

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: **033832/2022**

(1) REPORTABLE: no

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED:

DATE 15 OCTOBER 2025

SIGNATURE

In the matter between:

CENTRAL BRIDGE TRADING 435 (PTY) LTD

Applicant

and

FARIDA HAFJEJEE N.O

First Respondent

ZUNAID SALOOJEE

Second Respondent

REGISTRAR OF DEEDS

Third Respondent

MOHAMED SADEQ CASSOOJEE N.O

Fourth Respondent

MOHAMMED HAFJEJEE N.O

Fifth Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such 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 handing down is deemed to be 15 October 2025.

JUDGMENT

RETIEF J

INTRODUCTION

[1] The applicant, Central Bridge Trading 435 (Pty) Ltd [Central Bridge] seeks to declare a registered notarial deed of lease reference, K[...], it entered into with IHF Trust [Trust] [the lease] void and *ab initio* as a result of certain defects. Central Bridge contends that the defects arise *ex facie* the lease agreement itself and thus the resolution of its relief turns on a crisp issue of law [declaratory relief].

[2] The Trust opposes the declaratory relief and has launched a counter-application. The Trust in its counter-application seeks both preliminary and main relief. In respect of the preliminary relief the Trust seeks to join the remaining trustees of the Trust, Mohamed Sadeq Cassoojee N.O and Mohammed Haffejee N.O. and condonation for the late filing of the answering affidavit (and founding affidavit) in the counter-application.

[3] The thrust of the Trust's main relief is a monetary judgment, rectification of the terms of the lease to cater for the payment of certain charges and, by way of a conditional counter-application and, in the event that Central Bridge succeeds with its declaratory relief, the Trust seeks a claim of restitution, such claim to be referred to trial [counter-application].

[4] Central Bridge at the date of the hearing stated that it did not wish to oppose the preliminary issues of joinder¹ nor condonation, a contrary approach compared to its filed papers and its written argument. This Court considered the submissions and the parties desire to seek finality of the dispute which, despite the cited entities involved, related to family and an arisen feud. Both preliminary issues

¹ **Rosner v Lydia Swanepoel Trust** 1998 (2) SA 123 (W) at 126H-127C.

were granted. For the sake of convenience, reference to all the trustees now joined or, reference to the Trust, includes reference to the first, fourth and fifth respondents accordingly.

[5] Returning to Central Bridge's application. Central Bridge first attack related to the first respondent, Farida Haffejee's [Farida] procedural justiciability as the identified trustee to bring the counter-application and in consequence, the authority of the Trust's duly appointed attorneys to launch the counter-application. In this way Central Bridge raised a procedural barrier, *in limine*, at the date of the hearing arguing that if successful such finding will be a barrier for the Court to entertain the merits of the counter-application. This point was raised at the hearing of the application and although the Trust's Counsel confirmed being caught unaware, he argued the point.

[6] The second respondent, Zunaid Saloojee [Mr Saloojee] filed a notice to abide together with an affidavit. The purpose of the affidavit was to answer certain serious allegations made by Central Bridge against him in their founding affidavit regarding the execution and performance of his professional duties as the attorney acting on the instruction of Mr Salim Haffejee [Salim] of Central Bridge. Reference to such professional duties concern, *inter alia*, the registration of the lease, the subject matter of the declaratory relief.

[7] The papers filed are voluminous and are littered with evidence concerning two brothers, Salim and his deceased brother Ismail Ebrahim Haffejee [the deceased]. Both, over decades were embroiled in a number of business transactions together. Salim at times through Central Bridge and the deceased through the Trust. At times, a distinction between them and the entities through which they transacted are unclear on the papers. However, what is clear is that both brothers assisted each other financially in support of their business transactions. The financial extent of such assistance to each other, the terms of repayment to each other, the number of business transaction with any particularity and any agreed set-off is not entirely clear. However, the terms of the lease, ex

facie the document are clear as set out in K[...]. It is nonetheless prudent, at this stage, to place the parties, their relationship and, the lease into context.

SALIENT BACKGROUND FACTS, DISCUSSION AND EACH PARTIES CASE

[8] Salim contends that Central Bridge is the registered owner of two properties situated in Rustenburg. Erf 3[...], W[...] E[...], Extension 38 Township, Registration Division J.Q., North West Province, measuring 45997 hectares held by certificate of registered title T[...] [erf 3[...]] and of Erf 3[...], W[...] E[...], Extension 38 Township, Registration Division J.Q., North West Province, measuring 7383 hectares held by deed of transfer T[...] [erf 3[...]] [collectively “the property”].

[9] Salim explains that Central Bridge intended to commercially develop the property and, *inter alia*, caused a shopping complex to be built on it. At that time, the deceased assisted Salim financially toward the development of the property and wished to occupy and develop a portion of the property which he and his family could operate a business. It is common cause that since 2008 the Trust operated and still operates a Fastfit Tyre Fitment centre [Fastfit] business on a portion of the property [the premises]. The difficulty with the arrangement between the brothers was that no formal structured written agreement, at the material time, was concluded between them setting out the exact terms, their respective financial contributions and, for that matter how any set-off relating to other business transactions would operate.

[10] Salim however, refers to a verbal initial agreement between them. In short, all the foreseeable uncertainties which could arise from such a loose initial verbal agreement between brothers triggered the necessity and the purpose to formalise the arrangement. Before the lease was registered to cater for such formalisation, an attempt to register a usufruct against the property in favour of the Trust was initiated. The lease was duly concluded on the 20 April 2020, 12 (twelve) years after the Trust took occupation and used the premises to conduct its FastFit business.

[11] The deceased untimely passed away on the 13 October 2022. Salim through Central Bridge within 8 (eight) months of his brother's passing launched the present application seeking to declare this lease void for want, *inter alia*, of the description of a thing (the leased premises) and a fixed rental.²

[12] The trustees contend that there was no debate about the premises and where it was situated and therefore argue that on the objective facts it can hardly be suggested that there was no "thing" and that both Salim and the deceased at the time of the conclusion of the lease, knew where the Fastfit was and operated. In consequence they argue on the objective facts³ the premises is identifiable and is described in the lease by its current use.

[13] The trustees argue further that the occupation of the premises by the Trust pre-existed the conclusion of the lease and was preceded by other agreements between the brothers. The intention of the lease was to formalise security of tenure of the Trust. The lease need not be in writing nor registered to be binding *inter partes*.

[14] In short, Central Bridge seeks to disturb the Trust's right of occupation and use of the premises as regulated by the lease, which it already enjoyed before the conclusion of the lease. The counter-application flowing from such disturbance now comes into focus.

[15] Whether in focus or not, Central Bridge's *in limine* point is to be adjudicated first in that its outcome will determine the Court's necessity to deal with the merits of the counter-application.

² **Mlungisi Ndodana Sontsele v 140 Main Street Properties CC and Another** (328/2019) ZASSCA85; **Southernport Developments (Pty) Ltd v Transnet Ltd** [2005] a All SA 16 (SCA) at par 6.

³ **Du Plessis N.O and Another v Goldco Motor & Cycle Suppliers (Pty) Ltd** 2009 (6) SA 617 (SCA); **Mpumalanga Tourism and Parks Agency and Another v Barberton Mines (Pty) Ltd** 2017 (5) SA 62 (SCA)

Is Farida, who approached the Court on behalf of the Trust the proper trustee to present the counter-application for adjudication, and did she possess the authority to instruct attorneys to launch the counter-application on behalf of the Trust?

[16] This appears essentially to be a standing and an authority point. Such issue Central Bridge already raised by way of a formal rule 7 notice. Of procedural significance, Shaheed Dollie Incorporated Attorneys on the 22 October 2022 caused a notice to oppose the declaratory relief to be served and filed on behalf of the Trust duly represented by Farida.

[17] According to the filed evidence, the Trust's answering affidavit dated 31 May 2023 stands as its founding affidavit in the counter-application. The notice of motion in the counter-application too refers to the answering affidavit of Farida together with the annexures to be used in support of the counter-relief. Central Bridge argues that from the founding papers a party's standing must be clear.⁴ This Court agrees with this contention.

[18] Flowing from that, Farida in paragraph 1 of the founding papers states that: *"I am an adult female and co-trustee of IFT Trust. I oppose this application (own emphasis) in my aforesaid capacity and confirm that I am duly authorised to instruct (own emphasis) the IHF Trust's attorneys, Shaheed Dollie Incorporated Attorneys."*

[19] On the same day, 31 May 2023, the trustees of the IHF Trust, Farida, together with the fourth and fifth respondent resolved by way of a written resolution that the Trust was authorised to oppose the declaratory relief and that 'Freda Haffejee' was authorised on behalf of the Trust to do all such things and to sign all such documents as may be necessary to oppose the declaratory relief. Furthermore, that any steps taken by 'Freda Haffejee' in contemplation thereof was to be ratified [resolution]. 'Freda', a typographical error as the date of birth of 'Freda' on the resolution accords with that of Farida on the Trust deed itself and no issue was taken.

⁴ **Mars Incorporated v Candy World (Pty) Ltd** 1991 (1) SA 567 (A) at 575.

[20] Central Bridge accepted the content of the resolution but contends that such does not support Farida's standing and authority in respect of the counter-application as, the terms of the resolution limit her capacity to opposing the declaratory relief and instructing Shaheed Dollie Incorporated Attorneys on the Trust's behalf.

[21] Central Bridge by way of a rule 7 notice raised the ambit of the argument *in limine* in detail in paragraph 7.1 of the served rule notice dated 26 June 2023. The Trust had since then to consider and correctly address the issue as raised.

[22] The resolution was provided to Central Bridge in answer to the filed rule 7 notice and such resolution was provide by Shaheed Dollie Incorporated under cover letter of the 11 August 2023. Other than the resolution the trustees tendered no further evidence to cure the point raised. The resolution does not cure the complaint that Farida was not identified to approach the Court on behalf of the Trust in respect of the counter-application nor that she was authorised to instruct Shaheed Dollie Incorporated to launch the counter proceedings.

[23] In consequence the point raised must succeed and the necessity for this Court to deal with the merits of the counter-application has not been established.

[24] This then leaves the need to consider the declaratory relief and the basis upon which Central Bridge elected to bring it.

DECLARATORY RELIEF

[25] Central Bridge repeatedly states that the declaratory relief it seeks turns on a crisp point of law and rejects the notion that this Court should have regard to any background facts. It contends that this Court should only have regard to the facts *ex facie* the lease itself. The weight of any facts, including those emanating from the lease itself cannot be viewed in a vacuum. One must surely consider certain facts to the extent that it enables a Court to test the veracity and weight of facts

relied on when applying the law and when considering the basis relied on by Central Bridge for its declaratory relief.

[26] To commence with the basis upon Central Bridge in its founding papers brings the declaratory relief. Central Bridge contends that it possesses an interest in existing rights and obligations which it amplifies as the following:

“68. *Central Bridge has an interest in the legal status of an agreement to which it is a party, which lease agreement constitutes a significant incursion on immovable property owned by Central Bridge (own emphasis) and is self-evidently extremely prejudiced to it.*

69. *Central Bridge also has an interest in the duties owed to it by the Trust under the lease agreement.”*

[27] Without commenting on the accuracy of the basis, this Court accepts that Central Bridge relies on an interest in existing right it possesses flowing from its ownership in the property which it alleges together with any duties, is being incurred by the legal status of the lease.

[28] On the facts in respect of Central Bridge’s rights to the property, this Court begins to consider who Central Bridge says it is. Central Bridge is cited as a company with limited liability. This too appears from the lease which further provides Central Bridge’s registered number being 2016/186399/07.

[29] Salim deposed to Central Bridge’s founding affidavit and states under oath that he is a director of the Central Bridge and that he was the brother of the deceased, who was a trustee of the Trust at the material time. Flowing from these salient facts, one considers what Salim stated in the founding papers in respect of the property. Salim stated that “In or around 2008 (own emphasis), *Central Bridge purchased and developed a commercial property located in Rustenburg, over both erven 3[...] and 3[...] (own emphasis), W[...] E[...], Extension 38 Township, Registration Division J.Q., North West Province (“the property”).*” At this juncture it is relevant to point out that none of the title deeds being T[...] and T[...] which are

ostensibly associated with Central Bridge's title to both erf 3[...] and 3[...] respectively are attached to Central Bridge's papers in support of any allegation in respect of its right of title to the erven.

[30] Be that as it may, if one accepts the statement as a fact, Salim's allegation in about 2008 is illogical. Central Bridge, as cited in the founding papers could not have purchased erf 3[,], as described in its papers in 2008. This is because on the crisp facts, Central Bridge was not incorporated 'in or around 2008' but, only in 2016 according to its registered number. This discrepancy could be explained, but it is not. This disturbs the "*in or around 2008*" purchase timeline of at least erf 3[...] as described and relied on by Central Bridge. Furthermore, according to Central Bridge, erf 3[...] is held under title T[...]. Yet again, in 2015 Central Bridge was not incorporated. Again, this discrepancy could be explained, but it is not, nor is the title deed or an endorsed copy thereof provided.

[31] Therefore applying the facts provided by Central Bridge, at this stage already, it has failed to demonstrate that it indeed purchased erf 3[...] as described and at the material time in 2008, and, it furthermore has failed to demonstrate that it, as described, holds the registered title in erf 3[...] as pleaded. Central Bridge's interest in existing rights premised on the ownership of erf 3[...] as relied not yet established.

[32] It is common cause that the lease was signed by both Salim and the deceased on the 20 April 2020 and that the lease was duly registered by the third respondent, the Registrar of Deeds on the 26 November 2021 under reference K[...]. Central Bridge attached a copy of K[...] to its papers. Relying only on the terms of the lease, in particular the whole agreement clause at 15.3, no variation of the lease is of any force or effect unless reduced to writing and signed by both parties. Central Bridge does not allege that a variation took place nor that one was effected. However, the lease describes the property which Central Bridge contends it owns as being erf 3[...] held by T[...] and erf 3[...] held by T[...]). Erf 3[...] as relied on by Central Bridge is not described in the lease.

[33] Reference to Erf 3[...] at paragraph 1.1.6 of the lease has not been deleted suggesting an effected variation in terms of clause 15.3 and no variation is pleaded. Although erf 3[...] is described as being held under title T[...], the Court repeats that the title deed T[...] did not form part of the evidence.

[34] From the copy of K[...] a handwritten inscription above reference to “3[...]” at paragraph 1.1.6 of the lease, is noted. The uninitialed handwritten and unexplained inscription is “3[...].” No record of compliance of clause 15.3 has been addressed. On motion, without evidence to the contrary and applying the terms of lease reference to erf 3[...] held by T[...], and as described stands. This Court therefore cannot reconcile with Central Bridge’s allegation that it purchased erf 3[...] in and around 2008 to bolster its basis and allegation that “-which lease agreement constitutes a significant incursion on immovable property owned by Central Bridge-”.

[35] Farida in her answer with reference to the property at paragraph 10 of the affidavit relies on the description of the property now known as erf 3[...] and 3[...]. Salim denies the content of paragraph 10 in reply but does not elaborate to give the denial context with regard to the property description.

[36] Salim furthermore when dealing with the evidence of Mr Saloojee in Central Bridge’s reply, as raised by Farida in the Trust’s answering affidavit, states at paragraph 80:

“80. The issue of the instructions given to Zunaid Saloojee and his recordal of them are irrelevant to the crux of this application. The issue of the validity of the lease agreement can be determined ex facie the terms of the agreement and require no evidence (own emphasis).

[37] This is not correct in the present circumstances as already reasoned and Central Bridge’s insistence that the background facts are not relevant are untenable. Regarding Mr Saloojee’s evidence, he confirms that on the 13

December 2018, Salim as the representative of Central Bridge approached him. Bearing in mind for the moment, that, in 2018 Central Bridge had already been incorporated as a company with limited liability. Salim's instructions to Mr Saloojee concerned the premises which was occupied by the Trust.

[38] Salim conveyed to Mr Saloojee that he, through Central Bridge, wished to ensure that the Trust could occupy and use the premises without the disturbance of any third party in the event that the property Central Bridge owned might be sold. In other words, Salim wished to secure his brother's right of tenure.

[39] To achieve this objective Salim instructed Mr Saloojee to register a usufruct⁵ in favour of the Trust. To this end, Salim provided Mr Saloojee with a copy of a notarial deed of cession of usufruct which had already been prepared by Central Bridge's previous attorneys, Mr Nasser A Tayob. A copy of the deed of cession of usufruct and a sketch plan was attached to Mr Saloojee's affidavit. The deed of cession of usufruct was marked annexure "ZS5" to his affidavit [ZS5] and the sketch plan was marked annexure "ZS7" [ZS7]. Salim admitted the intended purpose, at the time, of ZS5 and the location of the premises depicted on and ZS7.

[40] In ZS5 is a copy of a signed document headed "*Notarial Deed of Cession of Usufruct*", Salim was cited as the director with authority for Central Bridge Trading 435 Close Corporation, registration number 2006/13920/23 [CC]. The CC is not the cited entity in this application. Central Bridge does not explain how the CC factually fits into the chronology of facts on the papers. No explanation was elicited by the admitted facts relating to the usufruct.

[41] Furthermore, Salim in reply on behalf of Central Bridge confirmed at paragraph 32 of the replying affidavit that:

"32. *The portion in the usufruct is the premises which I intended to allow Ishmail to use (the deceased-own emphasis), but I note that this*

⁵ A usufruct is a limited real right that provides temporary enjoyment of property. In other words, the holder of the usufruct will enjoy the right to use and the enjoyment of the property while the holder holds the bare dominium.

diagram (ZS7-own emphasis) was not attached to the lease agreement, nor was there any description of the identified premises in the lease agreement. The fact that the premises was identified in a separate and distinct legal document (own emphasis) does not cure the invalidity of the lease agreement, which does not contain a description of the premises to be leased, and is thus void ab initio....”

[42] Flowing from paragraph 32 above, the distinct legal document, referred to by both Mr Saloojee and Salim is ZS5. “*The portion in the usufruct is the premises which I intended to allow Ishmail to use-*.” In context the premises described in ZS5 is portion 42, a portion of portion 9 of Erf 3[...], W[...] [Erf 3[...]] and the description of erf 3[...], erf 3[...], nor erf 3[...] appear as the admitted portion. The *lis* between erf 3[...] and the remaining erven relied nor how they may have been previously described as to enable a semblance of context was not provided in reply by Central Bridge. Salim’s admission in reply rings hollow and compounds the confusion in support of the declaratory relief.

[43] Furthermore, ZS5 refers to a diagram of the premises over which the usufruct was to be registered. In context, that would be erf 3[...]. Reference to such diagram is called annexure “A”. Annexure “A” is not attached to ZS5. Salim however in paragraph 32 above, admits that the portion is the premises and also refers to the diagram as being annexure “A.”

[44] Mr Saloojee confirms under oath at paragraph 36.1 that the sketch plan referred to in ZS5 is annexure “A” attached to his affidavit marked ZS7.

“36.1 *The area occupied by the Trust has been occupied by the Trust from day one of the opening of the shopping centre. No other tenant has occupied this area except for the Trust, who are still in occupation and possession of the premises. The area occupied by the Trust was well-known to the parties. On application for registration of the usufruct a sketch plan was attached to the application, and I attached the sketch plan marked annexure*

“ZS7”. The area occupied by the Trust is not in dispute between the parties.”

[45] In context, the mystery solved and ZS7 is annexure “A”. Annexure “A” albeit ZS7 is a sketch plan of erf 3[...] on which a shopping mall complex is depicted. Specific demarcated occupied areas are depicted. Area 01 is a Midas, 02 is Fitment Centre, 03 are vehicle show rooms, 04 is a warehouse, 05 is a filling station and 06 as a large warehouse. Erf 3[...] is not clearly depicted on ZS7 nor did Central Bridge deal with that aspect in its papers. It is however common cause that 02 is Fitment Centre on ZS7 and is the premises the Trust occupies. 02 Fitness Centre is depicted on erf 3[...]. Erf 3[...] nor Erf 3[...] are clear from ZS7 nor explained.

[46] When ZS5 was to be registered, Mr Saloojee explained that the Registrar of Deeds required the original title deed/s of the property, a transfer duty receipt and an approved SG diagram. The ZS5 was not registered. Central Bridge was not in possession of the original title deeds. Mr Saloojee stated that he initiated the process to obtain endorsed copies thereof. However, no endorsed copies of the relevant title deeds obtained by him and referred to him to assist were attached to Mr Saloojees’s affidavit.

[47] Mr Saloojee then confirmed that he went back to the drawing board in an attempt to fulfil the purpose of Salim’s initial instructions. In so doing it was proposed and agreed that Central Bridge would conclude a long-term lease over the premises. The lease was signed by both Salim and the deceased on the 20 April 2020. According to K[...] it was registered on the 26 November 2021. Mr Saloojee does not attach a copy of the notarial lease agreement he drafted and referred to in his affidavit.

[48] Having regard to the veracity of all the facts relied on by Central Bridge in support of the basis it relied on in support of the declaratory relief, must fail.

[49] Without satisfying that it possessed an interest in an existing right, as pleaded, the necessity for this Court to exercise a discretion to grant the declaratory relief is not triggered. In any event, even if it was triggered, too many inconsistencies in Central Bridge's own founding papers have arisen on motion to support the exercise of any discretion which may arise in favour of Central Bridge. Whether there is a plausible explanation for such highlighted inconsistencies or not remains unknown. Therefore, Central Bridge's founding papers have failed to establish the basis upon which it seeks to sustain its declaratory relief, *ex facie* the lease itself. There is therefore no need at this stage to consider the defects as raised.

COSTS

[50] It is trite that costs are in the discretion of the Court. The phrase which comes to mind when considering how to exercise the discretion having regard to all the facts and circumstances is, 'a sword cuts both ways.' This is apt because, the effect of the outcome of this application illustrates that both Central Bridge and the Trust were successful and both were unsuccessful. Having regard to all the facts, the acrimonious tug of war between a family, this Court in exercising its discretion, holds that each party should bear their own legal costs.

[51] The following order:

1. The Fourth and Fifth Respondent are hereby joined to the application under case number 033832/2022.
2. The First, Fourth and Fifth Respondent are granted condonation for the late filing of the answering affidavit and counter-application.
3. The Applicant's application is dismissed.
4. The First, Fourth and Fifth Respondents' counter-application is dismissed.

5. Each party is to bear their own costs.

L.A. RETIEF

Judge of the High Court

Gauteng Division

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