



**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**

Appeal case no: A96/2024

Case no:3198/2022

In the matter between

**GLOBAL CONNECT TRADING (PTY) LTD**

**WILLEM CHRISTOFFEL DE JAGER**

**STEFHANUS HENDRIK DE JAGER**

**JACOBUS HENDRIKUS DE JAGER**

and

**SOUTH AFRICAN SECURITISATION PROGRAMME  
(RF) LIMITED**

**SASFIN BANK LIMITED**

**SUNLYN (PTY) LTD**

**FIRST APPELLANT**

**SECOND APPELLANT**

**THIRD APPELLANT**

**FOURTH APPELLANT**

**FIRST RESPONDENT**

**SECOND RESPONDENT**

**THIRD RESPONDENT**

**Neutral citation:** *Global Connect Trading (Pty) Ltd and Others v South African Securitisation Programme and Others* (3198/2022) [2025] ZAFSHC 168  
(12 June 2025)

**Coram:** Loubser *et* Chesiwe JJ *et* Ntanga AJ

**Heard:** 29 April 2025

**Delivered:** 12 June 2025

**Summary:** Civil procedure – application for summary judgment – compliance with rule 32(2)(a) of the Uniform Rules of the High Court – impossibility of performance due to force majeure – denial of the terms and conditions due to illegibility – statement of material facts in a plea and/or in affidavit resisting summary judgment required – principles regarding summary judgment restated.

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## ORDER

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- 1 The appeal is dismissed.
  - 2 The appellants to pay costs on a party and party scale, including costs of counsel on scale B.
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## JUDGMENT

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### Ntanga AJ

#### Introduction

[1] This is an appeal against summary judgment for payment in the sum of R142 758.34 granted against first, second, third and fourth appellants, per Acting Judge Jordaan on 31 January 2024. Leave to appeal to the Full Court of this Division was granted on 15 May 2024.

[2] The appellants were defendants in action proceedings initiated by respondents in this court. After appellants filed their plea, respondents filed an application for summary judgment against the appellants on the ground that the appellants raised no defence to the substance and merits of their action and that the defence, as pleaded, did not raise any issues for trial.

[3] The appellants in their notice of appeal argue that the court *a quo* erred in finding that the terms and conditions attached to the summons and particulars of claim are legible and that the appellants' claim of illegibility was not bona fide and did not amount to a bona fide defence or a triable issue, including the finding that there was compliance with rule 32. The appellants also argue that the court *a quo* erred in finding that appellants did not cancel the agreement and failed to disclose a bona fide defence or a triable issue. Lastly, the appellants argued that the court *a quo* erred in dismissing the defence of *force majeure* or supervening impossibility to perform.

#### Background

[4] On or about 13 November 2019, Astfin Gauteng (Pty) Ltd t/a AssetFin (Astfin Gauteng) entered into a written rental agreement with the first appellant in terms whereof the first appellant was bound to pay monthly rentals to Astfin Gauteng for rental of goods for an initial period of sixty months.

[5] The second, third and fourth appellants concluded written guarantees on October 7, 2019 in terms whereof they bound themselves jointly and severally as co-principal debtors, for the primary continuing obligation for the proper and punctual payment by the first appellant for all amounts due to Astfin Gauteng or one or all of its cessionaries in the event of a cession in terms of the rental agreement arising out or incidental to the rental agreements and its schedule/s thereto.

[6] On 17 August 2015, Astfin Gauteng entered into a main cession agreement with Sunlyn (Pty) Limited (Sunlyn) in terms whereof Astfin Gauteng agreed and undertook from time to time to offer contracts for cession to Sunlyn. On 27 November 2019, Astfin Gauteng ceded and made over all its rights, title and interests in and to the rental agreement, including the ownership of the equipment, to Sunlyn. On 29 March 2006, Sunlyn entered into an addendum to the main cession agreement with Sasfin Bank Limited (Sasfin) in terms whereof Sunlyn ceded and transferred all rights, titles and interests, but not obligations, in and to supply agreements and main cession agreements as entered into between it and the suppliers. Sasfin entered into a sale agreement with the South African Securitisation Programme (RF) Limited (SASP) in terms whereof Sasfin sold to the purchaser all rights, titles and interest in and to the Specified Series 3 Participating Assets.

[7] In the particulars of claim the respondents averred that first appellant breached the terms and conditions of the rental agreement by failing to maintain regular monthly payments. The respondents instituted a claim for the payment of R142 758.34 which consisted of the arrear rental as calculated on 16 February 2022, in the sum of R54 753.10 plus the future rentals calculated at R88 005.24.

[8] The appellants raised the following defences in their plea:

- (a) cancellation of the agreement in order to mitigate their plea;
- (b) impossibility of performance due to *force majeure*;

- (c) denial of the terms and conditions of the contract due to its illegibility; and
- (d) denial of the cession of rights in the rental agreement.

[9] Subsequent to filing of the appellants' plea, the respondents filed for summary judgment. In opposition to the summary judgment, the appellants raised, *inter alia*, a point *in limine* claiming that the respondents failed to comply with rule 32(2)(a), because the deponent to the affidavit in support of summary judgment is not a competent person who can swear positively to the facts.

[10] The court *a quo*, after consideration of the legal principles relating to rule 32(2)(a) of the Uniform Rules of Court as well as the facts giving rise to the plaintiffs' cause of action, found that the deponent to the affidavit in support of summary judgment is a person with personal knowledge of the facts, and held the deponent to be in compliance with rule 32, thereby dismissing the point *in limine*.<sup>1</sup>

[11] The court *a quo* considered that the deponent to the affidavit in support of the summary judgement declared that she is the litigation manager in the employ of the second respondent, who together with the first respondent and Sunlyn, form part of the Sasfin group of companies. Sasfin, *inter alia*, administers and manages all rental agreements ceded to, among others, the respondents, and performs all the administrative functions in relation to the enforcement of the aforementioned rental agreements. Having regard to the factual matrix that the cause of action arose from the enforcement of rights provided for in a rental agreement and guarantees, which had multiple cessions between entities who form the plaintiffs, the court *a quo* found that the deponent to the affidavit in support of summary judgment had personal knowledge of the facts and could swear positively to the facts. It therefore dismissed the point *in limine*.

[12] On the defence of *force majeure*, the court *a quo* found that the appellants did not plead that it was objectively impossible for them to make timeous payments in terms of the rental agreement. It was further found that the national state of disaster occasioned by the Covid-19 pandemic did not make it absolutely impossible for anyone to pay monthly rental

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<sup>1</sup> See 235 of the record. Erasmus Superior Court Practice, 2023, D-379.

and that any impossibility is relative to the appellants. The court *a quo* concluded that this fails as a *bona fide* defence, having regard to the stringent common law requirements.

[13] Regarding illegibility of the contract attached to the particulars of claim, the court *a quo* acknowledged that the contract was a challenge to read but stated that it was not illegible. The court *a quo* found that the purported illegibility of the rental agreement does not serve as the basis for a *bona fide* defence, and it is not good in law, nor does it raise a triable issue.

[14] When considering the appellants' averment of cancellation of the rental agreement, the court *a quo* considered the email attached by the appellants purporting to be cancellation of the rental agreement and found that the email does not assert a cancellation of the rental agreement. The rental agreement clearly sets out the procedure for its termination by either of the parties.

### **Issues for determination**

[15] On appeal, this court is called upon to determine:

- a) whether the court *a quo* properly evaluated the evidence before it when it concluded and found that the deponent to the affidavit in support of summary judgment is a person with personal knowledge of the facts, thereby determining that the deponent was in compliance with rule 32 and dismissing the point *in limine*;
- b) whether the court *a quo* properly evaluated the evidence before it when it concluded that the purported illegibility of the rental agreement did not constitute a *bona fide* defence, and that it was not good in law, nor did it raise a triable issue;
- c) whether the court *a quo* properly evaluated the evidence before it when it found that the defence of termination of the rental agreement is not a *bona fide* defence and does not raise a triable issue; and
- d) whether the court *a quo* properly evaluated the evidence before it when it found that the appellants' defence of *force majeure* raises no triable issue and is bad in law.

### **Legal framework and analysis**

[16] The trite principle regarding appeals is that an appeal court will not interfere with the decision of a court *a quo* unless it finds that the trial court has misdirected itself on the facts and the law. On appeal, the court must make this finding before interfering with the court *a quo*'s decision. The appellant must clearly point out any misdirection by the court *a quo*, including the conclusion that was erroneous in respect of the respondent's case.<sup>2</sup>

[17] In *Mathale v Linda and Another*<sup>3</sup> the Constitutional Court stated that:

'When an appellate court is seized with an appeal against a discretion exercised by a lower court, it may only interfere with that discretion in certain circumstances. These circumstances include where the lower court has: exercised its discretion in a non-judicial manner; applied the wrong principles of law; misdirected itself on the facts; or reached a decision that could not have reasonably been reached by a court that has properly appraised itself with the relevant facts and legal principles.'<sup>4</sup>

[18] Summary judgment is a remedy available to a plaintiff for immediate judgment where the defendant has failed to show a *bona fide* defence that is good in law and a triable issue that should be ventilated at trial. This remedy was developed to come to the aid of a plaintiff where the defendant has filed its papers merely for the purposes of delay which would be to the prejudice of a plaintiff. Our law has developed from where a plaintiff was entitled to file a summary judgment application after the defendant had filed a notice of intention to defend. The current position is that a plaintiff is entitled to file for summary judgment after the defendant has filed its plea. This development places the court in a better position to make a proper evaluation of whether the defendant has raised a *bona fide* defence that is good in law and whether the plea raises any triable issues that should be ventilated at trial. The defendant may, in certain circumstances in its affidavit resisting summary judgment, raise a defence that was not raised in its plea. A plea is the answer to the plaintiff's claim and the defendant must set out its defence in the plea. The court has a significant role to balance the interests of both parties, that is, to ensure that a plaintiff is not prejudiced by a frivolous defence that is not *bona fide* to the claim, good in law or raises triable issues. Furthermore,

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<sup>2</sup> *AM and Another v MEC Health, Western Cape* [2020 ZASCA 89; 2021 (3) SA 337 (SCA); see also *ST v CT* [2018] ZASCA 73; 2018 (5) SA 479 (SCA).

<sup>3</sup> *Mathale v Linda and Another* [2015] ZACC 38; 2016 (2) BCLR 226 (CC); 2016 (2) SA 461 (CC).

<sup>4</sup> *Ibid* para 40.

the court must exercise its discretion judiciously to ensure that the court's door is not shut to the defendant that is entitled to enjoy its constitutionally enshrined right of access to court.<sup>5</sup>

[19] In *Maharaj v Barclays National Bank Ltd*<sup>6</sup> the court set out the principles relating to summary judgment as follows:

'Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the Court by affidavit that he has a *bona fide* defence to the claim. Where the defence is based upon

facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the Court enquires into is: (a) whether the defendant has "fully" disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both *bona fide* and good in law. If satisfied on these matters the Court must refuse summary judgment, either wholly or in part, as the case may be.'<sup>7</sup>

[20] The appellants argued that the court *a quo* incorrectly found that the deponent of the affidavit supporting summary judgment had personal knowledge of the facts and that this is in direct contradiction with the finding in *Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC*<sup>8</sup> (*Shackleton*) where the court found the affidavit deposed to by the attorney acting on behalf of the client did not comply with the requirements of rule 32. The appellants further argued that in the absence of confirmatory affidavits, the court *a quo* relied on hearsay evidence. In *Shackleton* the court stated that:

'The requirement that the founding affidavit be deposed to by the applicant or some other person who can swear positively to the facts precludes the affidavit being deposed to by someone whose knowledge of those facts is purely a matter of hearsay. Thus, a person who deposes to such an affidavit on the basis that their information comes from another source, whether another person or from documents, is not a person who can swear positively to the facts giving rise to the claim. It is for

<sup>5</sup> See in this regard *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* [2009] ZASCA 23; 2009 (5) SA 1 (SCA) para 31.

<sup>6</sup> *Maharaj v Barclays National Bank Ltd* [1975] ZASCA 102; 1976 (1) SA 418 (A) (*Maharaj*); see also *South African Land Arrangements CC v Nedbank Limited* [2015] ZASCA 88.

<sup>7</sup> *Maharaj* at 18-19.

<sup>8</sup> *Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC* [2010] ZAKZPHC 15; 2010 (5) SA 112 (KZP).

that reason that the application for summary judgment in *Rafael & Co v Standard Produce Co (Pty) Limited* was held to be defective.<sup>9</sup>

[21] Rule 32(1) and (2)(a) provides that:

'The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only . . .

(2)(a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.'<sup>10</sup>

[22] In my view, the facts of this case are distinct from circumstances referred to in para 21 above. In *Shackleton* the deponent to the summary judgment affidavit was an attorney of record of the plaintiff whilst in this matter the deponent to the summary judgment affidavit is an employee of the second respondent, who together with the first respondent and Sunlyn, form part of the Sasfin group of companies. In paras 21 and 22 of the court *a quo*'s judgment, the facts upon which the deponent to the summary judgment affidavit, who has personal knowledge of the facts giving rise to the claim, is set out. I am satisfied that, by virtue of the deponent's position as a litigation manager of the second respondent who, together with first respondent and Sunlyn form part of the Sasfin group of companies, and that Sasfin, *inter alia*, administers and manages all rental agreements ceded to and amongst the respondents and performs all the administrative functions in relation to the enforcement of the rental agreements. The deponent to the summary judgment affidavit can clearly swear positively to the facts.

[23] In *Toyota Financial Services (South Africa) (Pty) Ltd v Fredericks*<sup>11</sup> the court followed the decision of *Standard Bank of SA Ltd v Secatsa Investments (Pty) Ltd and Others*<sup>12</sup> where the court stated that:

'It is clear from the case law that first-hand knowledge of every fact which goes to make up the plaintiff's cause of action is not required and that, where the plaintiff is a corporate entity, the deponent

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<sup>9</sup> Ibid para 7.

<sup>10</sup> Erasmus Superior Court Practice, 2023, D-379.

<sup>11</sup> *Toyota Financial Services (South Africa) (Pty) Ltd v Fredericks* [2014] ZAFSHC 180.

<sup>12</sup> *Standard Bank of SA Ltd v Secatsa Investments (Pty) Ltd* 1999 (4) SA 229 (C) at 235A-B.

may well legitimately rely for his or her personal knowledge of at least certain of the relevant facts and his or her ability to swear positively to such facts, on records in the company's possession.<sup>13</sup>

Furthermore, the court followed the decision of *Rees and Another v Investec Bank Limited*<sup>14</sup> where the Supreme Court of Appeal stated the following:

'As stated in *Maharaj*, "undue formalism in procedural matters is always to be eschewed" and must give way to commercial pragmatism. At the end of the day, whether or not to grant summary judgment is a fact-based enquiry. Many summary judgment applications are brought by financial institutions and large corporations. First-hand knowledge of every fact cannot and should not be required of the official who deposes to the affidavit on behalf of such financial institutions and large corporations. To insist on first-hand knowledge is not consistent with the principles espoused in *Maharaj*.'<sup>15</sup>

It appears that the deponent to the summary judgment affidavit has direct knowledge of the material facts underlying the cause of action, which was gained by virtue of his possession of all the documentation he could access on account of the position he occupied. The deponent of the summary judgment affidavit would have acquired personal knowledge of issues relating to the rental agreements and this justifies the affidavit to pass muster.<sup>16</sup>

[24] The respondents relied in the decision of *Bragan Chemicals (Pty) Ltd v Devland Cash and Carry (Pty) Ltd*<sup>17</sup> where the court stated that:

'The role of pleadings in litigation is well-known and need not be restated in detail. The object of pleadings is to define the issues upon which a court will be called upon to adjudicate and to enable the parties to prepare for trial on the issues as defined. A plea is the answer by a defendant to the claims made against it by the plaintiff and in which his defence is set out ... An applicant for summary judgment is therefore entitled to rely on a plea in considering whether or not to launch an application for summary judgment. Where a defendant has failed to disclose a defence in its plea, a plaintiff would (in most instances) be entitled to the relief sought in its claim. I say this, however, with caution. I accept that there may be circumstances in which a defendant in summary judgment may well be able to raise a defence in the affidavit resisting summary judgment but which was not raised in the plea. However, this is not the case in the present matter. In the present circumstances the defences raised in the affidavit resisting summary judgment clearly were an afterthought for the reasons I have already alluded to. This is precisely what the drafters of the new rule have tried to avoid.'<sup>18</sup>

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<sup>13</sup> Ibid at 235A-B.

<sup>14</sup> *Rees and Another v Investec Bank Limited* [2014] ZASCA 38; 2014 (4) SA 220 (SCA).

<sup>15</sup> Ibid para 15.

<sup>16</sup> See *Maharaj*.

<sup>17</sup> *Bragan Chemicals (Pty) Ltd v Devland Cash and Carry (Pty) Ltd* [2020] ZAGPPHC 397.

<sup>18</sup> Ibid para 15-16.

[25] The defence indicated in the appellants' plea, is as indicated in para 8 above. Firstly, the appellants raised a defence of cancellation of the agreement. The agreement sets out the procedure for termination of the agreement. The court *a quo* evaluated and considered the terms of the rental agreement, the procedure set out therein as well as the email that purported to terminate the rental agreement and concluded that the rental agreement remained in force.

[26] The appellants denied the terms and conditions of the rental agreement based on illegibility of the copy attached to the particulars of claim. Whilst acknowledging the challenge in reading the attached agreement, the court *a quo* found that it is certainly not illegible and that the defence raised is not good in law, and therefore does not raise a triable issue. During hearing of the appeal proceedings, it was argued on behalf of the appellants that the court *a quo* simply relied on the particulars of claim and proceeded as if those were the terms of the agreement. I do not agree with this argument as the court *a quo* acknowledged challenges in reading the agreement but clearly stated that it is certainly not illegible.

[27] It appears that, notwithstanding the appellants' complaint of illegibility of the agreement attached to the particulars of claim, they were able to set out their defence in full; there is no dispute that they are in breach of the agreement, they understand fully the respondents' case that they were called upon to answer and they are not prejudiced. The respondents would therefore be entitled to be granted summary judgment.<sup>19</sup> This issue of illegibility does not raise a *bona fide* defence and neither does it raise a triable issue that must be ventilated on trial.

[28] Regarding the defence of purported cancellation of the rental agreement with the original contracting party, the court *a quo* considered the email attached to the plea which purports to cancel the agreement. The court *a quo*, after consideration of the terms of the rental agreement in relation to termination, found that the appellants did not cancel the rental agreement, having regard to contents their email purporting to cancel the agreement, and concluded that the agreement remained in force. The rental agreement regulates the

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<sup>19</sup> *Standard Bank of South Africa v Roestof* 2004 (2) SA 492 (W).

relationship between the parties to the agreement. Procedures set out in the agreement must be adhered to by both parties. The purpose of the terms of the agreement is to set out the nature and details of the agreement including obligations, remedies and the manner in which such an agreement may be terminated. This becomes a first point of entry for both parties on how they conduct themselves, what obligations either party has, what remedies are available in case of breach by either party and the procedure available to any party wishing to terminate the agreement.

[29] It appears that the appellants' purported termination was based on financial hardship as a cause of the termination. The purported email of termination states that: '*The company is not in the cash flow position at the moment to make any firm commitments towards any outstanding payments on the Cannon account.*' This purported termination is not in accordance with the terms of the rental agreement. The court *a quo* specifically referred to the terms regulating the manner in which the rental agreement may be terminated.

[30] The next defence raised is *force majeure* or supervening impossibility to perform, rendering the fulfilment of the first appellant's obligations arising from the rental agreement, namely the payment of the monthly agreed rental instalments, impossible. The court *a quo*, in consideration of the appellants' version admitting that there is no *force majeure* clause in the rental agreement, found that the common law requirements of supervening impossibility to perform become applicable and set out the conditions that must be fulfilled to trigger impossibility to perform in terms of common law. The default position in our law is that if a *force majeure* clause is not included in a contract, the common law concept of supervening impossibility to perform is applicable. The court *a quo*'s conclusion was based on this default position, and I agree with the court *a quo*'s approach.

[31] Upon considering applicable case law in relation to the common law requirements of supervening impossibility of performance and the fact that the applicants were already in mora prior to 10 March 2020, which is prior to the events resulting in the raised defence of supervening impossibility of performance on account of the Covid-19 pandemic, the court *a quo* concluded that this fails as a defence and does not raise a triable issue.

[32] In the law of contract, a maxim exists known as *impossibilium nulla obligatio est* which means that no contractual obligation can be created to perform the impossible. The appellants raised a defence of *force majeure* to demonstrate that they were unable to perform their obligation and ascribed this to the national lockdown caused by the Covid-19 pandemic. *Force Majeure* is ordinarily contained as a clause in a contract, the purpose of which, is to regulate liability of the parties and the effect on the contract when an extraordinary event or circumstance beyond the control of the parties prevents one of the parties from fulfilling their obligations under the contract. Examples of *force majeure* are war, strikes, riots or what is known as an 'act of God', referring to natural disasters like floods, earthquakes or a volcanic eruption.<sup>20</sup> In *Barkhuizen v Napier*<sup>21</sup> the Constitutional Court stated that:

'For instance, common law does not require people to do that which is impossible. This principle is expressed in the maxim *lex non cogit ad impossibilia* – no one should be compelled to perform or comply with that which is impossible. This maxim derives from the principles of justice and equity which underlie the common law. Over the years the maxim has become entrenched in our law and has been applied to avoid time bar provisions in statutes'.<sup>22</sup>

[33] In their plea, the appellants state that they cancelled the rental agreement with the original contracting agent as far back as 10 March 2020. The appellants aver that at the time, the outstanding account amounted to R2 368.72 and this was done in order to mitigate any damages that may have followed. It is apparent that prior to the Covid-19 pandemic, the appellants were already experiencing financial difficulties and were in material breach of the rental agreement. The court *a quo* is, in my view, correct in its finding that the defence of supervening impossibility of performance resulting from the national state of disaster fails as a defence and it does not raise a triable issue. The appellants' defence of supervening impossibility to perform cannot be sustained, taking into consideration that they were unable to meet their obligations in terms of the rental agreement prior to declaration of the national state of disaster. This is not a case where there was supervening impossibility for the appellants to perform, as their failure to meet obligation to pay was continuous prior the Covid-19 pandemic.

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<sup>20</sup> See Hutchison et al *The Law of Contract in South Africa* 4 ed (2022) at 451.

<sup>21</sup> *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323 (CC). See also *Wilson v Smith* 1956 (1) SA 393 (W).

<sup>22</sup> *Ibid* para 75.

[34] A defence based on financial difficulty to perform a contractual obligation does not give rise to the lawful termination of an agreement, save for instances permitted in some legislation, such as the Consumer Protection Act 68 of 2008. The purported termination is neither by notice as provided for in the rental agreement nor due to breach. This is also not by mutual agreement between the parties. Furthermore, this was prior to the Covid-19 pandemic and the subsequent national state of disaster. The purported termination by the appellants was not in accordance with the terms of the rental agreement and I cannot find fault with the court *a quo*'s finding that the agreement remains in force. They do not rely on a tacit term to terminate the agreement which may give effect to their purported termination.<sup>23</sup> The purported termination of the rental agreement by the appellants is invalid, their defence of termination of the agreement is bad in law and does not disclose a *bona fide* defence or a triable issue that should be ventilated on trial.

[35] Having considered the conspectus of evidence and applicable legal authorities, it cannot be said that the court *a quo* erred in granting summary judgment against the appellants. The appellants failed to provide a *bona fide* defence which is good in law and there are no triable issues raised which must be ventilated on trial. In view of what has been considered, the appeal must accordingly fail.

### **Costs of appeal**

[36] The general rule is that the successful party should be granted costs. This rule should not be departed from unless there are grounds for doing so. I see no reason to depart from this rule. The appellants should therefore pay the respondents' costs in this appeal.

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<sup>23</sup> See *Bredenkamp and Others v Standard Bank of SA Ltd* [2010] ZASCA 75; 2010 (4) SA 468 (SCA) para 61; and *De Lange v ABSA Makelaars (Edms) Bpk* [2010] ZASCA 21 para 21.

**Order**

[38] In the circumstances, the following order is made:

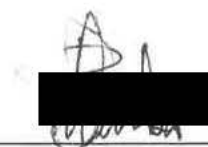
- 1 The appeal is dismissed.
- 2 The appellants to pay costs on a party-to-party scale, including costs of counsel on scale B.



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**NTANGA AJ**

I concur:



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**LOUBSER J**

I concur:



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**CHESIWE J**

**Appearances**

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|---------------------|---------------------------------------------------------------------------------------|
| For the appellants: | NMA Muller                                                                            |
| Instructed by:      | Kallie Pretorius Attorneys, Bethlehem<br>c/o Blignaut Attorneys Inc., Bloemfontein    |
| For the respondent: | S Aukamp                                                                              |
| Instructed by:      | Smit Jones & Pratt Inc, Johannesburg<br>c/o Symington De Kock Attorneys, Bloemfontein |