

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

CASE NO.: 2024-122322

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED

DATE: 28 November 2025

SIGNATURE:

In the matter between:

HUI ZE FENG INTERNATIONAL TRADING CC Applicant

and

FATOU WEAR (PTY) LTD Respondent

JUDGMENT

EASTES AJ:

[1] This is an opposed commercial eviction. The Applicant prays for the eviction of the Respondent from Shop 1[...] and 1[...]2, African Trace Centre, 1[...] M[...] R[...] Road, Amalgam, Johannesburg ("the premises").

[2] It is s common cause between the parties that: (a) the Applicant is the owner of the premises; and (b) the Applicant and the Respondent entered into a written lease agreement in terms whereof the Respondent leased the premises from the Applicant ("the lease agreement"); and (c) that the contents and terms of the lease

agreement are as per Annexure "AA6" that was annexed to the Respondent's Answering Affidavit; and (d) that the Respondent is in occupation of the premises.

[3] On 1 March 2024, the Applicant, through its appointed attorneys of record, in writing demanded from the Respondent to remedy an alleged the breach of the agreement, by paying the amount of R72 951.00 in respect of arrear rental and related charges. The aforesaid breach was remedied.

[4] However, in the demand, the Applicant also informed the Respondent that it obtained a purchaser for the premises and, provided the Respondent with formal written notice of its intention to terminate the agreement as provided for in terms of Clause 57 of the agreement by giving the Respondent 6 (six) months written notice of termination of the lease agreement.

[5] The Applicant informed the Respondent that the lease agreement will terminate on 1 October 2024. Despite 1 October 2024 arriving, the Respondent failed to vacate the premises. Subsequently, the Applicant initiated the application for the eviction of the Respondent from the premises. It is the Applicant's main contention that the lease agreement terminated as far back as 1 October 2024, and since the aforesaid date the Respondent has been in unlawful occupation of the premises. The Respondent resists its eviction and raises various reasons why the application should fail and, it not be evicted.

[6] First, the Respondent contends that the application should fail, by virtue of the deponent to the Founding Affidavit lacking the required personal knowledge to have testified in the application. The Applicant is a juristic entity and, the deponent to the Founding Affidavit testified that: "*I have perused all the documents relevant to this matter, have access to all records in this matter and I am fully acquainted with the facts herein*". The deponent therefore obtained knowledge from relevant documents and, had access to all the records and, acquainted herself with the facts of the matter.

[7] In Rees & Another v Investec Bank Limited, 2014 (4) SA 220 (SCA), the Court held to the effect that a deponent deposing to an affidavit on behalf of a corporate

entity need not have personal knowledge of every fact. Although the *Rees* dealt with an affidavit in support of summary judgment, in my opinion the principle is squarely applicable when an ordinary Founding Affidavit is considered. The Respondent concluded on the personal knowledge issue, that the testimony in the Founding Affidavit amounts to inadmissible hearsay evidence, and accordingly the application must fail on the personal knowledge issue. I have a threefold difficulty with the Respondent's contention.

[8] Firstly, the Respondent did not identify specific portions of the testimony in the Founding Affidavit that it takes issue with on the basis that it constitutes inadmissible hearsay evidence. It appears to be a general challenge. The only issue made by the Respondent in this regard is that according to the Respondent, the deponent and (so it was stated), if she had the required personal knowledge would not have attached an unsigned version of the agreement to the Founding Affidavit. She, so it was stated, would have known the agreement was signed. The Respondent then in support of the envisaged contention, annex to its Answering Affidavit a signed copy of the agreement.

[9] Secondly, and despite raising a complaint about the evidence being inadmissible hearsay, the Respondent did not make an application seeking that the testimony or any specific portion thereof be struck from the Founding Affidavit. In fact the Respondent in its Answering Affidavit grappled with the testimony in the Founding Affidavit. Thirdly, the bulk if not all of the essential facts in the matter are common cause. I therefore find that the personal knowledge point raised by the Respondent to be without merit.

[10] The Respondent further avers that the clause 57, used by the Applicant to terminate the agreement amounts to a "wish" and a "wish" so it was averred, is not enforceable in law. Counsel for the Respondent could not supply me with any authority to support this point and, neither could I find any authority. The relevant portion of clause 57 of the agreement reads as follows:

"57. The lessor may terminate this lease or any renewal thereof by giving the lessee six months' written notice to that effect if the lessor wishes to ...

57.3 *Sell the landlord's property.*" (Own Emphasis)

[11] The Respondent contends for an interpretation of clause 57 to the effect that, for the Applicant to have relied on clause 57 to terminate the agreement, there had to have been an actual sale in terms of a valid written sale of land agreement between the Applicant and a Third Party purchaser. The Respondent further contended that the clause 57, is vague and unenforceable and, pointed out that there is no written sale agreement before the Court. The Respondent requested such a sale agreement but none has been forthcoming and the Applicant failed to provide it or make it available in the application.

[12] The Respondent also contended the Applicant is *mala fide* and seeks that it be evicted because it can obtain other lessees at a higher rental. Many of the Respondents contentions is not supported by any facts or evidence and amounts to speculation, and is irrelevant. In terms of the lease agreement, the Respondent has no right to demand to see any possible sale agreement between the Applicant and a Third Party purchaser. The lease agreement does not supply the Respondent with such a right and, the legal nexus between the Applicant and the Respondent was regulated by the lease agreement.

[13] The Applicant contends for an interpretation of clause 57, to the effect that once the Applicant has the mere intention or hope, to sell the property, clause 57 becomes operative and entitles the Applicant to terminate the lease agreement on six months' notice, and it does not mean that at the time there must be a valid lease agreement of sale between it and, a Third party purchaser.

[14] The rules of interpretation is trite and, has been trite for a period of time. [See Natal Joint Municipal Pensions Fund v Endumeni Municipality, 2012 (4) SA 593 (SCA) and Botha-Botho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk, 2014 (2) SA 494 (SCA)]. It will serve no purposes for repeating it herein. Also, when written instruments are interpreted a businesslike meaning is preferred above an unbusinesslike meaning [See KwaDukuza Municipality v Lahaf (Pty) Ltd, [2020] 2 ALL SA 356 (SCA)].

[15] Clause 57 does not state that the Applicant may terminate the lease agreement only "*when there is a valid and binding sale agreement concluded*". In my opinion, the purpose of clause 57 is to put the Applicant in a position to for instance sell to a Third Party purchaser that is disinterested in purchasing if there are lessees. A Third Party purchaser may want to demolish the premises. The Applicant then has the contractual right to terminate the lease agreement with six months' notice and so also supply lessees with ample time to make suitable arrangements. The Court therefore agrees with the businesslike interpretation of clause 57 contended for by the Applicant.

[16] The Court do not find the interpretation by the Respondent of clause 57 to be businesslike interpretation. The lease agreement for instance does not make provision therefore that the Applicant must make available any possible sale agreement it may have to the Respondent. Many commercial dealings and transaction in the world of business are highly confidential and subject to non-disclosures.

[17] Third, the Respondent also raises the issue of "huur gaat voor koop". The Respondent indicates that this legal maxim is coupled with clause 80 of the lease agreement which reads:

"80. If the landlord's property or the premises is sold by the lessor to any third party or if the lessor transfers its rights and obligations under this lease to a third party, the lessee agrees to treat the third party as the lessor for purposes of this lease."

[18] In my opinion, reliance on "*Huur Gaat Voor Koop*" and, clause 80 of the lease agreement does not assist the Respondent. Clause 80 on my interpretation thereof caters for a different scenario. It may become operative in circumstances such as when the Applicant for instance sold the premises to a Third Party purchaser subject to the existing lease agreements, because such a Third Party purchaser is interested in having lessees. Furthermore, for the Respondent successfully invoke clause 80 herein, it must be a party to a valid and existing lease agreement. But as indicated already the lease agreement was already terminated in as envisaged in clause 57.

[19] The Respondent raises a so-called lien over the property that allegedly has. In this regard, the Respondent's case on this point is that it has spent an amount of approximately R400 000.00 in respect of alterations, improvements and fixtures and fittings to the property so as to conduct its trade from the property. If it is to be evicted, the Respondent contends the Applicant would be unjustifiably enriched/it has a lien. It does not mean if a party has spent R400 000.00 in respect of alterations or improvements and fixtures to a property that by doing so, the value of the property increased.

[20] Furthermore, a party relying upon a lien in this regard will only be entitled to the lesser amount between the amount actually spent and paid (R400 000.00) and the increase in the market value of the immovable property because of the alterations, improvements, fixtures and fittings. There is simply no such a case made out in the Answering Affidavit by the Respondent.

[21] In addition clause 38 of the lease agreement indicates that the Respondent is liable for any costs of alterations and/or additions to the property. In my opinion therefore, the Applicant cannot rely on a lien. Even if I am wrong, the Respondent has not made out a case in the Answering Affidavit to rely on a lien.

[22] In the premises, I find that the Applicant lawfully terminated the lease agreement, which was effective as from 1 October 2024, and since then, the Respondent has been in unlawful occupation of the property. 31 January 2026 will be a suitable date to vacate the premises. The Respondent had to have been aware of the termination as far back as 1 October 2024 already, and even if it disagreed, it must have been aware of the risk that this court might find, as it did against it. It had more than enough time to make suitable alternative arrangements. If the Respondent ignored the risks associated with litigation, it did so at its own peril.

[24] On the issue of costs, the lease agreement makes provision for costs on an attorney and client scale and there is no reason in this matter for me to deviate from the lease agreement between the parties on this aspect.

[25] I therefore order the following:

[25.1] An order is issued evicting the Respondent and all those occupying the premises through and under the Respondent from the premises known as Shop 1[...] and 1[...], African Trade Centre, 1[...] M[...] R[...] Road, Amalgam, Johannesburg ("the premises").

[25.2] In the event that the Respondent and/or all persons claiming occupation through or under the Respondent fail to vacate the premises by the date determined by this Honourable Court (31 January 2026), the sheriff or his deputy is hereby directed and authorised to forthwith enter the premises and to evict the Respondent and all those persons who occupy the premises through or under the Respondent.

[25.3] The Respondent is ordered to pay the Applicant's cost of the application on a scale as between attorney and client.

J EASTES
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES: