IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case no: 13410/2017

In the matter between:

TRANSNET SOC LTD **PLAINTIFF**

and

KINGS REST CONTAINER PARK (PTY) LTD **DEFENDANT**

ORDER

(a) The defendant and all other persons holding occupation through or under it, to the property, Lot 1[...], Durban, held under title deed number T14655/1966 in extent 125.1689 acres ("the property"), is directed to, within three months from date of judgment, vacate the property.

(b) In the event, that the defendant does not vacate the property in accordance with paragraph (a), the sheriff of this Court is authorised and empowered to do all things necessary to evict the defendant and any and all persons from the property.

(c) The sheriff is authorised to remove anything found on the property and may engage a removal company to do so and place it in storage.

(d) The defendant is to pay for the costs of removal and storage incurred arising from this order, if any.

(e) Defendant is to pay the costs of suit, including the costs consequent upon the employment of two counsel in terms of Rule 69(7) read with Rule 67A Scale C.

JUDGMENT

Nicholson AJ:

Introduction

[1] In the years 2004, 2006, and 2007, the plaintiff and the defendant entered various written lease agreements, wherein the plaintiff agreed to lease to the defendant a property described as Lot 1[...], Durban held under title deed number T14655/1966 in extent of 125.1689 acres situated at 1[...] H[...] Road, Bayhead, Durban ('the property' or 'Lot 1[…]'). The property is situated at the port of Durban and is used by the defendant as a container handling facility to store, refurnish, unpack, and pack containers that are either arriving at or exiting the Durban Harbour.

[2] All three lease agreements were due to terminate on 31 August 2014. However, shortly before termination, the plaintiff, represented by a Mr Petrus May, and the defendant represented by a Ms Faye Fox, negotiated a further lease of the property, which is referred to herein below as the July 2014 lease, to enable the defendant to remain on the property past the termination date.

[3] It is convenient to mention here that the defendant's plea asserted that the lease agreement was partly oral and partly written[1]; however, at the close of the defendant's case it was apparent that there was no oral portion to the agreement. Accordingly, the agreement asserted by the defendant is a written agreement only.

[4] The plaintiff seeks to evict the defendant from the property by way of a *rei vindicatio*. According to Amler's Precedents of Pleadings[2], to succeed with a *rei vinidicatio*, a plaintiff must allege and prove that it is the owner of the property (either moveable or immovable), and the defendant is in possession of the property when the

[1] Index to pleadings: paragraph 9.3, at pages 16 and 17.
[2] Amler's Precedents of Pleadings, Nineth Addition at Page 373.

action was instituted. In *Van der Merwe and Another v Taylor NO and Others*[3] the Constitutional Court asserts a further element that the property in question must still be in existence and clearly identifiable. Amler's further asserts that it is neither necessary for the plaintiff to allege nor prove that the possession of an owner's property by another is wrongful because it is regarded as being prima facie wrongful.

[5] In eviction proceedings, a plaintiff may only allege ownership of the property, and the defendant is in possession thereof. Should the defendant wish to rely on a right of possession (for example a lease) the defendant must allege and prove that right. However, if the plaintiff concedes this right, at any stage of the proceedings, the onus is on the plaintiff to prove a valid termination of the right[4].

[6] In its plea, the defendant admits: it is in possession of the property, the plaintiff is the owner of the property, and it refuses to vacate the property; but denies that it is in unlawful occupation and possession of the property[5].

[7] To dispel the allegation that it is in 'unlawful occupation and possession' of the property, the defendant further pleads that it occupies the property through a valid lease which was entered into between the plaintiff and the defendant in two emails which consist of the offer and acceptance dated 18 July 2024 and 25 August 2024 (the 'July 2014 lease' or 'the agreement' herein). The email dated 18 July 2014 is an email drafted by Petrus May to Faye Fox that states:

'Thank you for meeting with me on the 17th instant to discuss and regularise your continued occupation of the two sites after 31 August 2014 in anticipation of the completion of the tender exercise to be undertaken to identify the new tenant for the land. As advised it is the intention to include the adjacent J & I site (currently illegally being occupied by Highveld Containers). In the exercise for occupation by the successful tenderer once eviction had been completed, management's approval for the envisaged *modus operandi* is currently being awaited whereafter the tender process will commence in all earnest. For the sake of good record, the conditions for your continued occupation of the sites being leased is annumerated below:

1. Payment of a combined rental of R551 200,00 per month, including

[3] *Van der Merwe and Another v Taylor NO and Others* 2008 (1) SA 1 CC at para 22.
[4] *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20B – G ; *Woerman NO v Masondo* 2002 (1) SA 811 (SCA) at paras 15 and 16.
[5] Index to pleadings: paras 2, 3 and 4 at pages 14 and 15.

assessment rates but excluding VAT.

2. In the event of completion of the tender exercise continuing beyond
31 August 2014, the aforementioned rental will escalate by 9% per annum compounded.

3. Your continued occupation will, except for the rental referenced above, be on the same terms and conditions contained in your current lease agreements.

4. Should your company be successful in winning the envisaged tender, you will be furnished with three months' notice to vacate the site.

Kindly furnish me with your acceptance of the foregoing condition whereafter such exceptions, together with my mail under reply, will form an exchange of letters agreement applicable to the interim period.'

[8] On 25 August 2014, an email was sent from Wayne Lambson to Petrus May which reads as follows:

'In response to your email to Faye Fox of 18 July 2014, we confirm that our continued occupation of the premises will be on the terms contained in that email with us paying a combined monthly market-related rental of R551,200 per month including assessment rates but excluding VAT.

If the tender process continues beyond 31 August 2015, the annual escalation rate after the date will be 9%.

Save for the above, the continued occupation will be on the same terms and conditions contained in the current lease agreement.'

[9] It is instructive that during the testimony of Wayne Lambson, who I refer to below, he confirmed that a third email dated 21 July 2014, also forms part of the written terms of the lease agreement.

[10] In replication, the plaintiff admits the July 2014 lease but pleads that:

(a) The defendant was always aware that there was no certainty that it would be

the successful bidder to continue leasing the property.

(b) On 28 October 2014, Petrus May had advised the defendant that the property would be used for the berth deepening project which was not known to Petrus May at the time of agreeing to the July 2014 lease.

(c) The lease was then terminated in an email dated 31 December 2015 where the defendant was given three months' notice.

(d) The defendant refused to vacate the property and continued to service the rental which was accepted by the plaintiff.

(e) At that point, a monthly lease subsisted which was terminable on one month's notice.

(f) On 10 March 2016, the plaintiff gave the defendant one month's notice to vacate the property by 30 April 2016.

(g) On 31 March 2016, the plaintiff again gave notice terminating the tacit lease by 31 April 2016. Accordingly, the tacit lease was terminated on 30 April 2016.

(h) The defendant refused to vacate the property causing the plaintiff to bring an urgent application on 12 April 2016.

(i) The payments received after 30 April 2016 did not constitute rental but were appropriated as damages arising from the defendant's unlawful occupation of the property.

(j) Accordingly, the defendant did not have a valid lease after 31 December 2015 and was in illegal occupation of the property thereafter.

[11] At the commencement of the hearing, the parties were unable to provide a joint statement of issues in terms of Rule 37A(9)(a) of the Uniform Rules which caused both parties to hand up separate joint statements of issues. In terms of both joint statement of issues, both parties agree that the undisputed issues are as follows:

(a) the citation of the parties;

(b) the plaintiff is the owner of the property described in the particulars of claim;

(c) the title deed annexed to the particulars of claim is a true and certified copy of the title deed;

(d) the defendant is in occupation of that part of the property known as “Bayhead Portion” (the property herein);

(e) the defendant operates a container handling facility on the property; and

(f) the defendant refuses to vacate the property.

[12] The issue in dispute under the heading ‘UNDISPUTED ISSUES’ in both ‘Joint Statement of Issues’ is found at paragraphs 7[6] of both plaintiff and defendant, where:

(a) ‘The plaintiff asserts that plaintiff cancelled the lease on 31 December 2015 and again on 30 April 2016’; and

(b) ‘Defendant asserts that a lease was concluded between the parties in respect of the property, on or about 25 August 2014 by way of an exchange of emails, being annexures “DB” and “DC” to the plea (referred to as “the July 2014 lease”)’.

[13] Considering the replication and statement of issues, the factual issues in dispute are as follows:

(a) the plaintiff admits the July 2014 lease but asserts that it was cancelled on 31 December 2015, at which time a tacit oral month to month lease came into existence, which was also cancelled on 30 April 2016; and

(b) the rental that was paid by defendant after 30 April 2016, was receipted by plaintiff as damages; accordingly, the defendant is in unlawful occupation and possession of the property because the agreement was cancelled, and despite cancellation, defendant refuses to vacate the property.

[6] Exhibits C and D.

[14] Notwithstanding the fact that plaintiff has repurposed the property for its own benefit, rendering a public tender process unlikely; the defendant, in both its plea and statement of issues, asserts that it still occupies the premises under the July 2014 lease, despite plaintiff's plea that it was cancelled, which permits the defendant to occupy the property in the interim, until the public tender process is complete.

[15] In the circumstances, considering the elements of the cause of action, the common cause issues are that; the plaintiff is the owner of the property, the defendant was in possession of the property at the time of the commencement of the action and remains in occupation, and the property is in existence and identifiable; the sole issue for determination is whether the defendant is in 'unlawful' occupation and possession of the property.

Issues for determination

[16] Considering that the sole issue for determination is the lawfulness of defendant's occupation and possession of the property in circumstances where the defendant asserts that it is not in unlawful occupation and possession of the property in consequence of the July 2014 lease, and the plaintiff admits the July 2014 lease but avers that it had cancelled both, the July 2014 lease and a further tacit agreement, which came into place thereafter; the very narrow issue for determination is whether the July 2014 lease is still in effect.

Onus and duty to begin

[17] While in the normal cause once the main elements of the *rei vindicatio* are established the onus shifts to the defendant to establish its right to retain the property.[7] Considering that in the replication, the plaintiff admitted the agreement and asserts it was terminated, the onus remains with the Plaintiff to establish it had terminated the July 2014 lease.

The evidence

[18] The plaintiff led the evidence of three witnesses: Mr Petrus May, the plaintiff's erstwhile property manager; Mr Vinesh Mahes, a regional property manager employed by the plaintiff; and Mr Nondumiso Zakhela, a programme manager for the plaintiff's berth deepening project. The defendant led the evidence of two witnesses: Ms Faye

[7] *Dreyer and Another NNO v AXZA Industries (Pty) Ltd* [2005] ZASCA 88; 2006 (50 SA 548 (SCA).

Fox, the defendant's executive finance and administration manager; and Mr Wayne Lambson, the defendant's managing director.

Plaintiff's witnesses

[19] Mr May testified that he is currently retired but at the material time, he was a property manager employed by the plaintiff, and as such was involved in the leasing of the property to the defendant and was aware of all the leases that had been concluded with the defendant.

[20] On 17 July 2014, he met with Ms Faye Fox and discussed a proposed lease for the defendant. On 18 July 2014, he sent an email to Ms Faye Fox and set out proposed terms and conditions for the defendant's lease. On the same day, Ms Faye Fox responded to his email requesting a telephone call to clarify "one or two things". On 21July 2014, he spoke to Ms Fox and he told her that the defendant's tenancy would be on a month to month basis terminable on three months' notice. In confirmation, of his telecon he sent an email to Ms Fox recording their discussion. On 25 August 2014, he received an email from Mr Wayne Lambson, accepting the proposal he made to Ms Fox in both emails.

[21] Sometime, in October 2014 he became aware that the property was required for a berth deepening project that the plaintiff was about to embark on. He informed the defendant that the property would no longer be leased and that it would have to vacate the property. On 6 February 2015, he sent an email to the defendant recording a discussion of a meeting that was held on that day. In the email, he informed the defendant that it must vacate by 31 December 2015, which is 10 months' notice.

[22] Despite various attempts to amicably engage with the defendant to vacate the property, the defendant refused to do so.

[23] Under cross examination, he explained that the defendant was in occupation of the property on a month-to-month basis, after the written lease agreements had expired on 31 August 2014. Initially, he did advise the defendant that there would be a public procurement process for a tender for a lease for the property; but later advised the defendant that the tender process had fallen away because the property had been identified as necessary to construct caissons for its berth deepening project.

[24] Mr May disputed that the lease was meant to be an indefinite lease and

notwithstanding the wording of the agreement, he believed it was always understood between the parties that the lease was month to month but terminable on three months' notice.

[25] It is relevant to mention here that while Mr May confirmed in his evidence in chief that the July 2014 lease had been cancelled, the cancellation was never disputed with Mr May by the defendant under cross examination.

[26] Mr Zakhela testified that he is in the employ of the plaintiff as a programme manager for the infrastructure project taking place within the Port of Durban. The plaintiff's mandate in terms of the National Ports Act is to ensure that the Port is efficient and provide infrastructure to create growth in the economy. Accordingly, the plaintiff has adopted a master plan that is comprised of 13 mega projects country-wide, and amongst them is the berth deepening project.

[27] Mr Zakela testified further that the property is ideally situated and suited for the construction of caissons for the berth deepening project. He explained that a caisson is a massive concrete structure that weighs about 2.4 million tons and is as high as a seven-story building. In 2004, ground improvements were made to the property which enabled it to support the massive weight of the caissons. He described that the caissons would be manufactured at the property, then slid into the water and towed with two tugs to the required location.

[28] He further testified that the bidding process for a contractor for the birth deepening project commenced in 2016, and in July 2018, a contractor was appointed. However, soon thereafter, the plaintiff received an unsolicited report of fraudulent activities during the tender process. In the circumstances, the project was paused pending an investigation by the Special Investigating Unit. The project has now re-commenced. Accordingly, the tender process started in December 2023 and closed in April 2024, and it is envisaged that an award will be made in August 2024; therefore, the site must be cleared for the project to commence in January 2025.

[29] Under cross examination, he testified that the contractor in 2018 did not commence with physical work and only started with administrative work. He said that the bare minimum space required on the property for the project was to encroach upon the defendant's current site by 64.8 metres and that the property is required by January 2025 for the project to commence. This is approximately 5 500 square metres

according to Mr Lambson.

[30] Under re-examination, he explained that 64.8 metres was the bare minimum required for the project. The project was due to commence in December 2025 but due to builder's holidays, the date was moved to January so that the project can flow.

[31] Mr Mahes testified that he is a senior property manager. He has been employed by the plaintiff for 29 years. He was always aware of the dispute over the property but only became involved in it in 2019.

[32] He explained that the plaintiff does not enter into lease agreements without a public process as this is contrary to the National Ports Act, Policy framework, and the plaintiff's leasing manual. He explained what is meant by a month-to-month lease and that for new business the plaintiff does not enter such leases but for purposes of business continuity where there are existing leases which come to an end, a month-to-month lease is considered. He testified that the defendant has been paying its rental, but this rental is not market related. As a result of the litigation, the plaintiff has not engaged the defendant on an increase on rental as that may be seen and acceptance of lease.

[33] He testified further that the berth deepening project would be beneficial to the economy of South Africa as a whole. He explained that the bare minimum area that the plaintiff catered for is a result of the refusal of the defendant to vacate the property. By using the bare minimum area, the project will be compromised as there will be an extension of time as the smaller area of use on the property will impact upon the performance of construction. The entire property is required for the project to be properly executed.

[34] Mr Mahes also spoke to the high volume of traffic in the vicinity of the property and said that the defendant is a significant contributor to the traffic congestion.

[35] Under cross examination he testified that the defendant is a nuisance in the Port. If there was a tender for a lease for the property and if the defendant tendered for the lease, it would have an equal opportunity in being awarded the tender. He explained that the defendant could not simply be offered another property because this is contrary to the National Ports Act and the plaintiff's policy.

[36] Under re-examination, he testified that not all container handling companies were within 5kms of the Port, some are further than 5kms from the Port. The defendant's other branch, in Clairwood, is 15kms away from the Port.

Defendant's witnesses

[37] Ms Fox testified that she is an executive manager of finance and administration and has been in the employ of the defendant for 16 years. Her job description includes *inter alia* the attending to all financial matters, human resources and administrative affairs of the defendant.

[38] She further testified that, although she is not responsible for entering into lease agreements on behalf of the defendant, which was the responsibility of Mr Lambson; she would nonetheless engage with Mr May on lease agreements because she was based on the property, while Mr Lambson was not. Whatever discussions she had with Mr May; she would convey to Mr Lambson. She confirmed that she received the email dated 18 July and 21 July 2014 from Mr May and that she contacted him to correct the date in the 18 July 2014 email.

[39] The emails dated 18 July 2014 and 21 July 2014, that were exchanged between Mr May and herself, culminated in an interim lease, which was confirmed by Mr Lampson on 25 August 2014 (the July 2014 lease herein). Her understanding of the agreement is that the plaintiff and the defendant entered into an interim lease agreement, which could be cancelled on three months' notice, after a public tender process for the rental of the property; and if the defendant was unsuccessful.

[40] Under cross examination, Ms Fox conceded that she was good with documents and that she is familiar with leases. She stated that she would prepare all information and provide these to Mr Lambson who would include them in his proposals to the plaintiff for the further lease.

[41] She had a cordial relationship with Mr May and all their discussions were confirmed in an email. She also agreed that Mr May was conscientious, and he would send an email recording discussions that they had at a meeting. She admitted that the email of 30 June, 18 July, and 21 July 2014 was only sent to her. She confirmed that she did not tell Mr May that she had no authority to agree to a lease and that all the emails he sent to her would go to Mr Lambson.

[42] Her understanding of the month-to-month lease was it would continue indefinitely until such time as the award of the tender. At that point, if the defendant was successful, it would remain on the property, if not it would have to vacate the property. She could not explain why her version of a month-to-month lease was never put to Mr May in cross examination despite her telling her counsel this version.

[43] Ms Fox confirmed that she gave Mr Lambson the emails dated 18 July and 21 July 2024 and that when he responded on 25 August 2014 to Mr May he had both emails. She also confirmed that Mr Lambson considered both emails when he responded on 25 August 2014.

[44] It was further put to Ms Fox under cross examination that she had a discussion with Mr May that the lease would be on a month-to-month basis, which was confirmed in an email dated 21 July 2014, and the said lease was cancelled and various 'notices to vacate' were given to the defendant. Ms Fox was unable to provide any response to the version.

[45] Mr Lambson testified that he has been the managing director of the defendant since approximately 2008/2009, and the defendant is the biggest independent container depot in the Durban harbour. He testified further that the benefit of operating from the harbour is that it can transport containers quicker to the shipping yards, and while he had a container yard that is in Clairwood, which is outside the harbour precinct, the Clairwood branch had a different role in the business.

[46] He testified that he understood the agreement to mean that the defendant could stay on the property until such time as the property went out to tender and if the defendant was not a successful bidder, it would have three months to vacate the property. He stated further that he believed that reference to month to month meant the period between the expiration of the written lease and the award of the tender. Further, the plaintiff would invoice the defendant every month and the defendant would accept the rental.

[47] He confirmed that Ms Fox gave the emails dated 30 June, 18 July, and 21 July 2014 to him and that he understood that they must all be read together. However, in his email dated 25 August 2014, he did not refer to the email dated 21 July 2014 because he was of the view that the emails of 18 July 2014 incorporated the main conditions of the agreement.

[48] He testified that considering the agreement, the plaintiff could not evict the defendant for the berth deepening project. Notwithstanding, he agreed that he would immediately consent to vacate a portion of the property to enable the plaintiff to commence its berth deepening project.

[49] Under cross examination Mr Lambson, confirmed that he is a director of 5 or 6 other companies. He knows what a long term, short term and month to month lease is. He conceded that an exchange of letters agreement means that the letters must be read together to compromise an agreement.

[50] He admitted that he did not have any oral discussions with Mr May between 18 July and 25 August 2014; accordingly, he denied that there was an oral agreement between the plaintiff and the defendant. In the circumstances, the pleaded oral agreement at paragraph 9.3 of the plea was wrong. He further conceded that his understanding as to the terms of the lease agreement differed from what Mr May understood and there was no meeting of the minds.

[51] Mr Lambson further admitted that he did receive the notices of cancellation and that the 10-month period of notice to cancel was reasonable.

[52] He stated that it would take the defendant between 2 to 3 weeks to vacate 64000 sqm of the property. He admitted that there would be no additional costs to the defendant if it moved out of the harbour and the sole advantage to being in the harbour is a competitive edge over its competitors.

[53] He further did not respond to the plaintiff's version that it was a month-to-month lease terminable on three months' notice, and the lease has been cancelled, therefore, the defendant is in unlawful occupation of the property.

[54] In re-examination he testified that he was not confused by the emails, 18 July and 21 July 2014, and there was no contradiction. He further saw no significance in the 21 July 2014 email. He is familiar with the law of contract; the emails of 18 July and 21 July 2014 constitute the offer, and the 25 August 2014 is the acceptance.

Analysis of pleadings and evidence

[55] While both plaintiff and defendant went to great lengths to lead evidence about

the meaning of a month-to-month lease and the contextualisation of the agreement; having regard to the pleadings and the evidence, the issue for determination that emerges, is much more subtle. The question is, considering the plaintiff's pleadings and evidence, was the July 2014 lease terminated?

[56] In *King v King*[8] it was held:

'Pleadings are there to ensure:

(a) that parties to litigation can come to Court well prepared, and

(b) that the Courts can administer justice speedily and efficiently.

It is therefore essential that the issues be fully and clearly stated in the pleadings, so that each party may know what case he has to meet and that the Court be clearly informed of the questions it is asked to resolve.'

[57] In *Minister of Safety and Security v Slabbert*[9] it was stated:

'The purpose of pleadings is to define the issues for the other party and the court. A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at trial. It is equally not permissible for a trial court to have recourse to issues falling outside the pleadings when deciding the case.'

[58] Pleadings are invaluable to both the court and the parties, and should therefore, be carefully prepared and considered. It provides the parties that are before the court, not only with the benefit of knowing the cause of action it is to meet, and therefore, not been taken by surprise, but also the facts upon which the cause of action is based. The opposite party is then provided with an opportunity to take instructions, consult with witnesses, source evidence, and conduct the necessary research. The court is then able to; firstly, limit the issues; secondly, determine the disputes; and thirdly, determine the relevance of the evidence lead.

[59] In both its replication and 'joint statement of issues' in terms of Rule 37A(9)(a)

[8] *King v King* 1971 (2) SA 630 (O) at p635 A-C.
[9] *Minister of Safety and Security v Slabbert* [2009] ZASCA 163; 2010 (2) All SA 474 (SCA) at para 11.

of the Uniform Rules, the plaintiff has very clearly pleaded that the July 2014 lease has been cancelled. In its plea, the cornerstone defendant's case is that the July 2014 lease remains in place and binding on the plaintiff until a public tender process. However, the defendant did not rejoin the replication to plead that a term of the agreement was that the July 2014 lease was incapable of cancellation or not properly cancelled.

[60] Bearing in mind that when both parties have been provided the opportunity to ventilate an issue during the trial, a party may rely on an issue that has not been canvassed in its pleadings[10]. During the trial, consistent with its pleadings, the plaintiff led the evidence of Mr May that indeed the July 2014 lease was cancelled. On the other hand, the defendant did not challenge the fact that the July 2014 lease was cancelled but instead lead evidence on the contextual interpretation of the July 2014 lease only, which on the pleadings did not appear as an issue.

[61] I have considered the defendant's pleadings, the oral evidence, the wording of the July 2014 lease, and the defendant's submissions regarding the context of the agreement. Since defendant pleaded a valid lease agreement, the onus is on plaintiff to prove a valid cancellation of the agreement. Plaintiff has led evidence that the July 2014 agreement is cancelled, but defendant has neither led evidence that the agreement was incapable of cancellation, nor that the notices of cancellation did not cancel the lease. In the premises, I must find that the July 2014 lease has been properly cancelled.

[62] If I am wrong on that score and, as pleaded by the defendant, a contextual interpretation as provided for in *Natal Joint Municipal Pension Fund v Endumeni Municipality* [11]of the July 2014 lease, is called for. It is common cause that the July 2014 lease was never meant to be a permanent lease but a mere interim measure. It is also common cause that the plaintiff's intention to put the lease of the property out to tender has been changed because a decision has been taken to repurpose the property for its own benefit.

[63] The plaintiff, being a 'State Owned Enterprise', is a Schedule 2 entity in terms of the Public Finance Management Act 1 of 1999; accordingly, the decision to

[10] Id at para 12.
[11] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA).

repurpose the property amounts to an administrative action. In the event I find that the July 2014 lease is incapable of cancellation, without the decision to repurpose the property being changed or set aside, the result would be that the July 2014 lease becomes a “permanent” agreement, contrary to the wishes of both parties. In the premises, for that reason too, the plaintiff’s action must succeed.

[64] In the result, I make the following order

Order

(a) The defendant and all other persons holding occupation through or under it, to the property, Lot 1[...], Durban, held under title deed number T14655/1966 in extent 125.1689 acres (“the property”), is directed to, within three months from date of judgment, vacate the property.

(b) In the event, that the defendant does not vacate the property in accordance with paragraph (a), the sheriff of this Court is authorised and empowered to do all things necessary to evict the defendant and any and all persons from the property.

(c) The sheriff is authorised to remove anything found on the property and may engage a removal company to do so and place it in storage.

(d) The defendant is to pay for the costs of removal and storage incurred arising from this order, if any.

(e) Defendant is to pay the costs of suit, including the costs consequent upon the employment of two counsel in terms of Rule 69(7) read with Rule 67A Scale C.

NICHOLSON
Acting Judge of the High Court
KwaZulu-Natal Division, Durban

Appearances

For the plaintiff:	Advocates AE Potgieter SC and K Gounden
Instructed by:	Matthew Francis Inc

	Plaintiff's Attorneys Suite 4, 1st Floor, Block A 21 Cascades Crescent Montrose Pietermaritzburg Ref: A Naidoo/SM/01C017005 c/o Ramdeen and Associates 2nd Floor, Connect Space Offices 2 Stephen Dlamini Road Musgrave Ref: CORR7/MAT9/MFI/1348
For the defendant:	Advocate L Mills
Instructed by:	EM van Huyssteen Incorporated t/a EVH Inc Unit 4, 7 Holwood Crescent, Holwood Park La Lucia Ridge Umhlanga, 4319 Ref: N5288/0059
Heard:	03 June 2024 – 6 June 2024, and 10 June 2024
Delivered:	The date and time for hand-down are deemed to be delivered on 27 August 2024.