



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1) REPORTABLE: YES/NO	
(2) OF INTEREST OF OTHER JUDGES: YES/NO	
(3) REVISED	
<u>2023/03/20</u>	
DATE	SIGNATURE

Case no: 2022/007750

In the matter between:

CENTPRET PROPERTIES (PTY) LTD

Applicant

and

SHANDUKANE, MOSES

Respondent

JUDGMENT

FRIEDMAN AJ:

- 1 In this matter, the respondent took occupation of commercial premises situated in Fox Street in Johannesburg in terms of a written lease agreement concluded between the applicant and respondent. The applicant says that it cancelled the lease agreement because the respondent breached it and seeks to evict the respondent from the premises. The applicant also seeks an order providing for the payment of the arrears owing under the agreement.
- 2 On 24 February 2022, after the respondent fell into arrears, the applicant addressed a notice of default to him informing him that he was in breach of the lease agreement. I shall describe this letter below as “the breach notice”. At that stage, he was in arrears in an amount of just short of R30,000. The respondent failed to remedy his breach in response to the breach notice and, on 25 March 2022, the applicant’s agent addressed a further letter to the respondent on behalf of the applicant confirming that he remained in breach of the lease agreement and terminating it. I shall describe that letter as “the cancellation notice”. In the cancellation notice, the respondent was called upon to vacate the property. The respondent failed to do so, and this application therefore became necessary.
- 3 The most convenient way to organise this judgment is for me first to address the respondent’s defences to the eviction application. This is because it is common cause

that, at the time when the breach notice was sent, the respondent was indeed in breach of the agreement. It is also common cause that he did not rectify his breach. Therefore, unless any of the respondent's defences are good, the eviction application must succeed. After considering the eviction component of the case, it is then convenient to consider the applicant's further claim for an order that the respondent pay the arrear rental.

THE RESPONDENT'S DEFENCES

- 4 As I understand the respondent's defences to this application, he relies on essentially three propositions. First, he relies on a clause of the agreement, which I shall describe in more detail below, in terms of which 20 days' notice must be given to a party which breaches the agreement to rectify the breach. He alleges that he was given less than 20 days' notice in order to rectify the breach between the sending of the breach notice and the cancellation notice. He therefore argues that this application is defective and he cannot be ordered to vacate the property. He advances this argument despite the fact that, as noted briefly above, it is common cause that the respondent remains in arrears in respect of the rental in the lease agreement and has not rectified his breach.
- 5 The respondent has an additional argument. He says that, after the agreement was purportedly cancelled, he remained in occupation of the property and paid rental. He says that this gives rise to a tacit agreement of lease which came into effect after the original lease agreement, which is the applicant's cause of action in this matter, had already purportedly been cancelled by the applicant. He seems to argue that he is

entitled to remain in occupation of the property in terms of the new tacit lease agreement and that he therefore cannot be evicted.

6 The last of the respondent's arguments, which permeates his entire defence to this application, is that there are irresolvable disputes of fact on the papers, precluding the applicant from being granted the relief which it seeks.

7 It is necessary to consider each of these arguments.

The notice period

8 Clause 9 of the agreement of lease deals with breach. Because of its importance, I reproduce it in full here.

"9. BREACH

9.1. For the purposes of this Agreement, a "material breach" shall include the following:

9.1.1. failing to make payment of any amount payable in terms of this Agreement on due date;

9.1.2. failing to take occupation of the Leased Premises when tendered by the Landlord and failing to rectify such breach within 7 (seven) calendar days of receipt of written notice to such effect;

9.1.3. failure to commence business on taking occupation of the Leased Premises, alternatively on the rent free period as set out in clause 3.2 [if applicable) lapsing;

9.1.4. failure by the Tenant to remain in occupation of the Leased Premises until termination of this Agreement, for whatsoever reason, by voluntarily vacating and/or abandoning the Leased Premise and/or acting in a manner which can reasonably be construed as the Tenant abandoning his rights in terms of the Agreement (i.e. repudiating the Agreement);

9.1.5. committing any breach (other than a material breach) of any term of this Agreement, on more than 2 (two) occasions in a consecutive 3 (three) month period;

9.1.6. failing to comply with the management rules prescribed by the Landlord in terms of clause 6.1.2.3, as amended from time to time;

9.1.7. effecting any improvements, alterations and/or additions to the Leased Premises as set out in clause 8, without the prior written consent of the Landlord.

9.2. Subject to the provision of clause 11.4:

9.2.1. If either Party commits any material breach of this Agreement;

9.2.2. if either Party commits any other breach in terms of this Agreement and fails to remedy such breach within 7 (seven) calendar days (or such longer period as may be reasonably necessary to remedy such breach) after receipt from the other Party of written notice calling upon it to do so:

9.2.3. if either Party, commits an act of Insolvency within the ambit of Insolvency Law, is deemed unable to pay its debts within the ambit of Company Law, finds itself in circumstances capable of being placed under business rescue, is wound up, is deregistered or applies for deregistration or is subject to application for the provisional winding up or judicial management, or a special resolution is passed for the winding up otherwise than for the purpose of an amalgamation or reconstruction; or

9.2.4. where the Tenant acts as a company or a close corporation and changes the controlling shareholding or member's interest in such entity, without the prior consent of the Landlord, which consent shall not unreasonably be withheld;

then the other Party shall be entitled, in addition to and without prejudice to any other right it may have in law or in terms of this Agreement, to:

9.2.5. enforce specific performance of the terms of this Agreement;
or

9.2.6. convert this Agreement to one in which the Landlord is entitled to terminate by giving 1 (one) month's written notice to the Tenant;

or

9.2.7. terminate this Agreement and vacate/ reclaim possession of the Leased Premises: and/or

9.2.8. recover such damages sustained and that which may be permitted in terms of law (including, without limitation, the Landlord claiming all future Monthly Rentals that would have been payable by the Tenant for the remainder of the lease period), subject to the provisions of the clause 10.

9.3. Notwithstanding the provisions of this Agreement and without prejudice to any other rights of the Landlord, if the Tenant breaches any provision of this Agreement (excluding non-payment of rental as provided in terms of clause 9.1.1 above), the Tenant shall be liable for a penalty at a rate of R500.00 (five hundred rand) per day or part thereof, for each day that the Tenant remains in breach. The said penalty shall be payable by the Tenant to the Landlord on demand.

9.4. Notwithstanding the provisions of clause 9.2 and where the Tenant concludes this Agreement in the capacity of a natural person, then the Landlord shall be entitled to terminate this Agreement on the Tenant materially breaching this Agreement and failing to rectify such material breach within 20 (twenty) Business Days written notice to such effect.

9.5. Without prejudice to any other right in terms of this Agreement, the Landlord shall be entitled to inform any registered credit bureaux of any breach of this Agreement by the Tenant within 20 (twenty) Business Days of written notice by the Landlord to the Tenant."

- 9 The respondent relies on clause 9.4 and says that, because he is a natural person, the applicant had to give him 20 days to rectify his breach; ie, his failure to pay the rental. His arguments seem to be, first, that he received less than 20 days' notice, as a matter of fact; and, secondly, that the breach notice is defective because it gave him 7 days to rectify the breach, and not 20 days as required.
- 10 The respondent is correct that, in any case involving a natural person – and it is common cause that the respondent is a natural person, which I only mention because one might get the impression from some parts of the papers that he represented a firm of attorneys which occupied the premises – 20 days' written notice must be given to rectify a material breach before the applicant may cancel the agreement. The

respondent is also correct that, in terms of paragraph 4 of the breach notice, he was given 7 days' notice to rectify the breach. However, the respondent is wrong to suggest that these characteristics render the breach notice defective.

- 11 If an agreement does not include an express requirement that a breach notice should take a specific form – to take the example directly relevant to this case, by providing, for instance, that a demand notice must specify the time for compliance – then an incorrect indication of the timeframe in which the breach may be rectified is not fatal to the innocent party's right to cancel.¹ The defaulting party has a right to cure his or her breach within the timeframe provided in the agreement – in this case, 20 days. If a breach notice gives him or her less than 20 days to cure the breach, then he or she is entitled to say: I have a right to cure the breach within 20 days, so I reject your attempt to require me to cure it in less. The defaulting party may then take the full 20 days to cure the breach. If the breach is cured within that period, then this will be a basis to refuse to accept the innocent party's subsequent cancellation of the agreement (or other attempt to enforce rights based on the breach). However, it does not entitle the defaulting party simply to treat the breach notice as defective, and to ignore it entirely. That is precisely what the respondent appears to have done. Put differently, if, in the face of such a notice (regardless of the time specified in the notice), the defaulting party does not cure the breach within 20 days, then the innocent party's right to cancel kicks in. This right can be exercised at any time after the expiry of the 20-day period.

¹ See *Lurlev (Pty) Ltd v Unifreight General (Pty) Ltd* 1978 (1) SA 74 (D)

- 12 Which brings me to the respondent's factual argument that there were less than 20 days between receipt of the breach notice and the cancellation notice. The respondent has failed to establish that he was given less than 20 days' notice to rectify the breach. The fact that the breach notice and cancellation notice were sent was explained in the founding affidavit. In the respondent's answering affidavit, he purported to deal with the applicant's allegations about these notices. He addressed that issue by saying the following: he referred to clause 13.1 of the lease agreement and said that in terms of that clause the parties had nominated their domicilium addresses. He says that the applicant was required to deliver the two notices – ie, the breach notice and the cancellation notice – to his domicilium address. He says that the notices were sent to him, instead, by e-mail. He says that the e-mail address to which the notices were sent is an unattended e-mail address which he hardly uses. He says that the problem is compounded by the fact that the applicant sent the notices by e-mail without an agreement with him permitting it to do so (carrying the implication that, had there been such an agreement, he would have checked his emails more regularly). Importantly, in his answering affidavit, the respondent did not at any stage acknowledge that he received the breach notice; if anything, he implied that he did not.
- 13 The breach notice was sent on 24 February 2022, as I have explained above. In response to the respondent's reference to his unattended e-mail address, the applicant, in its replying affidavit, pointed to the fact that on 6 March 2022 the respondent replied to the breach notice. In his email of 6 March 2022, the respondent acknowledged receipt of the breach notice and acknowledged that he was in default of the lease agreement. Again, it bears emphasis that no mention at all was made of this in the answering affidavit.

- 14 In argument, the respondent seeks to use the fact that his e-mail was dated 6 March 2022 as evidence that he was given less than 20 days' notice to rectify the breach. The contention is that we have no evidence before us that the respondent received the e-mail before 6 March 2022 because the first time on which he responded to the breach notice was on that date. Since the cancellation notice is dated 25 March 2022, the respondent asks this Court to infer that he was only given the period between 6 March 2022 and 25 March 2022 to rectify the breach.
- 15 The respondent's argument is, with respect, quite bizarre. Without saying so in so many words, the respondent in his answering affidavit tried to imply that he did not receive the breach notice. He did not take the court into his confidence as to the fact that he received it and when he in fact received it. It took the applicant in its replying affidavit to demonstrate that he had in fact received it. If the respondent wished to make something of the 20-day notice period, then he had an obligation to explain to the court (a) when he received the notice and (b) the consequences of receiving the notice on that date. He did almost the precise opposite by trying to obscure the question of whether he had in fact received the notice at all. There can be no other reasonable interpretation of his reference in the answering affidavit to the unattended e-mail address.
- 16 Before me, there is evidence that the respondent was sent the breach notice on 24 February and that he replied to it on 6 March. If his case is that he only received the email on 6 March, then he ought to have explained himself clearly in his answering affidavit. Instead, he seeks to latch onto the evidence in the replying affidavit – which was only put up in the first place because he did not play open cards in the answering affidavit – as proof that he only received the email on 6 March. This is self-evidently

unhelpful. To the extent that the respondent's argument is based on the proposition that sending the breach notice by email, rather than delivery to the domicilium address, was invalid: clause 13.1.3 of the lease agreement provides that "written notice or communication actually received by the addressee shall be adequate written notice, notwithstanding that such notice was not delivered in accordance with this clause". This makes it clear that an email actually received is sufficient to constitute delivery of the relevant notice.

- 17 Ultimately, the position is this: the respondent breached the lease agreement by failing to pay his rental. The applicant exercised its right to put the respondent in mora, which it did by sending the 24 February 2022 breach notice. The respondent, despite admitting that he was in breach in his email on 6 March, did not at any stage before this application was launched cure his breach. Even if one somehow would wish to treat the cancellation notice sent on 25 March 2022 as invalid, then the applicant's founding affidavit makes clear that it cancelled the agreement. Since the founding affidavit was served on the respondent more than 20 days after the breach notice was sent, it was a valid vehicle with which to cancel the lease. On either construction, the applicant is entitled to evict the respondent.

The so-called tacit lease

- 18 But, as I have mentioned, the respondent has a second argument. The statement of account in respect of the lease agreement is part of the papers before me. It shows that, after the lease agreement was cancelled by the applicant, the applicant continued to charge the respondent rental. The respondent argues that this demonstrates that a tacit

lease agreement was concluded between the parties after the written lease agreement was cancelled. According to this argument, since he is not in breach of this new agreement, he cannot be evicted.

- 19 *Ms Gordon*, who appeared for the applicant, directed me in argument to clause 10.6 of the lease agreement. It provides as follows:

“10.6. Where, notwithstanding termination of this Agreement, the Tenant remains in occupation of the Leased Premises (irrespective of any dispute), then:

10.6.1. the Tenant shall continue to pay all amounts due to the Landlord in terms of this Agreement (escalating at 10% (ten percent) per annum compounded) on the due dates for same);

10.6.2. the Landlord shall, without prejudice to any of its rights in terms of this Agreement, be entitled to recover and accept those payments.”

- 20 This clause is the complete answer to the respondent's argument. No tacit lease agreement was concluded between the parties after the cancellation of the written lease agreement. The statement of account simply caters for the fact that the respondent has remained, illegitimately, in possession of the property and reflects the fact that the applicant is entitled to charge him rent for so long as he remains in occupation.

- 21 It follows that this defence must also fail and that the respondent should be evicted from the premises.

Disputes of fact

- 22 The respondent has a further argument, which I might describe as a “catch-all” argument – ie, he says that there are irresolvable disputes of fact on the papers, which prevent the applicant from obtaining the relief which it seeks in motion court. However, the discussion above demonstrates that the following facts are common cause or have not been meaningfully disputed by the respondent:
- 22.1 First, that a lease agreement was concluded between the applicant and the respondent.
- 22.2 Secondly, that the respondent breached the lease agreement by failing to pay all of the rental which he was required to pay over the course of the lease.
- 22.3 Thirdly, the respondent was placed on terms to rectify the breach but failed to do so.
- 22.4 Fourthly, the applicant cancelled the agreement.
- 23 By virtue of these facts, the applicant is entitled to evict the respondent. I cannot identify any real disputes of fact which preclude the applicant from obtaining that relief.
- 24 It should be added that, in an attempt to create the impression that there are real disputes of fact relevant to the merits, the respondent attempts to raise a further supposed dispute of fact regarding the statement of account which demonstrates that he is in arrears. I deal with that in the next section below. At this stage, I simply reiterate that, in my view, there is no genuine dispute of fact on the papers, precluding the applicant from obtaining its eviction relief.

THE CLAIM FOR ARREARS

- 25 In the notice of motion, the applicant claims, in addition to the order evicting the respondent, arrear rental in the amount of R33 589.37. This was what was owed by the respondent at the time when the application was launched. In the founding affidavit, the applicant reserved the right to file a further affidavit to demonstrate the updated balance. It reserved its right to do so bearing in mind that there was likely to be a significant lag time between the filing of the founding papers and the ultimate hearing of this matter. Provision was also made for this in the notice of motion.
- 26 The applicant attached an updated account to its replying affidavit, which shows that, as of the date of filing the replying affidavit, the account was in arrears in the amount of R65 010.96. In the replying affidavit, the applicant indicated that it would file a further affidavit closer to the hearing, showing a more recent balance. This was not done, and *Ms Gordon* asked me to order that the sum of R65 010.96 be treated as the final number reflecting the arrears.
- 27 Before I deal with the question whether I can make such an order, it is necessary for me to address the respondent's attempt to trigger a dispute of fact in respect of the arrears.
- 28 The respondent says that the statement of account goes back to 2018, "prior to Respondent concluding the lease agreement with the Applicant". In doing so, he seeks to imply that the statement of account is not a reliable basis to determine his liability to the applicant because it seeks to hold him liable for rental in respect of which he could not possibly have incurred liability. If I understand the argument, the respondent also

says that some of the components of the statement of account have prescribed, because they relate to a period of time more than three years ago.

- 29 Regrettably, this is a further instance where the credibility of the respondent is somewhat undermined. This is because the applicant has demonstrated, in its replying affidavit (in response to the respondent raising this complaint in his answering affidavit), that the respondent concluded a prior lease agreement with the applicant for a different unit in the same building. It is for this reason that the statement of account includes charges for occupation by the respondent of that unit. What is quite remarkable about the respondent's argument is that it involves, in part, a criticism that the applicant is not entitled to make out a case in reply. The previous rental agreement does not form part of the applicant's cause of action. Why it should have, in those circumstances, mentioned it at all in its founding affidavit escapes me. It dealt with the matter in reply after the respondent, disingenuously, tried to impugn the applicant's credibility by implying that it was trying to hold him liable in terms of a lease agreement which had never been concluded.
- 30 As mentioned above, the reason why there are rental amounts reflected on the statement of account in respect of 2018 and 2019 is because of the respondent's previous occupation of a different unit in the building in terms of an earlier lease agreement with the applicant. It seems to me that the respondent may have conflated two issues in his formulation of this argument. My reading of the statement of account is that the account only fell into arrears in 2020. Since this application was launched in 2022, I cannot see where prescription arises. It may be that the respondent meant to take issue with the fact that the statement of account begins to run from the time when the previous lease

agreement was in force; ie, in relation to a different agreement to the one on which the applicant sues, in order to imply that the applicant's version is unreliable, and then the (incorrect) prescription argument somehow was included in the criticism.

- 31 But, even if I am missing something in this regard, the applicant relies on clause 5.14 of the lease agreement. It provides:

“Appropriation of payments: The Landlord shall be entitled to appropriate any amounts received from the Tenant towards the payment of any debt or amount owing by the Tenant to the Landlord irrespective of when the debt arose.”

- 32 In terms of this clause, the applicant was entitled to apportion any historical arrears to the respondent's account, and those amounts would remain owing until settled. So, even if some of the amounts on the statement of account relate to the previous lease, this does nothing to render the account invalid.

- 33 The respondent has not otherwise disputed the veracity of the statement of account. Other than taking the point summarised above, he has not challenged any of the charges which make up the total of the arrears; for instance, by saying that the rental sum is wrong or that the applicant is not entitled to charge him for electricity or something along those lines. Once the respondent's complaint about historical charges falls away, it is necessary for me to proceed on the basis that the sums of money making up the statement of account are not disputed.

- 34 Returning, then, to the ultimate order to make in respect of the arrear rental. There are various contexts in which certificates of balance and similar documents are permitted to be introduced in reply or even at the hearing of matters. The present case is not quite

the same as a case in which reliance is placed on a certificate of balance to prove indebtedness; for example, where a bank sues on a mortgage account in arrears. In those cases, if it were not permissible for the certificate of balance to be handed up at the hearing, it would never be possible to nail down the precise quantum of indebtedness so that it could be reflected accurately in the order. In this case, if I were to hold the applicant to the quantum reflected in the notice of motion – on the basis that it should not be permitted to make out a new case in reply – it could theoretically sue the respondent for the difference (which would be roughly R32 000) in subsequent proceedings. However, I do not consider it to be in the interests of justice to require it to do so. There is no genuine dispute about any of the components of the statement of account and there is a need to bring this litigation to finality. The applicant should not be put to the expense of further proceedings to recover the remaining arrears and another court (whether this Court or a Magistrates' Court with jurisdiction) should not have to be convened to consider the matter. I accordingly consider it appropriate to grant an order providing for the payment by the respondent of the arrears as reflected in the statement attached to the replying affidavit.

THE APPROPRIATE ORDER TO MAKE

- 35 There are two further matters to address. First, the applicant in a draft order filed shortly before the hearing seeks an order evicting the respondent within three days of the granting of this court's order. I have to determine whether that is appropriate. Secondly, there are certain costs of interlocutory proceedings brought by the respondent which the applicant now seeks to recover on the attorney-client scale.

- 36 Although the premises are commercial premises and not the respondent's home, it is my view that three days is a rather short period of time in which to expect the respondent to clear out his business premises. I do not have detailed facts before me on that issue, but it seems to me to be more appropriate to allow the respondent seven days to vacate the premises. I have given consideration to the prospect of giving him until the end of the month (ie, the end of March 2023) to vacate the premises. However, that strikes me as potentially unfair to the applicant, which may wish to make improvements to the premises in order to make them ready for rental from 1 April 2023. As I say, I have no facts before me on this issue. But seven days seems to me to strike the right balance between the interests of both parties.
- 37 On the question of the costs of the two interlocutory applications: the issue is, unfortunately, somewhat complicated. The applicant's explanation of its stance on the interlocutory matters is the following: it says that the applicant filed a notice objecting to this matter being referred to mediation in response to a rule 41A notice filed by the respondent consenting to mediation. This happened after the respondent had filed an illegitimate rule 7 notice, challenging the authority of the applicant's attorney to represent it. I use the word illegitimate, because the applicant says that it was filed outside of the 10-day period envisaged by rule 7(1) of the Uniform Rules of this Court without leave of a court. Despite this, when the applicant filed a notice recording its objection to mediation, the respondent treated this as an irregular step because it was done before any response to the rule 7(1) notice had been furnished. The respondent brought a rule 30 application, withdrew it without tendering the costs, and then launched a second one on the same day. After the second application was launched, and without any obligation to do so (given that the rule 7(1) notice was defective), the

applicant provided proof to the respondent on the question of authority. Despite this, the respondent sought to enrol the second rule 30 application. After the applicant filed an affidavit in the second rule 30 application, the respondent simply abandoned it.

- 38 I have no reason for quibbling with the facts as stated by the applicant and summarised above. I would simply note that the second application came before Carrim AJ and, if I understand the facts correctly, the respondent sought to remove the matter from the roll. So, it would perhaps be more appropriate to say that the respondent chose not to persist in the application rather than saying that he abandoned it.
- 39 In any event, the first interlocutory application was withdrawn before it was set down. Rule 41(1)(a) empowers an applicant to withdraw an application unilaterally before it is set down, with or without a costs tender. Rule 41(1)(c) then provides that, if a notice of withdrawal is not accompanied by a consent to pay costs, the other party may apply to court on notice for an order as to costs. I am not aware of any application brought by the applicant for the wasted costs of the first interlocutory application, as envisaged by rule 41(1)(c). I cannot see how, in the circumstances, I am empowered to make any costs order in relation to the first interlocutory application.
- 40 Both parties addressed me on the second interlocutory application in some detail in their heads of argument on the premise that I am at large to make a costs order in respect of it. It appears that both parties have misinterpreted the order made by Carrim AJ on 17 October 2022 when the second application was removed from the roll. On the question of costs, Carrim AJ's order was that the "costs of this application to be costs in the main application". This is simply a different, and with respect more precise, way of

saying that the costs of the second interlocutory application are to be costs in the cause. This is, of course, different to an order reserving the costs. Had Carrim AJ reserved the costs of the second interlocutory application, I would have been able to exercise my wide discretion on costs and make any appropriate order, including a punitive costs order in favour of the applicant (as sought by it). But since Carrim AJ ordered that the costs of that second interlocutory application were to be costs in the main application, the simple position is that the costs of that application are to be awarded to the party in whose favour costs are awarded in the main application. If I were to consider myself at large to reconsider the costs of the second application, it would render Carrim AJ's order meaningless, and erode the distinction between orders reserving costs and orders rendering interlocutory costs to be costs in the cause.

41 In the light of what I have said above, I make the following order:

1. **The respondent is evicted from the property described as Erf 1188 Marshalls Town Township, Registration Division IR, Gauteng situated at Office 0421 Marlborough House, 127 Fox Street, Johannesburg ("the property").**
2. **The respondent shall vacate the property within 7 days of the granting of this order, failing which the sheriff is authorised and directed to evict him from the property.**
3. **The respondent shall pay to the applicant the sum of R65 010.96.**

4. The respondent shall pay the costs of this application, which shall include the costs of the rule 30 application under the same case number as this main application, launched on 12 September 2022 and removed from the roll on 17 October 2022.



ADRIAN FRIEDMAN
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected above and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand down is deemed to be 20 March 2023.

APPEARANCES:

Attorney for the applicant: Vermaak Marshall Wellbeloved

Counsel for the applicants: C Gordon

Attorney for the respondent: S Twala Attorneys

Counsel for the respondent: S Twala – Attorney with right of appearance

Date of hearing: 14 March 2023

Date of judgment: 20 March 2023