



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 2470/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO THE JUDGES: NO
(3) REVISED: NO

02 October 2025
DATE


SIGNATURE

In the matter between:

TIMBALI FLOWER GROWER NPC
REG.NO: 2002/006905/08

PLAINTIFF/APPLICANT

and

DELIPMODE PTY LTD
REG.NO: 2017/358489/07

DEFENDANT/RESPONDENT

JUDGMENT

Mangena AJ

[1] This is an application for summary judgment in terms of Rule 32 of the Uniform Rules of Court. The Plaintiff instituted legal proceedings against the Defendant, in which it sought the following prayers:

- 1.1 Payment in the sum of R130 000.00;
- 1.2 Interest on the aforementioned sum at the legal rate a *tempore morae*;
- 1.3 An order ejecting the Defendant from the property.

[2] The dispute between the parties arises out of the following facts: On or about March 2021, the parties entered into an agreement of sale of an immovable property described as portion 02 of the Farm Helena 400, Registration Division JU, Mpumalanga, measuring 89,6966 hectares. The purchase price was to be paid by way of yearly instalments of R2 500 000.00 payable in March, April and May in each year from 2021 until 2027. The Defendant was given occupation and from that date assumed risk in respect of the property and liability for rates and taxes.

[3] The Plaintiff alleges that the Defendant breached an oral agreement of lease concluded on or about August 2023. She demanded payment, and when the same was not forthcoming, she gave notice of cancellation. The letter of cancellation reads as follows:

“[1] On or about the **25th March 2021** and at **Nelspruit**, our client entered into written sale agreement with **Delipmode (Pty) Ltd**, represented by you (**G Van Der Merwe**) in terms of which *inter alia*, Delipmode purchased our client's property.

[2] Delipmode breached the agreement in that it failed to pay its monthly instalments of the purchase price for the aforesaid property.

[3] In order to assist Delipmode, our client agreed to lease the property to Delipmode and in this regard, a verbal lease was concluded by the parties.

[4] Delipmode has breached the verbal lease in that it has failed to pay its monthly rental on due date. The sum of **R130 000.00** remains outstanding.

[5] As a result of your breach of the verbal lease agreement, we hereby inform you that the said agreement is cancelled. We hold instructions to proceed against you for recovery of the sum of **R130 000.00** together with interests thereon and legal costs.”

[4] The letter elicited no response from the Defendant, and when a summons was issued, the Defendant initially expressed an intention to raise an exception to the claim on the basis that the pleadings are vague and lacking averments necessary to sustain the cause of action. This exception was not proceeded with, and a plea was filed.

[5] In the plea, the Defendant admits to the occupation of the property in terms of the sale agreement and denies the existence of the verbal lease agreement and that there is any rental due and payable to the Plaintiff.

[6] The Defendant further denies that the Plaintiff was entitled to the relief, as there was no compliance with clause 21 of the sale agreement. The claim, according to the Defendant, is therefore premature.

[7] The Plaintiff applied for summary judgment, and the same was set down for hearing on 14 February 2025. On 13 February 2025, the Defendant served and filed a Rule 28 notice expressing an intention to amend the plea and simultaneously filed a substantive application for postponement. The matter was postponed to offer the Defendant an opportunity to amend. However, the Defendant did not proceed with the amendment and has since filed an affidavit opposing the granting of the summary judgment.

[8] In the opposing affidavit, the Defendant contends that the Plaintiff has not verified any right entitling it to ejectment in terms of the oral lease.

[9] There is a dispute regarding the existence of the oral lease, and the Defendant denies that the payment made (if any) was for the arrear rental. This is not a genuine dispute when facts are considered in context. The contentions by the Defendant are

therefore without merit and cannot be supported. The issue regarding the existence of the oral lease is a red herring. By his own admission, the Defendant took occupation upon the conclusion of the sale agreement.

[10] The Plaintiff seeks an order to re-take possession of the property and eject the Defendant, who has breached the agreement by failing to pay the purchase price on the agreed terms.

[11] The principles governing summary judgment are trite. A Defendant resisting summary judgment is required to satisfy the court that his defences as raised are not a sham but *bona fide* and if proved at trial would constitute a defence.

[12] Rule 32 requires the Defendant to disclose fully the nature and grounds of the defence. In the affidavit filed by the Defendant, there are no facts raised upon which one can discern a defence to the Plaintiff's claim for ejectment.

[13] The Plaintiff has cancelled the sale agreement, and the Defendant has no legal basis to remain on the property. It is not a defence to say that the termination notice did not come to his attention. The fact is that it has now come to his attention, and he has not disclosed any *bona fide* defence in both the plea and the affidavit resisting summary judgment.

[14] It follows that the Plaintiff is entitled to summary judgment, and the following order is made:

1. The Defendant is ordered to pay the Plaintiff an amount of R130 000.00 together with interest a *tempore morae*.
2. The Defendant is ordered to vacate the property within 90 days from the date of service of the court order or at any time agreed upon with the Plaintiff.
3. The Defendant is ordered to pay costs on a party and party scale B of the High Court tariffs, including costs of one counsel.



M.I. MANGENA AJ
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

For Plaintiff: Adv. JJ Venter

Instructed by: HvH Attorneys Incorporated

For Defendant: Mr. Andre du Plessis for Andre du Plessis Attorneys

Heard on: 05 September 2025

Delivered on: 02 October 2025