY: JERRY NKELI & ASSOCIATES INC.

(jmt.20.6.16)