

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

Case Number: 2024-121804

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

In the matter between:

**REDEFINE PROPERTIES LIMITED**

Applicant

and

**BUNTU FOODS (PTY) LIMITED  
(REGISTRATION NUMBER: 2017/4795)**

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 17 November 2025.

Contract – Lease agreement – Application – eviction of lessee- Order of eviction granted

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**JUDGMENT**

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**Mudau, J**

*Introduction*

[1] This is an application for the eviction of the respondent from commercial premises described as Warehouse – XX00001 and Warehouse – XX00001A, M[...] P[...], 6[...] O[...] P[...] Road, H[...] H[...], Midrand ("the Premises"). The application is opposed.

*Background*

- [2] The applicant is the registered owner of the Premises, a fact established by the deeds search annexed to the Founding Affidavit. As such, the applicant has the necessary *locus standi* to institute these proceedings. It is common cause that the parties were in a landlord-tenant relationship governed by a written lease agreement dated 11 November 2021, as amended by an addendum dated 23 March 2022 and a Heads of Agreement dated 5 February 2024 (collectively, "the Lease Agreement").
- [3] The Heads of Agreement of 5 February 2024 constituted a settlement of prior litigation between the parties. In terms of this settlement, the applicant granted significant concessions to the respondent, including a rent-free period and a structured payment plan for arrears. The applicant successfully obtained an eviction order against the respondent in a prior case (2023/048977). The parties later entered into a Heads of Agreement, referred to above, to settle the dispute which required the respondent to comply with the lease terms and make payments. It is the applicant's case that the respondent, again, breached its obligations flowing from the Heads of Agreement. The applicant consequently cancelled that agreement.
- [4] The Heads of Agreement made provision, inter alia, that the leased premises would be used for "Light Beneficiation, storage, and distribution of dry good food products". The rental and other amounts payable by the tenant to the landlord as set out in item 9 of the schedule (read with clauses 5 and 6 of the Standard Terms and Conditions of Lease) shall be payable monthly, in advance, on or before the first day of each calendar month (Clause 4.1). It also provides that all payments to be made in terms of the lease by the tenant to the landlord "shall be made free of exchange, without deduction, set-off or demand at the landlord's address or any amended address given in terms of clause 26 of these Standard Terms and Conditions of Lease" (Clause 4.2).
- [5] In terms of clause 7.2, it provides that the landlord does not warrant that the leased premises are fit for the purposes for which they are let or that the tenant will be granted a license in respect of the leased premises for the conduct of the business of the tenant or that any license will be renewed. There shall be no liability on the landlord to do any work or make any alteration or repairs to the leased premises to comply with the requirements of any relevant authority.

- [6] The Heads of Agreement makes provision that, upon the respondent taking occupation of the premises for whatever purpose or on the commencement date, whichever was the earlier, the respondent would be liable for and would on demand pay (Clause 23.1), any charges arising out of the use of electricity, water and gas in respect of the premises, as well as any charges arising out of all electricity, water and gas consumed by the respondent in or on the premises, whether directly or indirectly, which would include water and electricity consumed by any air-conditioning unit/s serving the premises (Clause 23.1.1); as well as the basic and service charges in respect of the services referred to in clause 23.1.1 of the agreement (Clause 23.1.2). Importantly, as per clause 27, it provides that, while the tenant remains in occupation of the leased premises and irrespective of any dispute between the parties, including, but not restricted to, a dispute as to the landlord's right to cancel the lease, the tenant shall continue to pay all amounts due to the landlord in terms of this lease on the due dates.
- [7] The Heads of Agreement provides that the respondent would pay 40% (forty percent) of the outstanding rental arrears for the period 1 January 2023 to 31 December 2023 ("the arrears") to the applicant (clause 1.1). The arrears would be in 12 (twelve) equal instalments commencing on 1 September 2024 (as per clause 1.2 of the Heads of Agreement):
- [8] The respondent has, by its own admission or by the undisputed evidence of the applicant, failed to meet its payment obligations under the Lease Agreement as indicated below. The respondent is in arrears with its rental and other charges. The respondent is indebted to the applicant in the amount of R11,212,685.62 for arrears from rental and associated charges. The respondent has not made any payments since March 2023.
- [9] The Lease Agreement provides that a failure to pay any amount on its due date constitutes a material breach. The applicant complied with the contractual and common law requirements for cancellation in the following ways:
- a. It dispatched a written notice of breach via email on 13 September 2024, demanding that the respondent remedy the breach within 72 hours.
  - b. The respondent failed to remedy the breach.

- c. The applicant then dispatched a written notice of cancellation via email on 4 October 2024.

- [10] The respondent filed an affidavit that is a detailed rebuttal of the applicant's claims, arguing that the respondent should not be evicted because the applicant failed to provide premises fit for its intended purpose, thereby depriving the respondent of beneficial occupation. The respondent contends that the applicant's failure to perform its obligations, particularly regarding repairs, means the respondent's rental obligations are not yet due. In sum, the respondent opposes the eviction because, on the respondent's version, the applicant did not have the right to cancel the Lease Agreement. According to the respondent, the applicant failed to provide the respondent with beneficial occupation of the Premises due to numerous defects and a failure to perform necessary repairs as required by the Lease Agreement.
- [11] The respondent avers that, from the outset (Dec 2021/Jan 2022), the Premises were handed over in a poor state. The respondent notified the applicant of critical defects, including holes in the roof and walls, dampness on the north wall and general dirtiness and disrepair. These issues caused the respondent to fail a critical audit by its major client, Nestlé, on 6 January 2022 and as a result preventing it from commencing production. Although the applicant acknowledged the defects and undertook to fix them, the repairs were never fully completed, as evidenced by an Entry Inspection Form from 14 February 2022 and subsequent photos and videos. On 20 November 2022, a poorly installed fire sprinkler pipe burst, flooding the premises with stagnant, pathogen-filled water. This event contaminated the facility and rendered it unusable for food production.
- [12] According to the respondent, the applicant's purported cancellation of the lease in October 2024 is invalid because the respondent was not in breach but the applicant was. The respondent denies that its occupation is unlawful, asserting it remains in possession under the valid Lease Agreement and Heads of Agreement. In addition to that, the applicant's demand for payment is incorrect, as it includes charges (like interest, legal fees, and refuse charges) that are not payable under the terms of the Heads of Agreement. The core argument is that the applicant cannot claim rent or seek eviction when its own fundamental breaches of contract have made the Premises

unusable for the respondent's business, thus suspending the respondent's obligation to pay.

- [13] In its replying affidavit, the applicant points out that the respondent's failure to pay rent was not justified by any outstanding repairs. The applicant argues that the respondent's reliance on the *exceptio non adimpleti contractus* (defence of non-performance) is misplaced. The lease agreement explicitly requires rent to be paid without deduction or set-off. The respondent's obligation to pay rent was not contingent on the applicant completing repairs. The applicant highlights that if the respondent was truly deprived of beneficial occupation, Clause 21.1 of the Lease Agreement would apply, leading to cancellation of the lease, not suspension of rent.

### *Analysis*

- [14] The replying affidavit systematically dismantles the respondent's defences, emphasising, inter alia, the respondent's failure to pay rent despite continued occupation, and the applicant's compliance with repair obligations. The premises, however, according to the respondent as indicated above, are not fit for the respondent's purposes because there are still "pathogens" caused by the flooding in the premises, and these "pathogens" have not been removed. This has resulted in the respondent being unable to conduct its business. The absurdity of this contention is that the respondent continues to have full use and enjoyment of the premises, which it refuses to give up, as the applicant pointed out. The Lease Agreement specifically and expressly excludes any warranty that the premises are fit for the purposes for which they are let. As indicated, the Lease Agreement specifically contemplates that rental is payable in advance, and must be made free of exchange, without deduction, set-off, or demand.
- [15] The Supreme Court of Appeal in *Tudor Hotel Brasserie & Bar (Pty) Ltd v Hence Trade 15 (Pty) Ltd*<sup>1</sup> interpreted such a clause to have the effect of altering the usual position, that in the absence of contractual provisions, rent is payable in arrear at the end of each period in the case of a periodical lease, after the lessor has fulfilled his obligation. The lease agreement, therefore, altered the reciprocal nature of the obligations of the lessor and the lessee. The obligation of the lessee to make payment

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<sup>1</sup> [2017] ZASCA 111 at paras 11 and 14.

of the rent was no longer reciprocal to the obligation of the lessor to grant beneficial occupation of the premises to the lessee.

[16] This court held in *Balvest CC t/a Fourways Garden Shopping Centre v Rainbow Pepper Trading 76 (Pty) Ltd*<sup>2</sup> that if you are in occupation of the premises and use them, whether it has defects or not, then you must pay rental. In light of such a clause, the defence of *exceptio non adimpleti contractus* is accordingly not available to the respondent.<sup>3</sup>

### Conclusion

[17] I am satisfied that the Lease Agreement was validly cancelled by the applicant with effect from 4 October 2024. Following the cancellation of the Lease Agreement, the respondent no longer has any lawful right to occupy the Premises. Its continued occupation is therefore unlawful. In my view, the respondent has raised no defence that discloses a bona fide triable issue. Its continued occupation is without legal foundation. The Premises are commercial in nature. Accordingly, the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 do not apply to this matter.

### Order

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

1. The respondent, and all other persons occupying through or under the respondent, are evicted from the premises situated at Warehouse – XX00001 and Warehouse – XX00001A, M[...] P[...], 6[...] O[...] P[...] Road, H[...] H[...], M[...] ("the Premises").
2. The respondent and all such persons are directed to vacate the Premises within five (5) calendar days of the date of service of this order.
3. In the event that the respondent and/or any such persons fail to vacate the Premises within the period stipulated in paragraph 2 above, the Sheriff of this

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<sup>2</sup> [2019] ZAGPJHC 327 at para 53.

<sup>3</sup> See *Pacific Paramount Properties (Pty) Ltd v Apexviva Construction (Pty) Ltd* [2023] ZAGPPHC 25 at paras 31 to 41.

Court, or his lawful deputy, is hereby authorised and directed to evict them from the Premises.

4. The respondent is to pay the costs of this application on the attorney and client scale, as provided for in the Lease Agreement.

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**T P MUDAU**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

### **Appearances**

For the Applicant: : A W Pullinger Instructed by Hadar Incorporated

First Respondent : No appearance (MJD Law Incorporated withdrew on 17 September 2025 after setting down)

Date of hearing : 04 November 2025

Date of Judgement : 17 November 2025