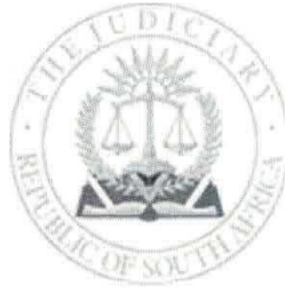


THE REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-047194

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

....14/11/2025.....
DATE

.....
SIGNATURE

In the matter between:

BUSINESS PARTNERS LIMITED

Applicant

and

MIXED TREES TRADING (PTY) LTD

First Respondent

CHERUBINA SHARIN SINGH

Second Respondent

JUDGMENT

NKOENYANE AJ:

[1] This is an application for the ejectment of the First and Second Respondents from commercial premises situated at Unit 3, Grand Central Industrial Park, Stand 695, 87 New Road, Halfway House Ext 13, Midrand ("the premises").

[2] The Applicant (the Landlord) seeks an order:

- 2.1. Ejecting the Respondents from the premises;
- 2.2. Authorising the Sheriff to eject them should they fail to vacate within five days;
- 2.3. Directing the South African Police Service to assist the Sheriff; and
- 2.4. Costs on an attorney and own client scale.

COMMON CAUSE AND ESTABLISHED FACTS

[3] The following facts are common cause or established by the papers:

- 3.1. The Applicant is the owner of the premises.
- 3.2. The parties concluded a written commercial lease agreement on or about 14 March 2022, for a fixed term which, as evidenced by the Applicant's own annexures, expired on 31 May 2025.
- 3.3. The First Respondent took occupation of the premises.
- 3.4. The Respondents remained in occupation of the premises after 31 May 2025, with the Applicant's tacit consent, as evidenced by the institution of these proceedings to secure their ejectment.

- [4] The Applicant's case is founded on the contention that the Respondents breached the original written lease by failing to pay monthly rental, resulting in arrears. The Applicant avers it cancelled this lease via a notice dated 15 March 2024 and that the Respondents' continued occupation is therefore unlawful.
- [5] The Respondents oppose the application, raising two primary defences:
- 5.1. Invalid Cancellation: They deny receiving the cancellation notice, alleging it was sent to incorrect email addresses, thus violating the contractual notice requirement in clause 36.1 of the lease agreement. The clause deals with breach.
- 5.2. Dispute of Fact on Arrears: They deny being in material breach, alleging payments totalling R220,000.00 were made after the alleged date of breach, which the Applicant has failed to properly account for.
- [6] During argument, a pivotal legal point emerged. The Applicant's case is predicated entirely on a lease agreement that had, by the Applicant's own case and the passage of time, reached its natural end. The original lease terminated by effluxion of time on 31 May 2025. This fact fundamentally alters the legal basis upon which the Applicant's claim for ejectment rests.
- [7] The initial disputes raised by the Respondents are, in themselves, sufficient to dispose of this application. The principles in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51¹ dictate that in motion proceedings, where a real, genuine and material dispute of fact arises which cannot be resolved on the papers, the respondent's version must be accepted, unless it is so far-fetched as to be rejected. The disputes regarding the validity of the cancellation notice and the true extent of the arrears are material and genuine.
- [8] However, the matter does not end there. The core of the Applicant's problem is its failure to recognise the new legal relationship that commenced on 1

¹ [1984] ZASCA 51

June 2025. Upon the expiry of the fixed-term lease and with the Respondents' continued occupation, a new lease agreement arose by operation of law. This is not a mere continuation of the old lease but a distinct contract, known in our common law as a tacit relocation or an implied lease.

- [9] The Supreme Court of Appeal in *Airports Company South Africa v Big Five Duty Free (Pty) Ltd*² provided authoritative clarity on this point. The court held that when a tenant holds over, the parties are presumed to have intended to renew the lease on the same terms and conditions, save for the requirement of a fixed term. The new lease is therefore one of indeterminate duration, typically on a month-to-month basis.
- [10] The legal consequence is profound. The Applicant cannot simply invoke the breach and cancellation clauses (like clause 36.1) of the expired lease to terminate the new implied lease. A lease of indeterminate duration is terminated by the giving of reasonable notice, unless the parties have expressly agreed otherwise within the context of the new lease. The Applicant has not alleged that it gave notice to terminate the implied lease effective from 1 June 2025. Its entire cause of action is anchored in a legal instrument that had ceased to exist.
- [11] The drastic nature of an ejectment order further militates against granting relief on these papers. The Constitutional Court in *Occupiers of Saratoga Avenue v City of Johannesburg Metropolitan Municipality*³ has consistently emphasised that eviction is a severe remedy that deprives persons of their occupation. A court must be satisfied that the applicant has a clear and unequivocal right to possession. Here, the Applicant's right is clouded not only by factual disputes but by a fundamental legal mischaracterisation of the relationship it seeks to terminate.

² 2019 (5) SA 1 (SCA)

³ [2012] ZACC 9

- [12] The Applicant has therefore failed to establish a clear right to the ejectment of the Respondents. Its case, as pleaded, is based on a lease that is no longer in force, and it has taken no steps to lawfully terminate the lease that currently governs the Respondents' occupation.

CONCLUSION AND ORDER

- [13] For these reasons, the application must fail. The disputes of fact regarding the original cancellation and arrears render the matter unsuitable for motion proceedings. More decisively, the Applicant's failure to address the legal regime of the implied lease that commenced on 1 June 2025 is fatal to its claim for ejectment as currently formulated.
- [14] In the result, the following order is made:
1. The application is dismissed with costs.



NKOENYANE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

Date of Hearing: 11 August 2025

Date of Judgment: 14 November 2025

Appearances:

For the Applicant: Adv. CJ Bekker

Instructed by: Hadar Inc

For the Respondent: Peter Zwane Attorneys

Instructed by: Peter Zwane Attorneys