

IN THE KWA-ZULU NATAL HIGH COURT, DURBAN
REPUBLIC OF SOUTH AFRICA

CASE NO. 12510/2010

In the matter between:

AUTUMN STORM INVESTMENTS 65 (PTY) LTD

APPLICANT

and

IMRAAN DAYDAT

RESPONDENT

J U D G M E N T

NDLOVU J

Factual Background

[1] The applicant company is the owner of immovable property situated at 46 The Grand Floridian, Utshani Close, La Lucia (“the premises”) which, in terms of the written lease agreement concluded between the applicant and the respondent on 23 October 2009, the applicant leased to the respondent for a period of 12 months, commencing on 1 September 2009 and terminating on 31 August 2010. The lease has now expired.

[2] In this matter the applicant seeks an order evicting the respondent from the premises as well as all those who occupy the premises by virtue of the respondent’s occupancy thereof.

[3] The application was instituted in terms of the provisions of the Prevention of Illegal Eviction from an Unlawful Occupation of Land Act, 19 of 1998 (“the PIE Act”) and the provisions of section 4(2) thereof were complied with by the applicant, by virtue of the Court order dated 11 April

2011.

[4] Besides the 12 months' duration period of the lease aforesaid, the other relevant or material terms of the lease included the following:

4.1 In terms of clause 3.1 the monthly rental payable by the respondent to the applicant in respect of the premises would be R15 000,00 per month with effect from the commencement date, payable monthly in advance without any deduction or demand and free of exchange, on the first day of each and every month. The respondent would, subject to clause 5.8 of the agreement and provided the respondent was not in breach in any of the terms of the agreement at the time, be entitled to renew the lease for a further period of 12 months on the same terms and conditions, save that the rental for the renewal period would be negotiated between the parties upon the receipt by the applicant of the respondent's written notice of renewal.

4.2 Clause 5.2 provided that, in order to be effective, the written notice of such renewal must be received by the applicant not more than 60 days and not less than 30 days prior to the expiry of the initial period. On this basis, it meant that, in the present instance, such written notice was to be received by the applicant not later than 31 July 2010.

4.3 The agreement further provided, in terms of clause 5.8, that notwithstanding anything to the contrary contained in the agreement it was expressly recorded that the respondent's right of renewal would automatically lapse, whether or not the respondent was in breach of any of the terms of the lease at such time, on the execution of an agreement of sale between the applicant and a third party purchaser, in respect of the premises, prior to the respondent exercising his right to renew the lease.

[5] In terms of the lease agreement, the respondent had the right of

first refusal in the event of the applicant deciding to sell the premises. Indeed on or about 12 August 2010, when the applicant had decided to sell the premises, it requested the respondent to exercise his right of first refusal. However, the respondent refused the applicant's offer to purchase the premises.

[6] It was common cause that as at 31 July 2010 the respondent had not furnished the applicant with the written notice of his intention to renew the lease and that on 31 August 2010 the lease agreement therefore expired.

The Applicant's Submissions

[7] According to the applicant's sole director and shareholder, Marco Dias, who is also the deponent to the applicant's founding affidavit, during the latter part of August 2010, which was just shortly before the lease expired, the respondent approached him telephonically and asked if he (the respondent) could remain in occupation of the premises for a further month during September 2010 as he had by then not found alternative accommodation. Dias said he reluctantly acceded to the respondent's request as he empathised with the respondent's situation and the proposed sale of the premises to a third party had fallen through. On 25 August 2010 Dias sent an email to the respondent advising the respondent of the fact that the applicant was prepared to give the respondent occupation of the premises for a further month at a rental of R22 500,00.

[8] Dias further averred that on the same day (25 August 2010) subsequent to his email to the respondent (referred to in the preceding paragraph), the applicant and the respondent had a telephonic conversation during which it was agreed between the parties that the additional month's occupation of the premises by the respondent would be at the monthly rental of R20 000,00. Indeed, on the same day the respondent sent the applicant an email confirming this agreement. Both the applicant's and the respondent's email correspondence referred to in this paragraph were attached and marked annexure "D" to the applicant's

founding affidavit. This is how they read:

Dias' email to the respondent:

"Dear Imraan

The sale for the unit has not gone through, so I will be able to give you 1 more month should you require it.

However the rental for this month will be at R22 500,00 which was my original rental (I gave the discount to R15 000,00 per month based on you spending R90 000,00 on repairs, we then agreed to bring the repairs figure down to R40 000,00 because you said you would get the repairs done cheaper).

Please advise me in writing as to whether you do require one more months occupation.

Also note that I have not received your repairs cost yet.

Regards

Marco Dias"

Respondent's response

"Hi Marco

As per our tele conversation I will be requiring one more months occupation as discussed @ R20 000.

Thanks"

[9] The applicant further alleged (through Dias) that on 29 September 2010 Dias telephoned the respondent to make arrangements for the collection of the keys to the premises and to enable himself to carry out the inspection of the premises. This, Dias did on the basis that the respondent's occupation of the premises was terminating on 30 September 2010 in terms of the latest agreement. To Dias' surprise, the respondent indicated that he would not be vacating the premises at the end of September 2010, as had been agreed. Instead, the respondent alleged that Dias had misled him with regard to the renewal of the lease agreement, an allegation which Dias said surprised him as he had not in any way misled the respondent.

[10] In an email sent to the respondent on 29 September 2010 the following was stated by the applicant:

"Dear Imraan

As per our lease agreement which expired at the end of August 2010.

You requested that I give you one more month (September) occupation, reluctantly (because my plan was to do the renovations to the unit myself during the September school holidays when I would be down in Durban, but I put what I needed to do for myself aside to help you) I said ok you could stay till the end of September. As per the emails between us below.

Under no circumstances or any discussions I had with you since or before did I express or intimidate that you could stay any longer. Even the emails & sms I sent requesting a time so that we could meet to do the final inspection and return of keys, you did not respond.

THIS NOTICE IS TO ENSURE THAT YOU UNDERSTAND THAT I HAVE NOT GRANTED ANY OCCUPATION TO YOU BEYOND SEPTEMBER 2010.

Regards
Marco Dias”

[11] On 30 September 2010 the applicant’s attorneys sent a letter to the respondent via email calling upon the respondent to vacate the premises before midnight of the same day, failing which proceedings would be brought to eject him from the premises. A copy of that letter was included in the applicant’s founding affidavit and marked exhibit “F” and it read thus:

“Dear Sir

Re: OUR CLIENT : AUTUMN STORM INVESTMENTS 65 (PTY) LTD

We confirm that we act for AUTUMN STORM INVESTMENTS 65 (PTY) LTD.

OCCUPATION

We are instructed that on or about 23rd October 2009 you entered into a Lease Agreement with our client in terms of which you leased the premises situate at Unit 46, The Grand Floridian. In terms of clause 2.1 the lease was for a fixed period of 12 months reckoned from 1st September 2009 to 31st August 2010.

In terms of clause 5.1 and 5.2 you were entitled to renew the lease for a further period of twelve months subject to your written notice of renewal being received by our client not more than 60 days and not less than 30 days prior to the expiry of the initial period.

Our instructions are that you did not exercise your right of renewal as provided for in the agreement of lease.

The lease accordingly to expired on the 31st August 2010.

On the 25th August 2010 and at your request the lessor agreed to allow you to remain in occupation for one further month on the understanding that you would vacate the property by not later than the 30th September 2010. Your continued occupation was upon the same terms and conditions as contained in the prior lease.

On the 29th September our client confirmed in writing that the lease would not be extended for any further period and in fact stated “THIS NOTICE IS TO ENSURE THAT YOU UNDERSTAND THAT I HAVE NOT GRANTED ANY OCCUPATION TO YOU BEYOND SEPTEMBER 2010.”

Inasmuch as it may be necessary this letter serves to again confirm that the lease will not be extended by any further period. You are to vacate the premises before midnight on the 30th September 2010. You may contact Marco Dias on the following telephone number 082 568 1227 to arrange for the hand over of the keys.

In the event that you fail to vacate the premises as aforesaid you will be in unlawful occupation thereof and our instructions are to approach the courts on an urgent basis for your eviction without further notice to you.

In terms of clause 21.3 you are liable for any attorney and own client costs incurred by our client in respect of its having to instruct attorneys and our

instructions are to seek an order in this regard should litigation become necessary.

We trust that the above will not be necessary and we await your confirmation in writing by close of business today that you will vacate the premises by midnight tonight together with the arrangements which you have made for the return of the keys to our client.

ACCESS

On a further and separate note clause 18.1 requires you to give our client access to the premises.

Our instructions are that you are refusing to do so. Should you continue with this conduct in breach of the agreement of lease our instructions are to approach the Durban High Court without further notice to you for mandatory interdict compelling you grant our client access to the premises. Again, an order that you are liable for costs on an attorney and own client scale in terms of clause 21.3 of the lease will be sought.

Should you wish to avoid the litigation contemplated above you are urged to contact Marco Dias to arrange for his access to the premises. You are to then revert to us in writing confirming that you have done so, so as to enable use to take instructions from our client in respect of halting the anticipated litigation.

Yours faithfully

(Signed) Haydn Friis

MEUMANN WHITE"

[12] Ms Law, for the applicant, submitted that, despite all the written correspondence which was exchanged between the applicant and the respondent and between their attorneys, nowhere did the respondent ever raise the defence that there was an oral monthly tenancy agreement which was concluded between the parties upon the written lease agreement having expired. The alleged month-to-month tenancy was raised by the respondent for the first time in his answering affidavit. In any event, Counsel submitted that the monthly tenancy had since been terminated by the applicant's notice sent to the respondent via email on 30 September 2010 calling upon the respondent to vacate the premises by 31 January 2011. (See annexure "MD 4" to the applicant's replying affidavit)

[13] Counsel further pointed out that on the respondent's own version, the respondent was, in terms of the alleged verbal monthly tenancy agreement, required every month to give to the applicant prior written notification that the respondent intended to remain in occupation of the premises for the next month. It was common cause that the respondent had not complied with this requirement.

The Respondent's Submissions

[14] In his answering affidavit the respondent acknowledged that the written lease agreement expired on 31 August 2010. He pointed out, however, that during July 2010 Dias advised him that he intended to sell the premises as he was in desperate need of cash. Although he (the respondent) had all the time the intention to renew the lease agreement, he had, after his discussion with Dias, empathised with Dias' position and, hence, agreed not to renew the lease agreement.

[15] With regard to the letter dated 30 September 2010 addressed by the applicant to the respondent (annexure "G" to the applicant's affidavit) the response thereto came from the respondent's attorneys and conveyed the following message:

"Dear Sir

RE: MR I.C. DAYDAT/AUTUMN STORM INVESTMENTS 65 (PTY) LTD

We act on behalf of Mr I.C. Daydat.

Your letter dated the 30th ultimo has been referred to us and we have been instructed to respond thereto as follows:

1. Our client denies that he is obliged to vacate the premises no later than the 30th of September 2010.
2. Our client accordingly advises that any action taken against him will be resisted in the strongest possible terms with an appropriate (??) for costs.
3. Insofar as access is concerned, our client has no difficulty in furnishing your client reasonable access to the premises provided that same does not interfere with the use and enjoyment of his property and timeous adequate arrangements are made in respect of same.
4. We wish to advise further, that our failure to deal with the remainder of the allegations contained in your aforesaid letter does not constitute an admission of the correctness of same, same is denied and our client reserves his right to respond thereto at the appropriate time and in the appropriate forum.

Yours faithfully

(Signed) V CHETTY & CO"

[16] The respondent further alleged that, despite not having renewed the lease, Dias had further advised him that he would be flexible with the respondent in that he would grant him (the respondent) leeway to occupy the premises until he obtained a suitable alternative place to move into.

[17] According to the respondent the applicant, duly represented by Dias, had then concluded a verbal agreement with the respondent whereby it was agreed that the respondent could remain in occupation of the premises on a month-to-month tenancy, but at an increased rental of R20 000,00 from the initial R15 000,00. On this basis, the respondent had remained in occupation of the premises in September 2010 on a monthly tenancy agreement at the rental of R20 000,00 per month.

[18] It was further agreed, so the respondent alleged, that for each month that the respondent intended to remain in occupation, the respondent would have to give the applicant prior written confirmation of his (respondent's) intention to stay on the premises. (par. 14.2 of the respondent's answering affidavit) The respondent alleged that the representation made by the applicant during the verbal agreement induced him to believe, to his own prejudice, that the applicant was flexible and that he (the respondent) would continue to enjoy occupation of the premises indefinitely in terms of the verbal agreement without the need to renew the lease. On this basis, the respondent submitted that the applicant should be estopped from denying him (the respondent) his right to occupy the premises and further that the verbal tenancy agreement had not been validly terminated.

[19] The respondent further pointed out that he was currently still paying to the applicant every month the sum of R20 000,00 which the applicant was also accepting. As the respondent put it:

"I have dutifully and faithfully paid the applicant rent for the full duration of my occupation. I continue to pay the applicant rent. There is no tangible prejudice to the applicant by my continued occupation which it agreed to on the basis set forth above."

[20] *Ms Moodley*, for the respondent, submitted that there were numerous disputes of fact present in this case which made it impossible or difficult to determine the matter on the papers. She contended that the issue of the existence or otherwise of the verbal monthly tenancy

agreement alleged by the respondent, for instance, was a matter which could not be resolved on the papers.

[21] Counsel further submitted that the applicant's email dated 30 September 2010 (annexure "MD 4") was issued only after the applicant had pleaded its case in the founding affidavit and that, therefore, the applicant was not entitled to rely on the email as this would amount to making up its case in reply.

[22] In response to the respondent's claim that he continued to pay to the applicant the sum of R20 000,00 every month for his occupation of the premises Ms Law, whilst confirming that the respondent was paying the said amount every month together with the municipal charges for the utility bill, submitted that the applicant's acceptance of the said R20 00,00 from the respondent every month after 30 September 2010 could not be construed as being the applicant's admission that the alleged monthly tenancy agreement existed. In this regard Counsel pointed out that the applicant only accepted the payments by virtue of clause 21.5 of the written lease agreement which entitled the applicant, among other things, to reserve its rights.

Analysis and Evaluation

[23] It is the elementary principle of the law that the owner of immovable property is the one who has the right of occupation of the property unless someone else can prove a better right than the owner in terms of occupation of the property. In *Chetty v Naidoo* 1974 3) SA 13(A) at 20B-D the Appellate Division (Jansen JA) stated:

"It is inherent in the nature of ownership that possession of the *res* should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g. a right of retention or a contractual right). The owner, in instituting a *reivindicatio*, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the *res* – the *onus* being on the defendant to allege and establish any right to continue to hold against the owner."

[24] To the extent presently relevant, section 4 of the PIE Act provides:

“(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the evicting of an unlawful occupier.”

“(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-

- (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances, and
- (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

“(9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.”

[25] It was common cause that the written lease agreement terminated on 31 August 2010 and that the applicant allowed the respondent to remain in occupation of the premises for the month of September 2010. The issue, therefore, is whether there is presently any legal right which the respondent has, justifying him to remain in occupation of the premises.

[26] The Court has a wide discretion in determining whether or not to refer a dispute for oral evidence. (See *Lombaard v Droprop* 2010 SA 1 at 10A; *Metallurgical & Commercial Consultants (Pty) Ltd v Metal Sales Co (Pty) Ltd* 1971 (2) SA 388 (W) at 396E-G.) Indeed, the allegations by the applicant and the respondent vis-à-vis each other did raise some disputes of fact, but which, in my view, were not of such a nature as to disable the Court from determining the matter on the papers without the need to revert to oral evidence. In my view, this was a typical instance where the Court needed to use “robust common-sense approach” and not hesitate to decide the matter on the papers. (*Soffiantini v Mould* 1956 (4) SA 150(E) at 154G-H; See also *Reed v Witrup* 1962 (4) SA 437 (D) at 443G; *Western Bank Bpk v Trust Bank van Afrika Bpk* 1977 (2) SA 1008 (O) at 10107E-H.)

[27] Concerning the respondent's defence of estoppel, in my view, this defence should fail. Significantly, I note that in her submissions, during argument, Ms Moodley was virtually, if not absolutely, silent about the estoppel defence. If this was a sign on the part of Counsel to indicate that the respondent no longer relied, or strongly relied, on this defence then it would have been prudent of Counsel to do so. The respondent alleged that Dias promised to allow him (the respondent) indefinite future occupation of the premises. This alleged gesture by Dias related to a future intention on the part of Dias, which then excluded the defence of estoppel in such circumstances. In *Hauptfleisch v Caledon Divisional Council* 1963 (4) SA 53 (C) the Court stated, in part:

“In amplification of this statement it may be emphasized that the representation must relate to a statement of an existing fact (see *Baumann v Thomas*, *supra* at p. 436; *Spencer Bower*, pp. 39-48; *Halsbury*, 3rd ed. Vol. 15 pp. 224-5) and that a mere statement as to, for instance, a future intention will not found an estoppel (see *Kelsen v Imperial Tobacco Co. Ltd.*, 1957 (1) A.E.R. 343).”

[28] It is also quite clear that the applicant was not accepting the sum of R20 000,00 every month in the form of rent. This could not be the case since the applicant consistently denied the existence of any contractual arrangement for the respondent's continued occupation of the premises. This payment was, therefore, not founded *ex contractu* as no contract existed between the parties then. In its acceptance of the said payment the applicant relied on clause 21.5 of the written lease agreement, which provided as follows:

“21.5 While for any reason or on any ground the lessee occupies the premises and the lessor disputes its right to do so, then, until the dispute is resolved, whether by settlement, arbitration or litigation, the lessee shall (notwithstanding that the lessor may contend that this lease is no longer in force) continue to pay (without prejudice to its rights) an amount equivalent to the monthly rent provided for in this lease, monthly in advance, on the first day of each month, and all other amounts payable in terms of this lease on the due date of payment thereof and the lessor shall be entitled to accept and recover such payments, and such payments and the acceptance thereof shall be without prejudice to and shall not in any way whatsoever affect the lessor's claim then in dispute. Should the dispute be resolved in favour of the lessor, then the payments made and received in terms of this clause 21.5 shall be deemed to be amounts paid by the lessee on account of damages suffered by the lessor by reason of

the unlawful occupation or holding over by the lessee.”

[29] This clause, in my view, clearly imposed an obligation on the part of the respondent to continue making monthly payments “equivalent to the monthly rent” (which was R20 000,00) even at the time when the written lease was no longer in force, as long as the respondent remained in occupation of the premises. In any event, the applicant would still be entitled, under the common law remedy of undue enrichment, to recover from the respondent the said amount in the form of damages.

[30] Ms *Moodley* submitted that the applicant’s email purporting to give notice of termination of the monthly tenancy was issued after the applicant had made out its case in the founding affidavit and that for the applicant to rely on the email (which was attached to the applicant’s replying affidavit – annexure “MD4”) amounted to making up its case in reply. However, it was clear from the written communication exchanged between the parties (including their attorneys) that at no stage did the respondent or his attorneys ever notify, or even slightly indicate, that the respondent sought to rely on the alleged existence of an oral monthly tenancy agreement as his defence. Indeed, this defence was raised by the respondent for the first time in his answering affidavit.

[31] I agree with Ms *Law* that all along, prior to the filing of the respondent’s answering affidavit, there was a veil of secrecy as to what the real defence the respondent sought to rely on was. Therefore, in such a situation the applicant could not reasonably have been expected to have issued the termination notice in respect of an alleged verbal contract which the applicant knew nothing about and which, prior to the founding affidavit, had not been alleged by the respondent to have existed. In the circumstances, the respondent’s election to resort to the veil of secrecy as to his defence was an election to his own peril. It is trite that both an oral monthly lease and the so-called “tacit relocation” are terminable at the instance of either party on one calendar month’s notice to the other. (See *Raner and Bernstein v Armitage* 1919 WLD 58 at 62; *Pareto Ltd & Others*

v Mythos Leather Manufacturing (Pty) Ltd 2000 (3) SA 999 (W) at 1005 par.12.). On the facts of this case, there was hardly any doubt in my mind that, had the respondent indicated that his defence was the existence of an oral monthly lease before this application was launched, the applicant (although denying the existence of such oral agreement) would have given the one calendar month's notice of termination prior to lodging the application. By its notice of 30 September 2010 (annexure "MD4") the applicant satisfies me that it would have taken precisely the same step had it known about the respondent's defensive stance earlier.

[32] On the contrary, the respondent's version appears to me to be highly improbable. For instance, (1) his apparent deliberate failure or omission to make known his defence of the alleged existence of a month-to-month tenancy agreement well in advance (as alluded to in the preceding paragraph), and (2) his failure to comply with what would be a material term of the alleged monthly tenancy agreement, namely, in that he alleged that it was a precondition of his continued occupation of the premises that every month he was required to furnish the applicant with a prior written notification of his intention to remain on the premises for the next month which, on his own version, he complied with only for September 2010. There was no plausible admissible explanation why, if such an agreement existed, he failed to continue complying with this important requirement. Even if he was no longer in talking terms with the applicant's representative, Dias (which Counsel sought to argue was then the case), this would not have prevented him from complying with such a material term of the alleged verbal contract. After all, the furnishing of "prior written notification" to the applicant did not necessarily require him to talk to Dias or anyone from the applicant company.

[33] I am inclined, in the circumstances, to reach a reasonable inference that this defence of an existing oral monthly tenancy agreement is nothing but a fabrication and an afterthought on the part of the respondent, which falls to be rejected on the papers.

[34] In any event, it did appear, on the respondent's own version, that as at 29 November 2010 (when he deposed to his answering affidavit) that he had found alternative suitable accommodation. In particular, this is what he said at the time at paragraph 19 of his affidavit:

"19.1 Influenced by the email received from Dias dated 29 September 2010 (Annexure "E" to Dias' Affidavit) I sought alternative suitable premises which I have located in Morningside, Durban."

"19.2 I anticipate that those premises in Morningside will become available to me for occupation during or about January 2011. Since those premises are not yet ready for occupation, I am not able to take immediate occupation of them."

[35] Even if the premises referred to by the respondent in the preceding paragraph were not available "during or about January 2011" it is highly inconceivable and, indeed very difficult to accept, that at the present moment (being the end of June 2011) those premises, or some other alternative premises, for that matter, were still not available. The respondent's conduct in this regard reflected on his state of mind, that is, not to co-operate with the applicant but simply to remain in unlawful occupation of the premises and to resist his eviction therefrom at all costs.

[36] I am satisfied that the respondent's lawful occupation of the premises terminated on 30 September 2010 and that his occupation of the premises after that date has been and remains unlawful. The applicant is, therefore, entitled to the relief sought in terms of the notice of motion.

[37] The applicant has sought an order directing the respondent to vacate the premises within one week of the date of the Court order. Indeed, given the respondent's apparent arrogant and stubborn attitude, the Court could be tempted to direct his vacation from the premises within that timeframe. However, I have considered the position of his family. These are residential premises which the respondent occupies with his wife and two children. Therefore, I think it would be just and equitable to give the respondent a reasonable time within which to vacate the premises. A period of one month for this purpose should, in my view, in the circumstances of this case be more than sufficient.

[38] On the question of costs, I do not believe that an award of costs on an attorney and client scale would be reasonable and fair in the circumstances of this case. The nature of the premises is well described by the respondent at paragraph 28 of his answering affidavit. His summing up that the premises are a “luxury unit” appears to be justified. There is, therefore, no doubt that his vacation of the premises together with his family will be a depressing and somewhat humiliating blow to him and his family. To impose on him a further burden of punitive costs order would not, in my view, be in the interests of justice.

The Order

[39] In the event, the following order is made:

1. The respondent and all those who occupy the premises situated at 46 The Grand Floridian, Utshani Close, La Lucia by virtue of the respondent’s occupancy thereof, are hereby evicted from the premises.
2. The respondent and all those who occupy the premises by virtue of the respondent’s occupancy thereof, are hereby directed to vacate the premises on or before 31 July 2011.
3. In the event of the respondent and/or any person occupying the premises through the respondent failing to comply with the provisions of paragraph 2 hereof, the Sheriff or his deputy is hereby authorised and directed to evict the respondent and/or such other person(s) from the premises forthwith.
4. The respondent is directed to pay the costs of the application.

Date of hearing : 29 June 2011

Date of Judgment : 30 June 2011

Appearances:

For the applicant : Ms ES Law
Instructed by : Meumann White Attorneys, Durban

For the respondent : Ms A Moodley
Instructed by : V Chetty and Company, Durban