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

Case number: 2024/025753

In the matter between:

CENTPRET PROPERTIES (PTY) LIMITED

Applicant

and

MASILO CHARLES MAAKE

Respondent

Neutral citation:

Coram: E Botha AJ

Heard: 11 September 2025

Decided: 21 October 2025

Summary:

ORDER

1. The respondent's request that the case be struck from the roll is refused with attorney-and-client costs.
2. The respondent's application for recusal is dismissed with costs.
3. The respondent's application for striking out is dismissed with attorney-and-client costs.
4. The respondent's application for postponement is dismissed.
5. The applicant's application for eviction is granted as follows:
 - 5.1. The respondent and all those occupying through or under the respondent are hereby evicted from the property situated at Erf 3[...] Pretoria, also known as Office 0[...], Office 0[...], Office 0[...], and Strongroom S0[...], Protea Towers, 2[...] P[...] K[...] Street, Pretoria, 0002 ('the property').
 - 5.2. In the event of the respondent and all those occupying through or under the respondent failing or refusing to vacate the property by 5 November 2025, the Sheriff of the High Court and, if necessary, his deputy is authorised and required to carry out the eviction, with the assistance of the South African Police Services, if necessary.
6. The respondent is liable for the attorney-and-client costs of the application.
7. The applicant is liable for its own costs in respect of 8 September 2025.

JUDGMENT

E BOTHA AJ:

Introduction

[1] The applicant, Centpret Properties (Pty) Limited, seeks an order evicting the respondent from commercial premises. The applicant is the owner of the premises which include a number of offices and a strongroom in a building in Pretoria (“*the premises*”).¹ The respondent, Mr Masilo Charles Maake, is an attorney who occupies the premises in terms of a written lease that was concluded on 1 September 2021 (“*the lease*”).

[2] By March of 2024 the respondent had fallen into arrears. The applicant sued the respondent in the Magistrate’s Court for the amount of R87,956.94. It also brought this application. The applicant’s case is that the respondent’s failure to pay constitutes a material breach of the terms of the lease and that, despite it giving him due notice to rectify the breach, he failed to do so. This, the applicant says, led to a termination of the lease, entitling it to an order for eviction.

[3] The respondent raised a number of defences without contesting the allegation that he is in arrears. In his answering affidavit, he raised four points *in limine*, including lack of authority on the part of the applicant’s deponent to the founding affidavit; *lis pendens*; lack of jurisdiction; and improper cancellation. The respondent also raised some other objections to the case proceeding at the hearing. For this reason, the litigation history has to be set out in some detail.

The litigation history

[4] The application was issued on 7 March 2024 and served on the respondent personally by the Sheriff on 2 May 2024. Service of the application took place at the premises, being the respondent’s chosen *domicilium citandi et executandi*. The respondent did not initially oppose the application. The applicant applied to the registrar for a hearing on the unopposed motion roll.

[5] A little more than a month after service of the application, on 3 June 2024, the respondent’s firm, Masilo Maake Attorneys, gave notice of intention to oppose. The

¹ In the papers, the premises are sometimes referred to as “*the property*” and sometimes as “*the premises*”. Nothing turns on this and for the sake of uniformity it is will be referred to in this judgment as “*the premises*”.

respondent did not file an answering affidavit by the due date.² On 1 July 2024 the applicant set the case down for hearing on the unopposed motion roll of 28 August 2024. The case could not proceed because the respondent belatedly filed his answering affidavit on the day before the hearing. The answering affidavit was not accompanied by an application for condonation.

[6] On 1 October 2024 the applicant's practice note, heads of argument, list of authorities, and chronology were filed. On 4 December 2024, the applicant applied for a hearing on the opposed motion roll. The applicant uploaded a compliance statement in terms of the Practice Directives to *CourtOnline*, but it was not uploaded to *Caselines*. On 7 January 2025, the respondent was given notice by the applicant that the case had been set down on the opposed motion roll for 12 May 2025.

[7] On 8 May 2025 Her Ladyship Ms Justice Molopa-Sethosa J³ directed that the case would be heard on 13 May 2025. The respondent, however, had not filed a practice note, heads of argument, a list of authorities, or a chronology. He had also not participated in the compiling of a joint minute. Molopa-Sethosa J postponed the case *sine die*, ordered the respondent to comply within ten days, and ordered him to pay attorney-and-client costs.

[8] On 27 May 2025 the respondent filed heads of argument and a list of authorities. None of the other documents required by the order were filed. He did not file a practice note and he did not participate in compiling a joint practice note. On 26 June 2025 the applicant served the notice of set down on the respondent, setting the case down for hearing on the opposed motion roll of 8 September 2025.

[9] On 21 August 2025 the applicant filed a second practice note dated 29 May 2025. In the practice note, it was *inter alia* recorded that the respondent had been ordered to provide input in respect of the joint practice note and that he had failed to do so. It was also recorded that the joint practice note was forwarded to the respondent on 29 May 2025, and that no input was provided.

² It appears from the first notice of set down that the notice of intention to oppose was filed on 4 June 2024.

³ As she was at the time. At the time of the hearing she was the Acting Deputy Judge President of this court.

[10] On 4 September 2025 the respondent served a notice of application to strike out on the applicant. The notice was sent by e-mail at 21h49 in the evening, after the respondent had signed the notice on 2 September and the affidavit on 3 September.

[11] On 5 September 2025 the court issued directions in respect of the hearing of all opposed matters, including directing that this case was to be heard at 10h00 on 11 September 2025. Later the same day, the court's Registrar received an e-mail from the applicant's attorneys. The applicant's attorneys indicated that there was a problem with the applicant's advocate appearing on 11 September, and it was requested that the case be heard on another day of the week.⁴ The respondent was included in the applicant's e-mail. The court informed the Registrar by e-mail to '[p]lease inform the parties' representatives that they must appear at 10h00 on Monday morning for arrangements to be made for the hearing of the matter'. The court's registrar wrote an e-mail to both parties and, without realising it at the time, only sent it to the applicant's attorneys.

[12] Only the applicant's legal representatives appeared on 8 September. Under circumstances where the court had already directed that the case would be heard on 11 September, and where the respondent could not be heard in respect of any alternative arrangements for a hearing later in the week, the date of the hearing could not change. The court ordered that the case would be heard on 11 September as initially directed; that notice of the order had to be dispatched to the respondent; and that the costs be reserved.

[13] On 11 September, the respondent appeared on his own behalf and Mr Kruger appeared on behalf of the applicant with the applicant's attorney.

The request that the case be struck from the roll

[14] At the commencement of the hearing, the respondent took the point that the applicant had not filed a compliance statement in terms of the Paragraph 14 of the Practice Directives and moved for the court to strike the case from the roll. *Prima*

⁴ Not Mr. Kruger who represented Centpret at the hearing on 11 September 2025.

facie, and in the circumstances, this was not the type of deficiency that should prevent a case that is otherwise ripe for hearing from proceeding.

[15] The authorities cited⁵ or alluded to⁶ by the respondent were not authority for his proposition. Being unable to address the court on some of the authority to which he was alluding,⁷ the case was stood down for a second time to provide the respondent an opportunity to find it.⁸ He was unable to do so. The respondent was also unable to explain how and why he would have been prejudiced by any failure by the applicant to file a compliance statement. He had even more difficulty explaining his position with regard to prejudice in view of the fact that he had not complied with the Practice Directives, the Uniform Rules of Court, or the order of Molopa-Sethosa J.

[16] In *Arendsnnes*⁹ it was held that courts are not bound inflexibly by rules of procedure and that they have a discretion, which must be exercised judicially on a consideration of the facts of each case. In *Registrar of Insurance*¹⁰ it was held that the court had to consider whether any of the parties would be prejudiced and that it should not allow 'the rules of procedure to tyrannise [it] where an important matter has to be thrashed out fully.' The facts before the court are that the respondent's non-compliance caused delays in the hearing of the case. There is no evidence that any non-compliance by the applicant caused any delay in the case being heard, or that the respondent had been prejudiced in any way.

[17] The purpose of the Practice Directives is to ensure the effective and expeditious resolution of cases. Those that the respondent relied on are there so the office of the Registrar does not have to trawl through entire court files before enrolling a case. As is the case with all rules of procedure, compliance with the Practice Directives must be taken seriously, and nothing in this judgment should be

⁵ *Izwelethu Cemforce CC v Dr Ruth Segomotsi Mompati District Municipality* (M509/2022) [2023] ZANWHC 192 (4 September 2023).

⁶ *National Director of Public Prosecutions* [2018] ZASCA 86; 2018 (2) SACR 176 (SCA) and *National Director of Public Prosecutions (Ex Parte Application)* [2021] ZASCA 142; 2022 (1) SACR 1 (SCA).

⁷ *Ibid.*

⁸ The previous time being at the commencement of the matter, when he had no notes of where documents were on Caselines and no way of accessing Caselines. After fifteen minutes he had a laptop with access to Caselines.

⁹ *Arendsnnes Sweefspoor CC v Botha* 2013 (5) SA 399 (SCA) at para 18..

¹⁰ *Registrar of Insurance v Johannesburg Insurance Co Ltd* (1) 1962 (4) SA 546 (W) at 546H.

taken to derogate from it. It will and should happen in some cases that a court has to refuse to hear a case due to non-compliance. In *Nathram*,¹¹ Davis J reminded that an abuse occurs 'when an attempt is made to use for ulterior purposes machinery designed for the better administration of justice'.

[18] In moving for an order striking the case from the roll, the respondent tried to employ mechanisms provided for in the Practice Directives for a purpose for which they were not designed or intended. If this were allowed, the effect would not be benign. It would inevitably lead to further delays, unnecessary costs, and a waste of valuable court resources. This would prejudice the applicant and, more than that, it would be detrimental to the effective administration of justice, which is the very objective that the Practice Directives seeks to achieve.

[19] *Nathram* and the authorities on which Davis J relied calls upon this court to exercise its inherent power and to comply with its duty to prevent an abuse of its processes. The events set out thus far, including the argument in respect of this point and instances where the case was stood down for the respondent's benefit, took the hearing beyond 14h00 in the afternoon. Most of the day had been spent on a meritless point that merely sought to prevent the case from being heard. One of the ways in which a court can show its displeasure with a party's conduct in litigation is by awarding attorney-and-client costs.¹² In all the circumstances, the court must dismiss the point with attorney-and-client costs.

The application for recusal

[20] It was during the respondent's argument in reply on the previous point, after the court had asked him about compliance with the order of Molopa-Sethosa J, that the respondent first mentioned recusal. He expressed the view that he should not have been expected by the court to answer questions in respect of the order of Molopa-Sethosa J, and that the court appeared predisposed not to strike the case from the roll. The court offered the respondent time to consider whether he wanted to proceed with the argument on his point, or whether he wanted to move for the court's

¹¹ *Nathram v Road Accident Fund* (46876/2020) [2024] ZAGPPHC 440 (26 April 2024) para 12-15.

¹² *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) para 223.

recusal. The respondent accepted the invitation, and the case was stood down for the third time for the respondent's benefit. Upon resumption, the respondent indicated that he would continue his argument on the previous point and that, depending on what the court did, he would then decide what he would do about the application for recusal. After finishing his argument, the respondent was requested to address the court on the remainder of the points he had before a decision would be made. He refused.

[21] The respondent handed up from the bar a notice of recusal application. The application was signed by the respondent on 10 September 2025 - the day before the case was heard. There were two grounds advanced for the recusal. The first was the Registrar's e-mail to the parties and the circumstances that led the order that was made on 8 September. The second was the court's alleged predisposition regarding the previous point. This included the fact that the court used the term 'unclean hands' in the context of the respondent refusing to address the court on a question whether he had complied with Molopa-Sethosa J's order. The respondent addressed the court on the grounds, referring to *SARFU II*,¹³ *SACCAWU*,¹⁴ and *Khan*¹⁵. Thereafter, Mr Kruger addressed the court, arguing against the recusal and submitting that the facts showed a mind that remained open to persuasion. The respondent replied. Having considered the application, the grounds therefor, the various authorities and the arguments raised by the parties, the court gave an *ex tempore* judgment on the issue of recusal, dismissing it with costs. What follows is the essence of the reasons.

[22] The authorities, including that on which the respondent relies emphasises the application of the test for recusal on the correct facts, and that one has to bear in mind all the circumstances. The test is only satisfied if a reasonable, objective, and informed person would, on the correct facts, reasonably apprehend that the judge has not or will not bring an impartial mind to bear.¹⁶

¹³ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 9 ("SARFU II").

¹⁴ *SACCAWU v Irvin & Johnson Ltd (Seafoods Division Fish Processing)* 2000 (3) SA 705 (CC).

¹⁵ *M.M.V v Khan and Others* (M 183/2021) [2021] ZANWHC 84 (3 December 2021).

¹⁶ *Bernert v Absa Bank Ltd* (CCT 37/10) [2010] ZACC 28 at para 33 and 34.

[23] In respect of the appearance on 8 September, the correct facts were that the court had directed both parties to attend court, but that the Registrar only sent the e-mail to one party. This was clearly a *bona fide* mistake on the part of the Registrar, that neither the Registrar nor the court was aware of until it was raised in the application for recusal. In *SARFU II*,¹⁷ a case on which the respondent strongly relied, the Constitutional Court held that the usual procedure is to first seek a meeting with the judge in the presence of his opponent to give the judge an opportunity to respond. Had the respondent done what was expected of him, the error would have become immediately apparent, and any feelings he harboured as a result of the accidental exclusion from the e-mail would likely have been alleviated.

[24] The order granted on 8 September was not made to benefit the applicant, but to uphold *audi alteram partem*. Inferences such as those drawn by the respondent, that by reserving the costs the court had a negative disposition of the respondent, are not reasonable inferences. On the facts, a reasonable, objective and informed person would not reasonably apprehend that the court would not bring an impartial mind to bear.

[25] If the respondent had strongly and genuinely felt anxious about the court's impartiality, he would have informed the court of this at the commencement of the hearing on 11 September. He had the facts at his disposal, and he had prepared and signed the notice of motion in the application for recusal the previous day. In any event, in *Bernert*,¹⁸ the Constitutional Court held that mere apprehensiveness on the part of a litigant that a judge will be biased - even a strongly and honestly felt anxiety - is not enough.

[26] The same applies to the respondent's application for recusal based on the court's questions or statements during the argument on the first point. In *Take & Save Trading*¹⁹ Harms JA said '[a] Judge "is not a mere umpire to answer the question 'How's that?'" Lord Denning once said. Fairness of court proceedings requires of the trier to be actively involved in the management of the trial, to control

¹⁷ *Supra* at para 50.

¹⁸ *Supra*.

¹⁹ *Take & Save Trading CC v Standard Bank of South Africa Limited* 2004 (4) SA 1 (SCA) at 4F-G.

the proceedings, to ensure that public and private resources are not wasted, to point out when evidence is irrelevant, and to refuse to listen to irrelevant evidence. A supine approach towards litigation by judicial officers is not justifiable either in terms of the fair trial requirement or in the context of resources.’ Here, the relevant facts include that the court differed with the respondent on a number of his submissions, in some cases strongly; the court questioned the respondent on the relevance, or accuracy of authorities he relied on, and questioned why he was unable to fully address the court on authorities on which he relied; the court questioned the respondent to address it on his compliance with the order of *Molopa-Sethosa J*; the court did not accept an attorney avoiding valid questions; and the court even used the term *unclean hands* to describe the action of asking for a striking from the roll in circumstances where there had been non-compliance with an order of court. This should not be considered in a vacuum, but in the circumstances of the lack of merit of the point the respondent took, as well as the respondent’s general conduct in the litigation. The facts also include that the court gave the respondent more than one opportunity to prepare himself for arguments he could not raise effectively due to not being prepared, either by standing down or allowing time for him to search for authorities and information that had not been filed. This is not conduct that a reasonable person would associate with a mind that was not open to persuasion. None of this can be described as injudicious.²⁰ None of the relevant facts would cause a reasonable, objective and informed person to reasonably apprehend that the court would not bring an impartial mind to bear.

[27] Before concluding on this point, it is necessary to address another aspect of the application for recusal. The respondent came to court armed with an application for recusal, yet he did not move it. After mentioning it the first time, he decided to wait and see what the court did, before moving it. In *Bernert*, the Constitutional Court held that conduct such as that of the respondent, waiting to see what the outcome is before pursuing his complaint of bias, is inconsistent with a reasonable apprehension of bias.²¹

²⁰ *Take & Save Trading supra* at para 17 and 18.

²¹ *Supra* at para 35 and 71.

[28] By the time the application of recusal had been dismissed, it was already after 15h00. All of this, the surrounding circumstances, the manner in which the application for recusal was pursued, and the timing thereof, also demonstrates that the respondent sought to employ the application for recusal for a purpose that it was not designed or intended: a delay in the hearing of the matter. It had the same purpose as asking for the case to be struck. Even when the stratagem failed, it still led to delays, unnecessary costs and a waste of valuable court resources.

The application for postponement

[29] In *SACCAWU*²² it was held that where an application for recusal is dismissed, the court may require the party seeking the recusal to deal with the merits. The respondent was asked to proceed with his next point. The respondent then informed the court that he had to leave for an appointment with a doctor. It was only when the court asked whether he was applying for a postponement before he decided to move for one.

[30] The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted unless a court is satisfied that it is in the interests of justice to do so. In this respect the applicant must ordinarily show that there is good cause for the postponement. Whether a postponement will be granted lies within the discretion of the court. In exercising that discretion, a court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed, and the broader public interest.²³

[31] The respondent did not give a full and satisfactory explanation for the postponement. he respondent merely stated that he had a medical appointment and

²² *Supra*.

²³ *Lekolwane and Another v Minister of Justice and Constitutional Development* 2007 (3) BCLR 280 (CC) para 17.

claimed a postponement as if it were a right. Even after indicating that he sought a postponement, no details were provided.

[32] Although it is conceivable that, for reasons of privacy, a party may not wish to disclose the particulars of his doctor or of his medical condition or symptoms, he will not necessarily be absolved from doing so. In any event, the respondent did not rely on his privacy as a reason not to give a full and satisfactory explanation. In the absence of reasons of privacy being raised, there was no reason why the respondent could not disclose the name of the doctor, or at least the type of doctor, or at least whether it was a general practitioner or a specialist. There was no explanation as to why he needed to see a doctor, when the need to see one arose, or when the appointment was made. No diary entry was shown. No information was offered as to the urgency of the consultation, the severity of the condition, or any difficulty seeing the same doctor later on the same day, or the next day, or why a later consultation would not suffice. There was no explanation as to why the appointment was made for a day on which he knew the matter was going to be heard. As an attorney, he must have known that all the points that he intended to take, together with his argument on the merits of the application would take the whole day, excluding allowance being made for the applicant's argument. There was no argument in respect of any prejudice the respondent would suffer if the postponement was not granted, or how any prejudice to the applicant may be avoided. There was no tender for wasted costs.

[33] In all the circumstances, a postponement would not be in the interest of justice. The application for postponement was accordingly refused.

The application to strike out

[34] At the commencement of the hearing, before raising his first point, the respondent referred to an application to strike out. He was, however, unable to address the court on it. It was then that the court gave the respondent his first opportunity of standing down to prepare himself to argue. It was only after 15h00 that he eventually moved the application he first referred to just after 10h00 in the morning.

[35] In terms of Rule 6(15) the court may on application strike out from an affidavit any matter which is scandalous, vexatious or irrelevant.²⁴ Whatever the grounds may be, the court may not grant the application unless it is satisfied that the applicant will be prejudiced if the application is not granted.²⁵ Despite mentioning other grounds, the respondent only attempted to make out a case in respect of what he says is new matter.²⁶

[36] The respondent is correct in submitting that the applicant must make out its case in the founding affidavit. The court must first determine if a *prima facie* case is made out and, if not, to decide whether it is open to be condoned.²⁷ For the reasons that follow later, it is found that the applicant did make out a *prima facie* case for the eviction.²⁸ The material in the replying affidavit that the respondent asks the court to strike out was not made to introduce necessary allegations that had been omitted from the founding affidavit. They were further corroborating facts necessitated by the approach taken by the respondent in the answering affidavit. Under such circumstances it would be wrong for the court to strike them out.²⁹

[37] The prejudice raised by the respondent was the alleged lack of an 'opportunity to answer' the allegations in the replying affidavit. The respondent's affidavit in the striking out application and his reliance on Rule 6(5)(d)(iii) therein shows that the respondent never had the intention of answering the allegations in the founding affidavit in the first place. The respondent did not attempt to make out a case explaining why he was unable to answer effectively at the time. He filed an answering affidavit but elected not to provide a full answer to the founding affidavit.³⁰ If he had any intention of answering to the allegations in the replying affidavit or

²⁴ *Titty's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd* 1974 (4) SA 362 (T) at 368G.

²⁵ *Helen Suzman Foundation v President of the Republic of South Africa* 2015 (2) SA 1 (CC) at paragraph 27.

²⁶ *Titty's Bar supra* at 368H.

²⁷ *Airports Company of South Africa (SOC) Ltd v Tswekgotso Trading Enterprise CC* [2022] ZAGPJHC 410 at para 9.

²⁸ *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20C – H.

²⁹ *eBotswana (Pty) Ltd v Sentech (Pty) Ltd* 2013 (6) SA 327 (GSJ) at 336G–H.

³⁰ *Bader v Weston* 1967 (1) SA 134 (C) at 136H–137A and *Gore v Amalgamated Mining Holdings* 1985 (1) SA 294 (C) at 295H–I.

supplement his answer, as he now claims, he had more than a year to do so. He used none of the opportunities he had to place his version before the court.

[38] In the words of Kirk-Cohen J in *Bowman*,³¹ the application to strike-out 'has been raised only as a tactical weapon and not because of any prejudice suffered.' In the circumstances it is found that the respondent has failed to establish any ground to strike out any allegation from the replying affidavit and that, in any event, there is an absence of prejudice. This application was another meritless point that merely sought to prevent the case from being heard in full. In all the circumstances, the court must dismiss the application for striking out with attorney-and-client costs.

The refusal to address the court

[39] After the court had ruled against the respondent on the applications for recusal and postponement, and after hearing him on the motions to strike the case from the roll and to strike allegations from the replying affidavit, he refused to address the court on the remainder of the case.

[40] Despite the court ruling that the matter had to proceed and that arguments had to be finalised, the respondent unjustifiably refused to address the court, saying that it was too late in the day and that he held the view that the court had no power to sit beyond normal court hours. It must be borne in mind that it being late in the day without the parties having had an opportunity to address the court on the merits was due to the respondent's approach to the litigation and throughout the day of the hearing.

[41] Despite the court's repeated invitations and emphasis on the respondent's right to be heard, he chose not to argue his case. Rather, he chose to take considerable time to question the court's motives, the court's powers, and to make threats against the court, such as to lay complaints with the Judge President and the Judicial Services Commission. Having spent some time on this, he proceeded to walk out of court.

³¹ At 336E-H.

[42] With the respondent having chosen not to participate in the proceedings any longer, the court had to decide whether to adjourn the matter or proceed to hear Mr Kruger on behalf of the applicant in the respondent's absence. This was not a decision that could be, or was, taken lightly. Section 34 of the Constitution guarantees the respondent the right to have the dispute between him and the applicant resolved in accordance with the law in a fair hearing. The applicant has the same right. Section 173 of the Constitution provides that the High Court has the inherent power to protect and regulate its own process, taking into account the interests of justice.³² In the words of Davis J,³³ it is a constitutionally authorised power of a High Court to regulate its own processes, and it is an incidence of its inherent power to prevent the abuse of its processes.

[43] The regulation of process and the prevention of an abuse thereof go hand in hand. A court cannot allow itself to be tyrannised by rules and procedures when a case has to be thrashed out.³⁴ Rules and procedures, as well as the right to be heard and to have a dispute decided, cannot be allowed to operate solely in favour of one party to the detriment of the other, particularly if the former is obstructive. Determining what is in the interests of justice requires weighing both parties' constitutional rights to be heard and to have their dispute decided by the court. It also requires weighing the court's constitutional obligation to regulate its process in a manner that allows for adjudication while preventing abuse. In a case such as this, one side of the scale holds the respondent's right to be heard and to have the dispute decided, and the other side holds the applicant's corresponding right. where abuse by one party threatens the other's right to be heard and to have the dispute decided, the court must place the weight of that abuse on the latter's side of the scale. In all the circumstances of this case, the scales of justice tilt in favour of the applicant's right to be heard and have the case decided. To the extent that the respondent's rights are affected by the decision, the affect is reasonable and justifiable in the circumstances. The respondent had more than ample opportunity to address the court on all the issues he considered important, and where he failed to

³² *South African Broadcasting Corporation v National Director of Public Prosecutions* 2007 (1) SA 523 (CC) at paras [35] and [36].

³³ *Nathram supra*.

³⁴ *Registrar of Insurance v Johannesburg Insurance Co Ltd* (1) 1962 (4) SA 546 (W) at 546H.

make use of those opportunities, he has only himself to blame. In the specific circumstances of this case, the court would be remiss in its constitutional duties if it were to hold itself bound by what is considered normal court hours. Allowing the case to be part-heard and postponed in such circumstances would be tantamount to permitting the continued perpetration of an abuse.³⁵

[44] The court decided that the hearing had to proceed and that it would hear the applicant in the absence of the respondent. Despite the respondent's decision to leave without further addressing the court, the court deals with the merits by reference to each of the points raised in the answering affidavit.

Authority to institute proceedings

[45] Reduced to its essence, the respondent's first point is that the applicant must have authorised Ms Smith, the deponent to the founding affidavit, to institute the application. Ms Smith is no more than a witness with knowledge of the relevant facts. Her affidavit makes that clear and the respondent did not challenge the basis of her knowledge. It is not Ms Smith, but the attorney acting on behalf of the applicant that requires authorisation to institute and prosecute the action.³⁶ The correct manner of challenging the attorney's authority is to file a notice in terms of Uniform Rule 7.³⁷

[46] The respondent did not place the applicant's attorney's authorisation in dispute in the answering affidavit. He did not file the required notice. It was also disingenuous of him to follow that approach and then, when the applicant met his challenge in the replying affidavit, to apply for the allegations to be struck out. In doing so, he caused a needless burgeoning of the papers which is what the introduction of Rule 7 sought to avoid.³⁸ The point is without merit and does not provide the respondent with a defence.

Lis pendens

³⁵ *Venmop 275 (Pty) Ltd v Cleverlad Projects (Pty) Ltd* 2016 (1) SA 78 (GJ) at 85D-F.

³⁶ *Ganes v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624G-H and *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705D-H.

³⁷ *Ibid.*

³⁸ *Ibid.*

[47] The respondent's point of *lis pendens* is based on the pending action in the Magistrate's Court. The authority on which the respondent relies is correct,³⁹ but his conclusion is not, as it is not based on the facts. Though he accepts the *onus* of proof, he placed no evidence before the court on which the decision could be made. For reasons that will become clearer, he did not take the court into his confidence by including the pleadings in the Magistrate's Court action. By doing so, he forced the applicant to do so in its replying affidavit. In view of this, it was also insincere of him to apply for the relevant allegations and the attached pleadings to be struck out from the replying affidavit.

[48] Even on his own version, the action is for payment and this application is for eviction. The relief sought is not the same. The *Williams*⁴⁰ case on which the respondent relies, is not authority for the proposition that a party claiming payment of arrear rental in one action cannot seek eviction in another application. The point is without merit and does not provide the respondent with a defence.

Jurisdiction

[49] There is no doubt that on the evidence in the founding affidavit, the court has jurisdiction in the usual sense. The respondent, however, argues that the applicant first had to follow an informal process before launching the application. Clause 13.2 does not, as the respondent says under oath, provide that the dispute *shall* be resolved informally. Nor does it provide for anything that would oust the court's jurisdiction. It provides for a party to make an election as to whether it will approach the court for relief or whether it would have a dispute referred to one of the processes provided for in the lease.

[50] A second string to the respondent's jurisdiction bow is his criticism of the election to approach the High Court rather than the Magistrate's Court for eviction. Following the Constitutional Court's decision in *SA Human Rights Commission*,⁴¹

³⁹ *Hassan and Another v Berrange* 2013 (6) SA 329 (SCA).

⁴⁰ *Williams v Shub* 1976 (4) SA 567 (C).

⁴¹ *SA Human Rights Commission v Standard Bank of SA Ltd* 2023 (3) SA 36 (CC).

such an argument cannot be seriously entertained. The court has jurisdiction and the applicant was free to elect to approach the court for the relief it seeks. The respondent's jurisdiction point accordingly fails.

Termination of the lease

[51] Despite the allegations of fact in the founding affidavit being common cause, the respondent argues that the applicant did not lawfully terminate the lease. For a terminating party to succeed it must prove the terms of the lease,⁴² and it must show that it complied strictly with the peremptory provisions of a lease in respect of termination.⁴³ The lease provides that where the tenant concludes the lease in his capacity as a natural person, the landlord is entitled to terminate the lease if the tenant commits a material breach and fails to rectify it within twenty business days of receiving written notice to that effect.⁴⁴

[52] The lease provides that a failure to pay amounts due to the applicant constitutes a material breach. It is common cause that the respondent refused to pay the amount in arrears to the applicant. The applicant alleges to have given the respondent notice of his default by e-mail on 3 November 2023, and it gave notice of termination by e-mail on 6 December 2023. The notices and evidence of them being forwarded to the respondent by e-mail are attached to the founding affidavit. On the face of it, the requirement to give twenty business days written notice was satisfied. However, two possible obstacles remain for the applicant.

[53] The first possible obstacle is the question whether the termination was valid under the circumstances where the respondent was given more than twenty business days before the termination, but the notices refer to seven days. It is peremptory that written notice must be given. It is also peremptory that the lease cannot be terminated until after the effluxion of twenty business days. The clause is

⁴² *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20C – H.

⁴³ *Hano Trading CC v JR 209 Inv (Pty) Ltd* 2013 (1) SA 161 (SCA) para 31.

⁴⁴ In the case of a tenant that is not a natural person that commits a material breach no notice is necessary. It is not clear why the lease would differentiate in this manner, but it is probably modelled after Section 14(2)(c) of the *Consumer Protection Act*, 68 of 2008. The section would not necessarily have been applicable to the lease on the facts of the case. Whatever the intention behind it may have been, the parties made this a term of the agreement between them.

not prescriptive as to what the content of the written notice must be, other than it must be 'to such effect'. The law requires that the notice must 'clear and unequivocal'.⁴⁵ The reference to seven days did not render the notices unclear or equivocal. The notices leave no doubt as to the fact that the respondent had committed a material breach in failing to pay the amount; that the breach could be remedied by paying the amount; that a failure to remedy the breach would lead to termination of the lease; and, when he failed to make payment after twenty business days, that the lease was terminated. The notices were therefor valid.

[54] The second possible obstacle is whether the notices came to the attention of the respondent. According to the founding affidavit the notices were forwarded to the respondent by e-mail. Both notices were sent to the respondent's e-mail address indicated in the delivery receipts. The clause in the lease dealing with notice is not a model of clarity. It is clear that written notice is required, but it is not clear how it must be delivered. Although it refers to delivery by hand and delivery by prepaid registered post, the context and the words employed there appear to be more concerned with the date on which notices would be deemed to be delivered in respect of each of those ways of delivery. However, it also provides that 'a written notice or communication actually received by the addressee shall be adequate written notice, notwithstanding that such notice was not delivered in accordance with this clause.' From this, it is clear that delivery by means other than by hand or registered post is envisaged. Interpreting it to mean that delivery must take place by hand or prepaid registered post would be insensible, lead to unbusinesslike results, and will undermine its purpose.⁴⁶ What is material for purpose of giving written notice in terms of the lease is that the notice comes to the attention of the tenant and that purpose is fulfilled if it can be shown that notice by e-mail was 'actually received'. Such a construction is consistent with the result of a unitary exercise of interpretation required by *Endumeni*,⁴⁷ taking into consideration the language used, understood in the context in which it is used, and having regard to the purpose of the provision.

⁴⁵ *Putco Ltd v TV & Radio Guarantee Co (Pty) Ltd & Other Related Cases* 1985 (4) SA 809 (A)

⁴⁶ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) *Endumeni supra* at para 18.

⁴⁷ para 18.

[55] The e-mail address that the notices were sent to is the one that is set out in the lease, together with the respondent's other personal particulars. Statements were required to be delivered to the same e-mail address. The electronic proof of delivery attached to the founding affidavit both refer to the e-mail address and confirm '[d]elivery to these recipients or groups is complete, but no delivery notification was sent by the destination server'. This is evidence that the notices were delivered which, at the very least, required an answer from the respondent. If the respondent had, for some reason, not received one or both notices despite them being sent to him - and despite evidence of their delivery - those would be facts within his particular knowledge. The respondent did not dispute having received the notices, nor did he provide any version in respect thereof. Under circumstances the court must take a robust view, and hold that the notices came to the respondent's attention.⁴⁸

[56] The same allegations concerning the notice of default and termination were made in the Magistrate's Court action. The same documents were included. To this, the respondent pleaded '[s]ave to admit that the [applicant] forwarded the notice of default and termination of the lease agreement, the [respondent] was for the longest time in the premises of the [applicant] committed to the rental payments. The [respondent] vehemently expresses [his] intention to settle the rental arrears and remain in leased premises'. The respondent admitted that the notices were forwarded. He did not plead that the termination was invalid. As is the case in this application, he did not deny receiving the notices. It must be held that he did.

[57] Mr Kruger argued that even if the termination on the basis of material breach were found invalid, there was another basis on which the lease must be regarded as terminated. After 31 August 2023 the lease was automatically renewed on a month-to-month basis, subject to either party giving thirty written days' notice of its intention to terminate. The argument is that, even if it were to be accepted in the respondent's favour that the termination was not valid, all that was required was that the respondent was given thirty days written notice of the termination. The notice to

⁴⁸ *Wightman t/a JW Construction (Pty) Ltd v Headfour (Pty) Ltd and another* 2008 (3) SA 371 (SCA) para 13.

terminate the lease must still be clear and unequivocal,⁴⁹ but it does not require the two step - process provided for in the cancellation clause. The question is how such an argument could succeed if it is premised on the termination being invalid - for instance, on the basis that due notice had not been given in accordance with the cancellation clause. Paragraph 8 of the founding affidavit reads that '[d]espite demand, the Respondent has refused to pay the arrear amount and the Applicant hereby terminates the Lease Agreement'. The notice of motion, founding affidavit and annexures were served on the respondent at his *domicilium citandi et executandi*, the premises, on 2 May 2024. The respondent entered an appearance to oppose the application and filed an answering affidavit. It has to be accepted that he received notice of the termination in this manner. The application in its entirety is an unconditional, clear, and unequivocal notice of termination of the lease. The respondent could not have been in any doubt as to the fact that he was being told to vacate. He had much more than the required thirty days to do so. Despite this, he decided to hold over. In any event, the respondent did not dispute the contents of paragraph 8 of the founding affidavit. Mr Kruger's reasoning is sound.

[58] For all these reasons, the court finds that the lease has been terminated and that the respondent has no right to remain in occupation.

Reasonable period

[59] The applicant moves for an order that, if it becomes necessary, the Sheriff be authorised and required to carry out the eviction with the assistance of the South African Police Services. No period was stipulated in the notice of motion, but the applicant's draft order provides that the eviction must take place 'forthwith'.

[60] Mr Kruger argued that such an order is justified in the circumstances where the respondent has held over for the period that he has. The argument has some merit. However, in the circumstances of the case, the relative uncertainty of the use of the word 'forthwith', and where the court is requested to authorise the Sheriff to carry out the eviction if necessary, the court is not willing to grant such an order.

⁴⁹ *Putco supra*.

[61] A period of approximately two weeks will be sufficient time for the respondent to vacate. For the sake of certainty, setting a date will provide clarity as to when the Sheriff may intervene, if necessary.

Conclusion

[62] In *Wightman*⁵⁰ it was remarked that ‘the respondents adopted ... an attitude ... of placing an obstacle in the path of the appellant at every step of the way irrespective of whether there were valid reasons for doing so. Whatever the tactical value of that approach, the effect was to water the force of the general denial down to a state of insipidity into which reality, *bona fides* and the genuineness of the denial all disappear’. Unfortunately, the same has to be said of the respondent’s approach to this case.

[63] For all the reasons set out above, every point the respondent raised, every application he brought, and each of his defences to the application must fail. The applicant has made out a case for an eviction.

Costs

[64] The costs should follow the result. The applicant asks that the respondent pays the attorney-and-client costs of the application. The lease provides that, in the event that a party must enforce any of its rights in terms thereof, the defaulting party shall pay the other party’s attorney-and-client costs.

[65] In *Public Protector v South African Reserve Bank*,⁵¹ the majority of the Constitutional Court said with reference to *Orr v Schoeman*⁵² that ‘[m]ore than 100 years ago, Innes CJ stated the principle that costs on an attorney and client scale are awarded when a court wishes to mark its disapproval of the conduct of a litigant.

⁵⁰ *Supra* at para 22.

⁵¹ 2019 (6) SA 253 (CC) para 223.

⁵² *Orr v Solomon* 1907 TS 281.

Since then, this principle has been endorsed and applied in a long line of cases and remains applicable.’

[66] The lease agreement, the conduct of the respondent in the litigation, and all the circumstances set out in this judgment requires that the court exercises its discretion in favour of ordering the respondent to pay the attorney-and-client costs of the application.

[67] The applicant’s costs in respect of the appearance on 8 September 2025 were not caused by the respondent. It must pay its own costs for that day.

Order

The following order is made:

1. The respondent’s request that the case be struck from the roll is refused with attorney-and-client costs.
2. The respondent’s application for recusal is dismissed with costs.
3. The respondent’s application for striking out is dismissed with attorney-and-client costs.
4. The respondent’s application for postponement is dismissed.
5. The applicant’s application for eviction is granted as follows:
 - 5.1. The respondent and all those occupying through or under the respondent are hereby evicted from the property situated at Erf 3[...] Pretoria, also known as Office 0[...], Office 0[...], Office 0[...], and Strongroom S[...], Protea Towers, 2[...] P[...] K[...] Street, Pretoria, 0002 (‘the property’).
 - 5.2. In the event of the respondent and all those occupying through or under the respondent failing or refusing to vacate the property by 5 November 2025, the Sheriff of the High Court and, if necessary, his deputy is authorised and required to carry out the eviction, with the assistance of the South African Police Services, if necessary.

6. The respondent is liable for the attorney-and-client costs of the application.
7. The applicant is liable for its own costs in respect of 8 September 2025.

E BOTHA
ACTING JUDGE OF THE HIGH COURT

For the applicant: A Kruger
on instruction of Raath Law Inc

For the respondent: M C Maake (Attorney) (In person)
Masilo Maake Attorneys