

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case Number: 2024/100997

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
7 November 2025

In the matter between:

LIBERTY GROUP LIMITED

First Applicant

PARETO LIMITED

Second Applicant

TWO DEGREES PROPERTIES (PTY) LIMITED
Applicant

Third

and

NEW AFRICA CAPITAL GROUP (PTY) LIMITED
(Reg 2019/201360/07)

Respondent

This Judgment is handed down electronically by circulation to the applicant's legal representatives and the respondents by email, publication on Case Lines. The date for the handing down is deemed 7 November 2025.

JUDGMENT

Mudau, J

Introduction

[1] This is an application for the eviction of the respondent from commercial premises known as Sandton City Office Tower, situated at the corner of R[...]

Road and [...] Street, Sandton (“the property”). The application is founded on the applicants’ case that they lawfully cancelled a written lease agreement due to the respondent’s breach for non-payment of rental and associated charges. The respondent opposes the application.

Background facts

- [2] The following background facts are not in serious dispute. The applicants are the registered co-owners of the property. The respondent was in occupation of the property pursuant to a written Lease Agreement concluded between the parties on 8 June 2023. The lease was for a fixed term, commencing on 1 June 2023 and terminating on 30 June 2026.
- [3] The provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ do not apply, as this is a commercial eviction. The deponent to the founding affidavit details several material terms of the lease, including base monthly rent starting at R17,357.60 (excluding VAT) and escalating annually. The respondent was liable for monthly contributions to rates, taxes, levies (R5,072.76), a City Improvement District Levy, and charges for a standby power system.
- [4] The agreement made provision for payment terms as follows. All amounts were payable monthly in advance, without deduction, by the first day of each month. Breach and Cancellation Clause (Clause 21.1) is crucial. It states that if the rent or any other amount is not paid on its due date, and the respondent fails to remedy this within 3 days of receiving a notice, the applicants are entitled to cancel the lease and evict the respondent. The respondent’s Breach: the core of the applicants’ case is that the respondent fell into arrears with its rental and other payments as required by the lease. The respondent has not made a single payment towards the rental and associated charges since November 2023.
- [5] As a result of the breach, the applicants previously issued a summons in the Randburg Magistrates’ Court (Case No. 1340/2024) in January 2024. In that summons, they cancelled the lease agreement and sought ejectment. They

¹ Act 19 of 1998.

have since withdrawn the ejectment claim from the lower court to pursue this application in the High Court. The current application serves as a further notice to vacate.

- [6] The respondent's answering affidavit is deposed by Daniel Besong, a director of the respondent (New Africa Capital Group (Pty) Ltd), who states he is authorised to make this affidavit on the company's behalf. The respondent formally applies for condonation for the late filing of this answering affidavit. The reasons for the delay are stated as: the applicants' failure to respond to a prior notice, and an agreed filing date that fell on a public holiday (December 16, 2024), leading to filing on 17 December 2024. The respondent argues that the applicants will not be prejudiced by this delay because the matter was not yet scheduled for a hearing, giving the applicants ample time to prepare. The respondent contends that the applicants were still able to file a full replying affidavit.
- [7] The respondent contends it has "excellent prospects of success" in defending the main application and refers to the contents of the entire affidavit to support this claim. Granting condonation merely allows the respondent to state its case and does not determine the application's outcome.

Grounds for Opposition

- [8] The core of the defence is that the applicants' cancellation of the lease agreement was unlawful. The respondent denies being in arrears on rental payments at the time the lease was cancelled. It argues that the applicants failed to provide specific details or evidence (like a statement of account) to prove the alleged arrears, including the amounts and the periods for which they were due. The respondent states that since it was not in breach of the agreement, the applicants had no right to cancel it. It concludes that the application should be dismissed on this basis alone.
- [9] In reply, the applicants point out that the respondent does not have a *bona fide* reason for its failure to file its Answering Affidavit timeously and has severely prejudiced the applicants by remaining in unlawful occupation of the premises all the while it fails to vacate, or at the very least make

payment of its arrears which are accumulating monthly, most especially the charges considered as out of pocket disbursements, such as utility consumption.

- [10] The applicants also point out that, at the time the replying affidavit was deposed to in January 2025, the respondent was indebted to the applicants in the amount of R632 911.54 (Six Hundred and Thirty-Two Thousand Nine Hundred and Eleven Rand and Fifty-Four Cents). A copy of the statement indicating such indebtedness is attached and marked “RA4”.

Current status and prejudice

- [11] The applicants argue that because the lease has been cancelled, the respondent's continued occupation is unlawful. They state that they are suffering financial prejudice as they derive no income from the property, are liable for municipal charges for the occupied space, and are unable to re-let or otherwise deal with the premises.

- [12] The matter is before me by way of motion proceedings. The legal principles applicable to resolving disputes of fact in such proceedings are trite. As articulated by the court in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*.²

“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed... When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer... if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.”

- [13] The respondent's defence consists of nothing more than a bare denial that it was “owing” at the time of cancellation. It has provided no evidence to substantiate this denial. It has not, for instance, provided proof of payment, bank statements, or a reconciling statement of its own to challenge the amounts detailed in the applicants' annexures.

² 2008 (3) SA 371 (SCA) at [13].

[14] It is a fundamental principle of our law that he who alleges must prove. In the context of a defence of payment, the onus rests on the debtor (the respondent) to allege and prove that payment was made.³ The Respondent has done neither. Its defence remains an unsubstantiated and bald assertion.

[15] Considering the detailed evidence presented by the applicants, which stands uncontroverted by any credible factual rebuttal, I find that the respondent's defence is not a genuine, bona fide dispute of fact. It is a patently unmeritorious denial raised for the purpose of delaying the eviction.

[16] Consequently, I find on a balance of probabilities that the respondent was in arrears in the amount alleged as at January 2024. This constituted a breach of the Lease Agreement. The applicants were therefore entitled, in terms of clause 21.1 of the Lease Agreement, to cancel the lease. The cancellation was lawful. Following the lawful cancellation of the lease, the respondent's continued occupation of the property is unlawful. The applicants, as owners, are entitled to an order for the eviction of the respondent.

Costs

[17] Clause 29 of the Lease Agreement expressly provides that the respondent is liable for legal costs incurred in enforcing the agreement on the scale as between attorney and client. As held by this court in *Vuselela Security SPV (RF) Pty Ltd v Lizoxola Properties Proprietary Limited and Another*,⁴ while a contractual costs clause does not bind the Court's discretion, a court will generally give effect to such an agreement unless there is a reason to depart from it. No such reason exists in this case.

[18] Furthermore, the respondent's conduct in these proceedings — including the delivery of procedural notices that were not pursued and the late filing of its answering affidavit — supports a punitive costs order. The applicants have been forced to litigate to enforce their clear rights against a defence with no merit.

Order

³ See *Pillay v Krishna and Another* 1946 AD 946.

⁴ 2023 JDR 3649 (GJ) at p2.

[19] In the result, the following order is granted:

- a. The respondent and all those holding under it are ordered to vacate the property known as Erf 2[...], Sandhurst Ext 3, City of Johannesburg and Erf 6[...], Sandown Ext 4, City of Johannesburg, situate at Sandton City Office Tower, Corner R[...] Road and [...] Street, Sandton, within five (5) calendar days from the date of service of this order.
- b. If the respondent fails to comply with paragraph (a) above, the Sheriff of this Court, or his duly appointed deputy, is authorised and directed to evict the respondent from the property.
- c. The respondent is ordered to pay the costs of this application on the scale as between attorney and client.

MUDAU J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicants: Adv A. Kohler
Instructed by: Hadar Inc Attorneys

For the Respondent: No appearance

Instructed by: Besong Attorneys Inc

Date of hearing: 4 November 2025

Date of judgment: 7 November 2025

