

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025/040312

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
4. 08. 2025	
DATE	SIGNATURE

In the matter between:

LESEDI LOCAL MUNICIPALITY

Applicant

and

HEIDELBERG BEER FESTIVAL CC

Respondent

JUDGMENT

MAKAMU, J

- [1] This urgent application was brought by Lesedi Local Municipality ("the Municipality") as an interdict, initially seeking an interim order. It subsequently sought final relief against Heidelberg Beer Festival CC ("the respondent"), , represented by its sole member, Mr. Bouwe Wiersma, a practising attorney. The respondent opposed the application, stating that he had been in peaceful and

undisturbed possession of the property and had operated a business there under a 19-year lease term, which was an improved term of the initial five years.

- [2] It is common cause that the respondent applied to lease the Heidelberg Heritage Museum from the applicant, who is the owner of the property. The Municipal Council approved the lease of the property to the respondent; however, no lease agreement was concluded with the respondent or any other person
- [3] It is common cause that the respondent failed to pay the required rental amount. It further operated the business and sub-let the premises to third parties to conduct their business on the premises.
- [4] The issue in this matter is that the respondent occupied the building without a signed lease agreement; failed to pay rent to the Municipality; and did not settle the electricity charges until the Municipality cut the electricity supply. The respondent further refused to vacate the property despite the applicant's numerous correspondences and multiple court actions against it.

Brief Background

- [5] The Respondent applied to lease the Heidelberg Heritage Motor Museum. It relied on the Council's resolution and correspondence from the applicant's officials as a positive indication of approval. The applicant denies signing any lease agreement; nevertheless, the respondent occupied the premises after the City Manager refused to sign the lease. All subsequent litigation between the parties was decided against the respondent.
- [6] The Respondent submitted that it relied on a Council resolution and extensive correspondence to justify occupying the building but conceded that no lease agreement was signed. The applicant acknowledged the resolutions and correspondence but emphasised that the City Manager never executed the lease agreement.

- [7] Upon occupation, the respondent leased part of the premises as a restaurant to Agler's Heidelberg Tap and Grill ("Agler's") without applicant's consent. The applicant submitted that, in any event, the respondent lacked authority to sub-lease the premises to a third party, as it held no valid lease agreement with the Municipality.

Submissions by the Parties

- [8] The applicant submitted that the respondent lodged a complaint regarding the state of the building's condition and also notified the SAPS in writing of these concerns.
- [9] In response, the applicant instructed the respondent to cease business operations and vacate the premises on safety grounds for the public. The applicant further asserted that, lacking a written lease signed by both parties, the respondent had no right of occupation.
- [10] The respondent submitted that it occupied the building from 2016 and commenced business operations in 2019. The applicant submitted that during this period, the respondent failed to pay for municipal services and electricity until the applicant terminated the electricity supply. Consequently, Agler's was forced to use a generator at significant expense.
- [11] The Applicant served notices on the respondent and other unlawful occupiers to vacate the premises. Agler's notified its patrons of the closure and vacated the premises, but the respondent remained in occupation.
- [12] The respondent's refusal to cease business operations and vacate the premises prompted the applicant to institute these proceedings.

Urgency

- [13] The applicant submitted that the matter is urgent based on the following grounds:
- (a) The respondent has occupied the premises for many years without paying rental;

- (b) The respondent has failed to pay electricity charges, accruing arrears in excess of R1 300 000; and
- (c) The building has been declared unsafe and requires immediate repairs to protect public safety.

[14] The respondent contended that the application is not urgent as the building's condition does not endanger the public who may be patrons at the business.

[15] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*¹ the court stated:

"The import thereof is that the procedure set out in rule 6(12) is not there for the taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of the absence of substantial redress in an application in due course."

[16] *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* states:²

"Under the *Setlogelo* test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. . . . the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm."

[17] The dispute between the parties dates from prior proceedings in the Magistrate's Court and also the High Court, so it is not a new dispute altogether. It intensified when the respondent requested SAPS to inspect the building, and SAPS subsequently declared that urgent repairs were required. Fearing vicarious liability, the applicant treated the matter as urgent. In light of the

¹ [2011] ZAGPJHC 196 at para 6.

² [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) at para 50.

foregoing and applicable authority, the applicant established absolute urgency under the Uniform Rules.

Applicable Legislation

[18] Section 116 of the Municipal Finance Management Act ("the Act")³ provides as follows regarding contracts between the local government and members of the public:

- "(1) A contract or agreement procured through the supply chain management system of a municipality or municipal entity must-
 - (a) be in writing;
 - (b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for –
 - (i) the termination of the contract or agreement in the case of non- or under-performance.
 - (ii) dispute resolution mechanisms to settle disputes between the parties;
 - (iii) periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
 - (iv) any other matters that may be prescribed."

[19] Both parties agreed that no contract was signed between them. However, the respondent regarded the Council resolution and correspondence as sufficient to constitute a contract. There was no contract, as the contract was supposed to have been signed by the Municipal Manager and the representative of the respondent.

[20] Section 60 of the Act designates the Municipal Manager as the accounting officer. As such, the Municipal Manager is responsible for signing all

³ 56 of 2003.

contractual documents once authorised by the Municipality. In other words, the authority to conclude contracts on behalf of the Municipality is delegated to the Municipal Manager in terms of the Act.

Submissions

- [21] The Council adopted a resolution to award a lease to Heidelberg Beer Festival CC, represented by Mr Bouwe Wiersma as sole member of the close corporation. However, the lease agreement was never signed. According to the respondent, this was because the Municipal Manager refused to sign the agreement. The respondent provided no explanation for the refusal or further details in this regard. In the absence of a signed lease, the respondent's decision to occupy the premises amounted to self-help, rather than compliance with lawful procedures.
- [22] The respondent nonetheless proceeded to occupy the premises, relying on the Council resolution and correspondence. However, as an attorney and the sole member of the respondent, Mr Wiersma ought to have known that a valid lease agreement was required before taking occupation.
- [23] The respondent further submitted that, after taking occupation, it expended over R6 million on the property. However, it provided no details regarding the nature of the improvements. Without a signed lease agreement, it was imprudent to incur such substantial expenditure.
- [24] The respondent had no lease agreement and thus no lawful right of occupation. It nonetheless sub-leased the premises to Agler's. After Agler's vacated the premises, it permitted the Railway Café to operate there. These actions were taken without the necessary authority, as the respondent had no lease agreement with the owner of the property, Lesedi Municipality.
- [25] The respondent failed to pay rent or service charges, including electricity, which accumulated to over R1 300 000.00. Despite the applicant's efforts to secure payment, the respondent paid nothing until the electricity was disconnected, at which point it complained.

[26] The applicant seeks an interdict prohibiting the respondent from continuing business operations and an order evicting it from the property.

[27] The key question is whether an interdict is the appropriate remedy in circumstances where the respondent had an opportunity to be heard. The second issue is whether applicant is entitled to an eviction order.

[28] In the matter of *City of Ekurhuleni Metropolitan Municipality v Tshepo Gugu Trading CC and Another*,⁴ the court held:

“[W]here the unlawful possession of a tampered vehicle had not yet been determined, in the current matter it is not in dispute that from the time of its erection, the billboard did not comply with the law — it is an illegal structure. The respondent was aware of this fact throughout. In our view, no court is permitted to countenance a glaring illegality. Nor should a court turn a blind eye on the prescripts of the law and the importance of observing them. After all, the By-laws are designed to maintain order, ensure public safety, and create harmonious living environments. They also play a vital role in promoting sound business interests and competition as well as regulating community life.”

[29] The respondent brazenly defied multiple requests to cease business operations on the premises despite having no signed lease agreement and failing to pay any rental. It continues to refuse to vacate the premises, even in the face of these proceedings. In light of the judgment reference in paragraph 28, the Court cannot ignore the illegality being perpetrated by the respondent.

[30] The building was declared dilapidated by members of the SAPS after the respondent lodged a complaint. Nonetheless, the respondent now claims that only the Rotarian building requires attention and that the portion he occupies is safe. However, the inspection report clearly refers to the Heidelberg Heritage Museum as a whole.

⁴ [2024] ZASCA 81 at para 38.

[31] The applicant initially sought an interim interdict to prohibit the respondent from conducting business, together with an eviction order. However, if the eviction is granted, the interim interdict becomes redundant, as the respondent will no longer be in occupation.

[32] The respondent has no legal basis to oppose this application, as it is an unlawful occupier. However, the Municipality's inaction from 2019 to 2025 — a period of six years — suggests that it condoned the respondent's continued presence on the property, whether expressly or by inaction.

[33] Therefore, the application succeeds, and I make the following order.

- (a) The respondent is ordered to stop conducting business at the Heidelberg Heritage Museum with immediate effect.
- (b) The respondent is ordered to vacate the Heidelberg Heritage Museum within seven (7) days after the issuing of this order.
- (c) Should the respondent fail to vacate the premises within seven (7) days of this order, the Sheriff of the Court is authorised to execute the eviction in terms of this order.
- (d) The respondent is ordered to pay costs of this application on the attorney and client scale, including the costs of counsel.



MAKAMU J

Judge of the High Court,
Johannesburg

Head on: 15 July 2025

Delivered: 4 August 2025

Appearances

For the Appellant: Adv. Emmanuel Nathi Sithole

Instructed by: MB Mabunda Incorporated

For the Respondents: Adv. L Hollander with Adv. V Qithi

Instructed by: LVD Attorneys