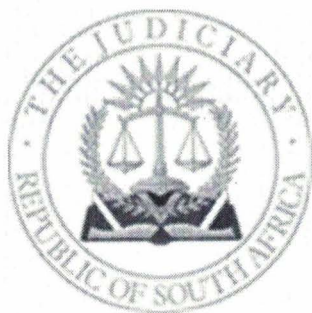


REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION, JOHANNESBURG**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

30/07/2021
DATEA handwritten signature in black ink, appearing to be "M. M. M. M. M.", written over the word "SIGNATURE".
SIGNATURE**Case No.: 43894/2019**

In the matter between:

Tong Ming Li**1st Applicant****Peak Industrial Enterprises (Pty) Ltd****2nd Applicant**

and

Pan Africa Logistics (Pty) Ltd**Respondent**

JUDGMENT

Malindi J:

[1] The Applicants see an order in the following terms:

- “1. An order ejecting the Respondent and all persons who hold under or through it from Portion 48 (Remaining Extent) of the Farm Mooiplaats no. 353, JR and Portion 6 of the farm Skurweplaas No.353, JR;
2. Optionally confirmation of the cancellation of the written third lease agreement;
3. Costs; and
4. Further and/or alternative relief.”

[2] The parties first entered into a lease agreement on 13 July 2016 in respect of Portion 48 of the farm Mooiplaats (“Mooiplaats”) and Portion 6 of the Farm Skurweplaas (Skurweplaas”) although the lease agreement only refers to Mooiplaats.

[3] The Applicants allege that the Respondent fell in arrears with payment rental payments of some R405 000.00, a breach which it failed to remedy after notice thereof was given and a letter of demand dispatched to it on 8 February 2019.

[4] On 13 February 2019 the Applicants dispatched a letter to the Respondent in which it was afforded until 20 February 2019 to make full payment of the arrears failing which cancellation of the lease would be effected. This step was taken on 11 March 2019 when the lease was cancelled with immediate effect.

[5] After a round of negotiations the parties entered into a new lease agreement (“the Second Agreement”) on 20 March 2019. The terms of the Second Agreement were, *inter alia* that the arrear amount and rental for 1 April 2019 to 30 June 2019 would be paid in accordance with clause 4.2 thereof which set out monthly payments from 25 March 2019 to 3 June 2019. The Second Agreement further states that any default

on payment will result in the agreement terminating with immediate effect and that the Respondent would be obliged to vacate the premises and property accordingly.

- [6] When the Respondent failed to effect payment on 25 March 2019 an addendum to the Second Agreement was entered into on 26 March 2019, the effect of which was to extend such payment to 3 April 2019 and provide for the automatic termination of the agreement should the Respondent default in such payment.
- [7] When the Respondent failed to make payment on 3 April 2019 a further indulgence was given to it and a third lease agreement was entered into on 15 April 2019 ("the Third Agreement") setting the new lease period as 1 April 2019 to 30 April 2019. The terms and conditions of the Second Agreement were essentially retained.
- [8] On 24 June 2019 the Applicants dispatched yet another letter to the Respondent alerting it to a breach of the Third Agreement and to the fact that the Respondent remained indebted to the Applicants in the amount of R360 000.00. It was demanded that the Respondent vacates the premises by 25 June 2019 failing which eviction proceedings would commence.
- [9] The Respondent admits paragraphs 36-38 of the founding affidavit which deal with the Third Agreement, especially the terms pertaining to the Respondent's indebtedness and automatic termination of the agreement should the Respondent be in default of payment. Furthermore, save to aver that certain payments were made which the Applicants allege were not, the allegations of the breaches as set out in the various agreements are not denied. The Respondent merely says it was not in unlawful occupation without elaboration. The Third Agreement was terminated on 19 April 2019 in terms of an admitted clause of the agreement (clauses 4.2.1 and 7) and

upon receipt of a letter confirming the Applicant's refusal to grant any further indulgences on 24 June 2019.

[10] The main and probably the only defence proffered is that the parties had always engaged in *bona fide* negotiations about the Respondent's indebtedness and that the Applicants are to blame for the non-fruition of an agreement that the Respondent and a third party were about to enter into when the lease agreement was terminated.

[11] The Respondent's reliance on the cases of *Garlick Ltd vs Phillips* and¹, do not assist it. The Appellate Court in *Garlick* spoke of a lessor giving "a revocable permission to respondent to pay his rent late".² In this case the Applicants did not act in a *laissez-faire* manner. They revoked any perception that any engagement in negotiations or grant of indulgencies was to be accepted as permission to pay rent late. Each of the agreements made it clear that any indulgencies granted do not constitute a waiver of the Applicants' right to terminate upon breach of payment.

Conclusion

[12] The evidence is overwhelming that despite bending over backwards numerous times in order to accommodate the Respondent, it remained in breach of the three agreements to substantial degrees. The Applicants consistently urged the Respondent to fulfill its undertakings to make arrear and future payments. Instead, each undertaking and new agreement would be breached in less than a month after entering into it.

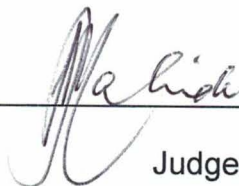
[13] The Respondent has admitted the Applicant's main allegations and has not provided any plausible answer thereto.

¹ 1949 (1) SA 121 (A)

² 1948 (1) SA 798 (SR)

[14] I therefore make an order in terms of the draft order as follows:

- (a) An order ejecting the Respondent and all persons who hold under or through it from Portion 48 (Remaining extent) of the Farm Mooiplaats No.355, JR and Portion 6 of the Farm Skurweplaas No.353, JR, within one week of this order being served on them;
- (b) In the event of the Respondent and all those occupying through and/or under the Respondent failing to vacate the premises, an order that the Respondent and all other persons who occupy or hold possession through the Respondent, are to be ejected/evicted from the premises;
- (c) That the sheriff of the above Honourable Court be authorised to do everything necessary, including but not limited to obtaining the help of the South African Police service, to give effect to paragraph (b) above and evict / eject the Respondent, and all other persons who occupy or hold possession of the premises through the Respondent.
- (d) The Respondent is ordered to pay the costs of the application on the scale as between party and party.



Judge of the High Court

Malindi J

Counsel for the Applicant	:	Adv C J C Nel
Instructed by	:	Assenmacher Brandt Attorneys
Counsel for the Respondent	:	Adv K Kollapen
Instructed by	:	SZ Ngwane Incorporated
Date of hearing	:	30 November 2020
Date judgment delivered	:	30 July 2021