



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: 2024/145157

In the matter between:

CAMBRIG HOLDINGS CC Applicant

and

**SA MR SMART FASHION WHOLESALERS AND
RETAILERS CC** First Respondent

**ALL THOSE HOLDING OVER UNDER THE FIRST
RESPONDENT AND/OR OCCUPYING THE PREMISES** Second Respondent

CORAM: GOLDEN AJ
HEARD: 16 OCTOBER 2025
DELIVERED: 27 October 2025

ORDER

The application is granted with costs.

JUDGMENT

GOLDEN AJ:

Introduction

1. This is an application for the ejectment of the first respondent and all those holding title under it from commercial premises at Erf 1[...], Bellville, situated at Charl Malan Street, Bellville City Centre, Bellville (“*the premises*”). The applicant is the registered owner of the property and its claim for ejectment is based on the *rei vindicatio*. The first respondent opposes the application.

The background facts

2. The applicant and the first respondent, Mr Smart, represented by Mr Abdi Yusuf (‘Yusuf’) concluded a written lease agreement on 26 November 2010 (‘the written lease agreement’) in terms whereof the applicant had leased the premises to the first respondent for the trade of a wholesale and retail business. The express material terms of the written lease directly relevant to the application, are the following:
 - 2.1 The lease would be for a period of 5 (five) years, commencing on 1 April 2011 [clause 2];
 - 2.2 The monthly rental would be R18 000.00 escalating annually by 10% payable

in advance on or before the first day of every month without deduction [clause 3.1];

- 2.3 The *domicilium citandi et executandi* of the first respondent was the premises, together with the email address of a[...] [clause 22];
 - 2.4 The first respondent would have the option to renew the lease agreement for a further 5 (five) years, provided that 6 (six) months' written notice is provided prior to the termination date [clause 25.1]; and
 - 2.5 Upon termination of the lease agreement, whether by effluxion of time or by cancellation, the first respondent would re-deliver the leased premises to the applicant in good order and condition, fair wear and tear excepted [clause 28].
3. Mr Manfred Shevel ("Shevel senior") passed away in January 2016 whereafter his son, Mr Russel Shevel assumed the operations of the applicant.
 4. Russel Shevel, on behalf of the applicant, delivered to the first respondent a notice to terminate the lease on 9 September 2024 as it intended to undertake a major renovation to the building. The notice to terminate informed the first respondent via Yusuf that the renovations would begin on 1 November 2024 and that the first respondent would need to vacate the premises on 31 October 2024. The first respondent was given 53 (fifty-three) days' notice to vacate.
 5. The first respondent did not vacate the premises which resulted in the applicant's attorneys addressing a letter dated 8 November 2024 to the first respondent which recorded that the lease had terminated on 31 October 2024, the first respondent was in unlawful occupation of the premises and demanded that it vacate by no later than 13 November 2024. The letter recorded that the applicant, as a gesture of goodwill, offers to pay the first respondent an amount of R12 000.00 to assist it to vacate the

premises by the said date.

6. The respondents failed to vacate the premises, which then resulted in the launch of this application on 6 December 2024.

The applicant's case

7. The applicant alleges that the original written lease agreement endured for a period of 5 years, commencing 1 April 2011 and that it terminated with the effluxion of time on 31 March 2016. The first respondent had the option to renew the lease for a further 5-year period which option had to be exercised in writing, within 6 months of the termination date. This did not occur but given Yusuf's desire to continue to occupy the premises beyond the termination date, the parties concluded an oral month-to-month lease agreement.
8. The month-to-month agreement, according to the applicant, was the basis upon which the first respondent continued to occupy the premises.
9. The applicant alleges that the month-to-month agreement terminated on 31 October 2024, alternatively, it cancelled the month-to-month agreement when the application was launched.
10. It alleges that 53 days' notice to vacate the premises was reasonable and that the first respondent was given additional time hereafter.

The first respondent's case

11. The first respondent opposes the application on the basis that:
 - 11.1 There is a binding lease agreement in place, the extension whereof Yusuf had

orally agreed with Shevel senior between 1 October 2015 and January 2016 prior to his (Shevel senior's) passing. According to Yusuf, who deposed to the answering affidavit on behalf of the first respondent, this effectively meant that the first respondent would be entitled to lease the premises from 1 April 2016 to 31 March 2021 with a further option to renew for the period 1 April 2021 to 31 March 2026 given that the lease made provision for a renewal for a further period of 5 (five) years. According to the first respondent, the oral agreement with Shevel senior was that it could continue to occupy the premises on the same terms and conditions of the written lease.

- 11.2 Given the oral agreement with Shevel senior that the first respondent could continue to occupy the property for as long as it wanted, Russel Shevel had effectively agreed on the applicant's behalf that the first respondent could occupy the premises until 31 March 2026.
 - 11.3 The first respondent alleges that there was no notice of cancellation addressed to it and its rights to occupy the property has therefore not been terminated.
 - 11.4 The lease period was extended in the year 2021 to 31 March 2026, and for as long as the first respondent has not breached the lease agreement, the applicant cannot cancel the lease which remains extant at least until 31 March 2026.
 - 11.5 Accordingly, the first respondent denies that it continues to occupy the premises in terms of a lease agreement for an indefinite period and on a month-to-month basis subject to reasonable notice.
12. The first respondent contends, to the extent that the Court finds that the notice of cancellation was properly delivered to it, that 53 days' notice was unreasonable given that it had been trading at the premises for over 17 years. It alleges that it could not,

after 17 years of trade, find a suitable, comparable and profitable location for its business in 53 days and that a “*poor and rushed decision*” could lead to the collapse of its business and have serious consequences for its staff.

Evaluation of the facts

13. Two important material common cause facts are: i) that the written lease agreement ended by effluxion of time on 31 March 2016, and ii) the first respondent did not exercise the option to renew the lease in terms of clause 25.1 thereof by giving written notice of a renewal for a five-year period.

14. Clause 25.1 provides that:

25.1 At the termination of the main period of this Lease, the LESSEE shall have the option to re-new the Lease for a further period of five years provided the LESSEE shall have given written notice of 6 (six) months prior to the termination date, of the LESSEE’S intention to exercise such option.

15. The allegation that no proper notice to vacate was given to the first respondent in that the notice was addressed to Abdi Yusuf t/a Mr Smart when Yusuf is not a sole proprietor, is without merit. The cover page of the written lease agreement itself expressly records that the first respondent is represented by Yusuf and clause 22 provides that any notice may be given by way of email, which [email] addresses the parties choose as their domicilium address. But there is no dispute that the first respondent had received notice as the application itself evidences this.

16. That the lease was not terminated because of a breach of the lease agreement is

inconsequential to the outcome of the application.

17. It is clear on the facts that the continuation of the lease agreement continued on a month-to-month basis after the written lease agreement terminated by the effluxion of time on 31 March 2016.
18. The first respondent's position is summed up in paragraph 18 of its answering affidavit. It alleges that Yusuf had orally agreed with Shevel senior that the first respondent could continue to occupy the premises on the same terms and conditions of the written lease agreement. Yusuf then alleges in the same paragraph that "*Effectively, this meant that the first respondent would be entitled to lease the premises from 1 April 2016 to 31 March 2021 with a further option to renew for the period 1 April 2021 to 31 March 2026*". In paragraph 20 he alleges that after Shevel senior's passing, he met with Russel Shevel who mentioned that the first respondent could occupy the premises for as long as it wanted and for as long as it continues to pay rent. He alleges that "*Effectively, Russel Shevel, on behalf of the applicant, permitted occupation by the first respondent beyond 31 March 2026*".
19. The first respondent's case is that the lease period was extended beyond March 2016 and again in the year 2021 "*just as it was extended in the year 2016*". The import of this allegation is that the lease period had been extended for the period 1 April 2021 to 31 March 2026 based on an alleged conversation Yusuf had with Russel Shevel which Yusuf had interpreted to mean that the lease was extended beyond March 2026. In other words, that the second extension of the lease had been orally agreed with Russel Shevel like it was purportedly done with Shevel senior prior to his passing. It is on this basis that the first respondent denies that the lease continued month-to-month as the lease was orally extended for a further 5-year period from 1 April 2021 to 31 March 2026.

20. The first respondent's opposition is without merit.
21. It is not in dispute that no written extension of the lease occurred when it terminated on 31 March 2016 and that the first respondent did not exercise the option to renew for a further 5-year period as required by the express terms of the written lease. The parties also did not conclude a further written lease agreement after this time. The fact that there may have been an oral agreement between Shevel senior and Yusuf that the first respondent may continue to occupy the premises hereafter does not detract from this position. It is difficult to advance this position further given that the first respondent had not placed anything before the Court to corroborate that it may have been anything more than this. All that the first respondent relies upon is an alleged oral agreement between Shevel senior and Yusuf. No details of the discussion are given as to the place of the conversation, whether an increased rental was agreed or whether it was agreed that it would be for 5 years as contemplated in the written lease agreement.
22. Assuming that the court were to accept the first respondent's version that the lease was orally extended between Yusuf and Shevel senior on the same terms and conditions as the written lease which endured until notice was given to vacate, then it must follow that the first respondent had to exercise its option to extend the lease in terms of the provisions of the written lease which required it to give written notice of the extension 6 months prior to the end of the lease term. Written notice would have had to be given to Russel Shevel for the second alleged 5-year extension until March 2026. On the first respondent's own version, this was not done. But even if the court were to accept the first respondent's version that the lease was extended "*just as it was extended in the year 2016*" until March 2026, then the first respondent had to at least have orally communicated this extension to Russel Shevel, which, on its own version, it also did not do. All the first respondent alleges is that Yusuf met with Russel Shevel after his father's passing (the first respondent does not say when) and that Russel Shevel

mentioned that for as long as the first respondent continues to pay rent, it could continue to occupy the premises for as long as it wanted. Although Russel Shevel admits that he and Yusuf met, they only exchanged pleasantries and did not discuss the terms of the lease.

23. The first respondent also does not rely on either an express or tacit extension of the lease, in respect of both extensions. It seeks to rely on what “*effectively*” the alleged oral exchanges with Shevel senior and Russel Shevel meant in relation to the extension of the lease.
24. Even if I were to give the first respondent the benefit of the doubt that the lease was orally extended between him and Shevel senior beyond March 2016 to March 2021 on the same terms and conditions of the written lease agreement, the lease made no provision for a second 5 - year renewal period from March 2021 until March 2026, nor can this be imported into the terms of the lease agreement. The express terms of the written lease agreement did not make provision for a second 5-year extension to March 2026. The first respondent’s version that the lease had been extended until March 2026 is not borne out by the facts and is also implausible.
25. Thus, the undisputed facts show that: i) the option to renew for a 5-year period until March 2021 was not validly exercised in terms of the provisions of the written lease; ii) even if there was an [oral] extension of the lease for 5 years to March 2021, there was no option to renew for a second 5-year period from March 2021 to March 2026, and iii) the first respondent did nothing to convey to Russel Shevel, whether in writing or otherwise, that it wanted to extend the lease for a further 5-year period to March 2026. The legal consequence of this is that the lease could only have continued month-to-month post March 2021 (giving the first respondent the benefit of the doubt

that the lease was validly extended for 5 years from March 2016 to March 2021) until it was terminated. Thus, the duration of the lease was no longer for a fixed term, at least not from April 2021, notwithstanding that it may have been implemented on the same terms and conditions as the written lease agreement. (*Airports Company South Africa Ltd v Airport Bookshops (Pty) Td t/a Exclusive Books* 2017 (3) SA 128 (SCA) at paragraph [17]). Having concluded that it was a month-to-month lease from at least 1 April 2021, it follows that the lease must be terminated on reasonable notice (ACSA at paragraphs [18] – [20]).

26. The applicant as the owner and landlord of the commercial premises was entitled in terms of the common law to terminate the lease on reasonable notice. This occurred when the applicant gave the first respondent notice to vacate on 9 September 2024.
27. The first respondent contends that 53 days' notice was unreasonable for reasons that it had occupied the premises for many years and cannot be expected to find suitable, comparable and a profitable location for its business within 53 days. It alleged that a "*poor and rushed decision could lead to the collapse of the first respondent.*" While the Court is sympathetic with the first respondent's position and its staff (almost all cases involving ejectment from commercial premises involve businesses with staff), the difficulty is that the first respondent did not make any effort to place before the court any evidence of the commercial rental market in the area where it trades or in the surrounding area to show what rental space is available, at what price, and how the location of what is available, would impact the first respondent as a business. The allegations upon which it relies are vague and unsatisfactory. It was incumbent upon the first respondent to cogently set out why it believed the notice period was unreasonable, which it failed to do.
28. Even if I were to find that 53 days' notice was unreasonable given the duration for

which the first respondent had occupied the premises, the complaint that it was afforded unreasonable notice has been overtaken by the passage of time. The notice period to vacate was also extended as the first respondent was ultimately afforded until 13 November 2024 to vacate, which amounted to more than two months' notice.

29. The first respondent continues to occupy the premises and did so still at the time when the application was heard on 16 October 2025. It has effectively had the benefit of an extended occupation of more than a year to source alternative trading premises as it knew all along that its occupation was tenuous. The complaint of unreasonable notice has clearly become moot given the considerable time which the first respondent has had which it was able to leverage while the application was being prosecuted.
30. The applicant gave the first respondent notice to vacate the premises on 9 September 2024, more than a year ago. It is entitled to the cancellation of the month-to-month lease agreement and to an ejectment order. The first respondent has no right to continue to occupy the premises.
31. Whilst there was no breach of the lease on the part of the first respondent, it elected to oppose the application based on unsupported and uncorroborated allegations of a further 5-year extension of the lease until March 2026. The allegations surrounding the unreasonableness of the notice period were bald and unsubstantiated. Through its opposition the first respondent had effectively secured for itself an additional year to continue to occupy the premises in circumstances when it had no factual or legal basis to do so. The only conclusion which the court can reasonably draw from this conduct is that the first respondent sought to benefit from an extended period of occupation and

sought to deliberately delay its ejectment in circumstances where the applicant had ultimately given it reasonable notice to vacate. This conduct warrants a punitive costs order.

32. I note that the applicant had also agreed to reduce the first respondent's rental in May 2023 when the first respondent had experienced financial difficulty and that it had also offered the first respondent financial assistance to vacate the premises.

33. The following Order is granted.

ORDER:

- (a) The lease agreement entered between the applicant and the first respondent in respect of the lease of commercial premises at Erf 1[...] Bellville, known as Shop 42(a), 42 Charl Malan Street, Bellville City Centre, Bellville ('the premises') is cancelled.
- (b) The First and Second Respondents are ordered to vacate the premises by 1 December 2025, failing which the Sheriff, or his lawfully appointed deputy, is authorised and directed to do all things necessary to eject the respondents from the aforesaid premises.
- (c) The first respondent shall pay the costs of this application on the scale as between attorney and client.

TJ GOLDEN
Acting Judge of the High Court of South Africa
Western Cape Division, Cape Town

APPEARANCES:

For the Applicant: Adv J Hamers
Instructed by: Ashersons Attorneys
(Per: A Goldschmidt)

For the Respondents: Adv M Karolia
Instructed by: Shaheed Dollie Inc
(Per: J Seedat)