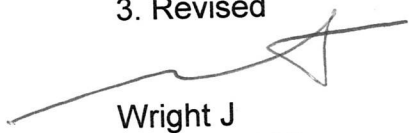


**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**APPEAL CASE NO: A5042/2020  
COURT A QUO CASE NO: 2018/23489**

1. Reportable: No
2. Of interest to other judges: No
3. Revised

  
Wright J  
19 May 2023

In the matter between:

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR  
THE DEPARTMENT OF THE HUMAN SETTLEMENTS,  
GAUTENG**

**APPELLANT**

**and**

**BOBWORTH INVESTMENT PROPRIETY LIMITED**

**RESPONDENT**

**Neutral Citation:** *The Member of The Executive Council For Department Of The Human Of The Human Settlements, Gauteng v Bobworth Investment Propriety Limited*  
(Case No: A5074/2022) [2023] ZAGPJHC 517 (19 May 2023)

---

## FULL COURT APPEAL – JUDGMENT

---

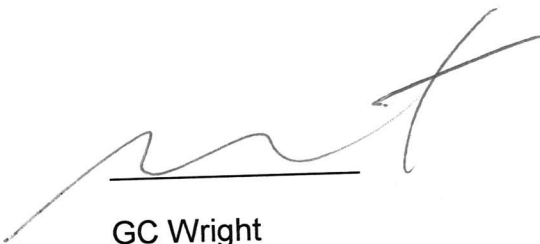
### **WRIGHT J (ADAMS et STRYDOM JJ concurring):**

1. The present respondent company, Bobworth, owns and rents out commercial property. The appellant provincial department, as represented by the MEC, needed space. The parties appear from the court documents to have begun business as early as March 2009, if not earlier.
2. Bobworth instituted action against the MEC. A claim A and a claim B were brought. Summary judgment was applied for and opposed. Bobworth abandoned the summary judgment application for claim B. Summary judgment was granted on claim A and the MEC now appeals with the leave of the court below.
3. Bobworth cross-appeals, with leave, the failure of the learned judge below to grant a costs order in favour of Bobworth relating to the costs in the summary judgment application.
4. Molahlehi J below did not deal with costs in his order. At the end of the hearing before Molahlehi J, the parties undertook to provide him with affidavits on the question of previously reserved costs. It is unclear whether or not they did so. There seems to be considerable confusion regarding the question of costs in the summary judgement application. The learned Judge was of the view that the question of costs had been settled.
5. Regarding Claim A, the particulars of claim allege two written lease agreements. The first is referred to as the 2016 agreement. The second is described as the 2017 agreement. The 2016 agreement had a commencement date of 1 May 2013. This agreement seems to firm up an ongoing landlord and tenant business relationship going back at least four years. The 2017 agreement had an end date of 30 April 2018.

6. An allegation is made, in paragraph 21 of the particulars of claim, that the MEC breached the agreements by failing to pay amounts due and payable "*between the period of 1 May 2013 until 30 April 2018.*" It is further alleged, in paragraph 22 of the particulars of claim that "*The details of the defendant's breaches are contained in POC3*". POC3 is annexed to the particulars of claim. It starts with what is obviously a balance brought forward from an earlier date. It does not appear from POC3 how far back the account goes or how the opening balance is calculated. POC3 starts with the date 2015/09/28 and ends with the date 2018/03/27. In its terms, it contradicts the allegation in paragraph 21 of the particulars of claim, at least for the reason that Claim A is from "*1 May 2013*", while POC3 starts two years and five months later. The allegation in the particulars of claim that "*details of the defendant's breaches*" are to be found in POC3 is confusing. The particulars of claim are therefore excipiable on the ground of being vague and embarrassing.
7. The answering affidavit sets out in great detail why many of the allegations in the particulars of claim are incorrect and why the MEC intends filing in due course a counterclaim for overpayments.
8. At the summary judgment hearing, Bobworth sought and was granted an amendment to its notice of motion in the summary judgment application. The amendment related to the amount in a certain invoice. The effect of the amendment was to reduce the claim by about R200 000. The amendment, in a vacuum was innocuous. But what it showed was that the affidavit in support of the application for summary judgment was unreliable. The affidavit of course cannot be amended. It can be explained, but the best place for such explanation is in a trial.
9. I have much doubt that the amount granted as summary judgment is correct. Bobworth has, at this stage, not clearly isolated from a long standing running account what it now seeks. It would be unwise, on the papers before me to attempt to arrive at the correct figure, either way.
10. In these circumstances, the appeal must succeed and it is not necessary to canvass a number of other defences raised.

**ORDER**

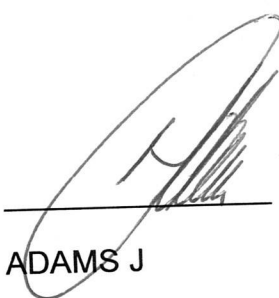
1. The appeal is upheld with costs.
2. The cross-appeal is removed from the roll.
3. The costs relating to the summary judgment application and the costs of the cross-appeal are reserved for the trial court.
4. The order of the court below is set aside and replaced with one reading
  - "1. The defendant is granted leave to defend.*
  - 2. The costs of the summary judgment application are reserved for the trial court."*

  
\_\_\_\_\_  
GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

I agree

  
\_\_\_\_\_  
ADAMS J

Judge of the High Court

Gauteng Division, Johannesburg

I agree



STRYDOM J

Judge of the High Court

Gauteng Division, Johannesburg

I agree

**HEARD : 17 May 2023**

**DELIVERED : 19 May 2023**

**APPEARANCES :**

**APPELLANT Adv MH Mhambi**

**Instructed by Mr Colin Thaver**

**083 226 2169**

**KThaver@justice.gov.za**

**RESPONDENT Adv N Naidoo**

**Instructed by VDMA Law**

**Stuart Roux**

**082 457 6581**

**sroux@vdmalaw.com**