

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

Case number:2025-127231

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
25 August 2025	
DATE	SIGNATURE

In the matter between:

HEALTH-WORX MEDICAL CENTRES (PTY) LTD

Applicant

and

FIRSTRAND BANK LTD

First respondent

EMIRA PROPERTY FUND LTD

Second respondent

STRATEGIC REAL ESTATE MANAGERS (PTY) LTD

Third respondent

BROLL PROPERTY GROUP (PTY) LTD

Fourth respondent

KRUGER, SINGH & ASSOCIATES INCORPORATED

Fifth respondent

EXP HEALTHCARE SOLUTIONS (PTY) LTD

Sixth respondent

JUDGMENT

WINDELL J

Introduction

[1] This is an urgent application by the applicant, Health-Worx Medical Centres (Pty) Ltd, for interim relief preserving its occupation of Shop 221/221A, Randridge Mall (the premises), pending the outcome of an action to be instituted. I am satisfied that the matter is urgent.

[2] The application is opposed by the second, fourth and fifth respondents. The sixth respondent has filed a notice to abide. As far as the first, third and fourth respondents are concerned, they ought not have been joined. The first and third respondents have no legal interest in the dispute and are incapable of giving effect to any order that may be granted. Similarly, the fourth respondent at all material times acted as the agent of the second respondent and accordingly has no personal or direct interest in the matter.

[3] The applicant has operated a healthcare centre from the premises for over 20 years in terms of a lease agreement that has been terminated with effect from 31 August 2025. The landlord is the second respondent, Emira Property Fund Ltd (hereinafter referred to as 'the landlord'). The fifth respondent, Kruger, Singh & Associates Incorporated, is a firm of medical practitioners who has concluded a new lease with the landlord to commence on 1 September 2025.

[4] The most recent written lease between the applicant and the landlord expired by effluxion of time in October 2024. Clause 54.1 of that lease expressly provided: "*... any occupation of the Leased Premises by the Tenant after the expiration date stipulated in this Lease, without ... a formal agreement signed by both the Landlord and Tenant ...*

shall be deemed to lease the premises on a monthly tenancy basis ... either party will be entitled to terminate ... by giving the other party one (1) calendar month's prior written notice ... irrespective of any oral discussions, representations, negotiations and correspondence that may have been exchanged ..."

[5] After the expiry of the written lease, the applicant continued to occupy the premises on a month-to-month basis. From October 2024 to July 2025, the applicant and the landlord engaged in protracted negotiations aimed at concluding a new written lease and expanding the applicant's operations. These negotiations were at all times subject to approval by both the applicant's Board and the landlord's Board. To date, no lease has been approved in the same form by both Boards, nor has any lease been signed, despite several drafts being submitted to the applicant. As late as 3 July 2025, the applicant again requested a renegotiation of the terms. By then, the applicant had already suffered the cancellation of its agreement with its doctors, failed to secure financing, and sought to renegotiate the lease terms afresh.

[6] According to the landlord, several substantive issues remained unresolved and ultimately prevented the conclusion of a new agreement. These included: (1) the rental amount and escalation, with the landlord insisting on market-related increases and the applicant resisting them as excessive; (2) responsibility for installation and fit-out costs, where the landlord required the tenant to bear the expenses while the applicant sought landlord contributions; (3) the commencement date of the new lease and its alignment with the expiry of the old lease; and (4) various operational terms, such as signage rights, exclusivity clauses, and service charges.

[7] Another major point of contention was the expansion of the leased premises to include adjoining space. The landlord maintains that no consensus was reached on which additional area would be incorporated, when it would become available, or how the rental for the enlarged premises would be calculated. In the landlord's view, this was a material term that had to be settled before any binding lease could be concluded, and its absence was one of the reasons the written lease was never signed.

[8] By mid-July 2025, the landlord concluded that consensus on the outstanding issues would not be reached and, on 17 July 2025, exercised its contractual right to terminate the month-to-month tenancy on 30 days' written notice. Shortly thereafter, it concluded a new lease with the fifth respondent. The applicant disputed the cancellation, asserting that an agreement for continued occupation had been reached. In a letter dated 24 July 2025, the applicant sought an undertaking from the landlord to preserve the status quo and tendered performance of its payment obligations pending resolution of the dispute. On 29 July 2025, the landlord's representative rejected the request and confirmed that the tenancy would terminate on 31 August 2025. It is common cause that a lease was then concluded with the fifth respondent, Kruger, Singh & Associates Incorporated, to take occupation from 1 September 2025.

Requirements for an interim interdict

[9] The requirements for an interim interdict are trite: a prima facie right, though open to some doubt; a reasonable apprehension of irreparable harm; balance of convenience; and, the absence of an alternative remedy.

[10] On the applicant's papers, the case was initially framed on the basis that a legitimate expectation arose that a lease would be concluded with it. Our law of contract recognises no such doctrine. In its heads of argument, however, the applicant reformulates its case, alleging that a binding lease was in fact concluded and that signature was a mere formality. This represents a material departure from the pleaded case, without any amendment to the founding papers.

[11] The respondents therefore argue that, although the notice of motion is couched in interim terms, the relief sought is final in effect. The practical effect of the order sought is to exclude the fifth respondent from the premises and prevent it from taking up occupation under a valid lease.

[12] Whether an interdict is interim or final depends on its substance, not the label attached to it.¹ The mere fact that the notice of motion couches the relief as 'interim' does not make it so. Relief pendente lite that secures the applicant's continued occupation and excludes the fifth respondent from taking up its lease effectively disposes of the dispute, since by the time the principal proceedings are determined the lease period may have expired and the issue rendered academic. The order would therefore achieve the very outcome sought as final relief and must be treated as final in nature. The applicant has not indicated how or when the dispute will be resolved, and in the meantime the fifth respondent cannot be left in limbo.

¹ *Fourie v Uys* 1957 (2) SA 125 at 126 D-G.

[13] In these circumstances, the application must be assessed against the requirements for a final interdict. The applicant was therefore required to establish a clear right. On the papers, it has failed to do so. That finding is dispositive of the matter.

[14] Even if, however, the matter is approached on the basis that the relief sought is interim, the application would still fail. This is so because, as will be shown below, the applicant has not satisfied the requirements for an interim interdict.

Prima facie right

[15] The correct approach is to assess the applicant's version of the facts together with those facts put up by the respondents which the applicant cannot dispute. On that combined version, and with due regard to the inherent probabilities and the ultimate onus, the question is whether the applicant would be entitled to final relief at trial. If the respondents' evidence casts serious doubt on the applicant's case, the application cannot succeed.²

[16] As already noted, the founding affidavit relied on a 'legitimate expectation' that a lease would be concluded. In its heads of argument and at the hearing, however, it sought to recast the claim as one based on a binding agreement already concluded, with signature being a formality. This amounts to a material departure from the pleaded case, made without any application to amend. The inconsistency undermines the coherence of the applicant's case and weakens any assertion of a prima facie right.

² *Webster v Mitchell* 1948 1 SA 1186 (W) 1189; *Godbold v Tomson* 1970 1 All SA 218 (D); 1970 1 SA 61 (D) 63D; *Spur Steak Ranches Ltd v Saddles Steak Ranch, Claremont* 1996 3 SA 706 (C) 714; *Aranda Textile Mills (Pty) Ltd v Hurn* 2000 2 All SA 530 (E). A possibility or a slight degree of probability will not suffice: *Molteno Bros v SAR* 1936 AD 321 333.

[17] In any event, the founding papers do not disclose facts capable of establishing such a right. No case is pleaded that the parties reached consensus on the essential terms of a lease, whether expressly or tacitly. What is alleged amounts to negotiations only, not agreement. Moreover, the respondents' version confirms that no agreement was reached. They point out that material terms — including the rental and escalation, responsibility for fit-out costs, the commencement date, and operational matters such as signage and service charges — remained unresolved. In addition, there was no consensus on the extension of the premises to adjoining space, or on how rental for the enlarged area would be calculated. According to the respondents, these unresolved issues explain why no written lease was signed.

[18] Against this background, the applicant cannot rely on bare assertions that a binding lease was concluded. Absent pleaded facts establishing consensus, whether expressly or tacitly, the requirement of a prima facie right is not met.

Apprehension of harm

[19] The applicant contends that eviction after more than 20 years of occupation will cause substantial harm. It points to its role in operating a healthcare clinic, the loss of monthly turnover and administration fees, liability under a three-year telecommunications contract, and the inability to use existing equipment and furniture elsewhere.

[20] The respondents dispute that irreparable harm is established. They emphasise that the goodwill and patient relationships vest in the doctors, now comprising the fifth respondent, who remain able to continue operating under their new lease. The alleged

'closure' is therefore not the termination of patient care but the natural consequence of lease expiry.

[21] The harms relied on by the applicant are either speculative, self-created or purely financial. The Vox contract was entered into despite the uncertainty of the lease, and the relocation of furniture and equipment is readily remedied. Any loss of income or contractual exposure is patrimonial in nature, quantifiable, and compensable by damages, and do not constitute irreparable harm.

[22] In these circumstances, the applicant has not demonstrated a reasonable apprehension of irreparable harm. The requirement is accordingly not satisfied.

Balance of convenience

[23] The applicant argues that, as the current occupier, the balance of convenience (also referred to as the 'balance of hardship'³) favours preserving the status quo. That contention is misplaced. The fifth respondent has already secured a valid lease, paid a substantial deposit, and made operational and clinical preparations to commence occupation on 1 September 2025.

[24] It is trite that the court must weigh the prejudice that the applicant will suffer if the interim interdict is not granted against the prejudice the respondent will suffer if it is.⁴ The exercise of its discretion usually resolves itself into a consideration of the prospects of success and the balance of convenience: the stronger the prospects of success, the less

³ *LF Boshoff Investments (Pty) Ltd v Cape Town Municipality, Cape Town Municipality v LF Boshoff Investments (Pty) Ltd* 1969 1 All SA 430 (C); 1969 2 SA 256 (C) 267.

⁴ *Crossfield & Son Ltd v Crystallizers Ltd* 1925 WLD 216 223.

the need for such balance to favour the applicant; the weaker the prospects of success the greater the need for it to favour him.⁵

[25] The applicant's prospects of success are slim. In contrast, granting the interdict would cause the fifth respondent immediate and serious prejudice: disruption of patient care, interruption of treatment, loss of doctor-patient relationships, and financial harm from money already paid and preparations already made for occupation. The applicant, on the other hand, faces only relocation and financial loss, which are the normal consequences of a month-to-month lease coming to an end.

[26] The balance of convenience therefore overwhelmingly favours the fifth respondent, who holds a clear contractual right to occupy. The applicant's suggestion that the fifth respondent can 'simply obtain alternative premises' is unrealistic. Healthcare services cannot just be moved overnight. Doing so would break the continuity of patient care and damage the trust between doctors and patients. The requirement of balance of convenience is not satisfied.

No alternative remedy

[27] The applicant has not shown that it lacks an adequate alternative remedy. Its claim, properly analysed, is one for damages arising from the cancellation of a month-to-month tenancy and the breakdown of lease negotiations. Any financial loss it may suffer is patrimonial and quantifiable and can be pursued by way of a damages action.

⁵ *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 1 All SA 112 (D); 1957 2 SA 382 (D).

[28] This is borne out by the applicant's own attorney's letter of 14 July 2025, which expressly anticipated that any dispute would include a claim for damages if the termination were implemented. In the circumstances, the applicant has an effective alternative remedy, and the requirement of absence of such remedy is not satisfied.

Conclusion

[29] The applicant has failed to meet the requirements for interdictory relief, whether assessed on the footing of a final or an interim interdict. It has not established a clear or even prima facie right, its claim of irreparable harm is unfounded, the balance of convenience favours the fifth respondent who holds a valid lease and has already committed resources to occupy, and an adequate alternative remedy in the form of damages is available. In these circumstances, the application falls to be dismissed with costs.

[30] In the result the following order is made:

1. This application is enrolled as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court
2. The application is dismissed with costs on a party and party scale, Scale B.


L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 25 August 2025.

APPEARANCES

For the applicant:	Mr I.L. Posthumus
Instructed by:	Wolmarans & Susan
For the second and fourth respondent:	Mr G. Dobie
Instructed by:	Reaan Swanepoel Inc
For the fifth respondent:	Mr N. Maharaj
Instructed by:	DMA Attorneys
Date of hearing:	12 August 2025
Date of judgment:	25 August 2025