



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

CASE NO: 2024-008279

- (1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGES:
(3) REVISED.

30 November 2025
DATE

.....
SIGNATURE

In the matter between:

WARREN RIGELSFORD

Plaintiff/

and

SIFISO CALVIN BIYA

First Defendant

RAPHAHLE SHIRLEY BIYA

Second Defendant

WATT-PRINGLE AJ:

1. This is an application for summary judgment.
2. In his combined summons, the plaintiff claims arrear rental and damages for holding over respectively, interest and costs. Defendants filed a plea in response to which the plaintiff made application for summary judgment. The plaintiff

delivered an affidavit confirming the facts alleged in his particulars of claim and asserting that the defendants have no bona fide defence.

3. First defendant delivered an answering affidavit resisting summary judgment at a time when his former attorney had withdrawn and no new attorney had been appointed. That affidavit does however appear to have been drafted with assistance from a legal professional.
4. Despite the matter being properly set down, the defendants failed to deliver heads of argument or a practice note. Counsel who appeared for the defendants when the matter was first called on Monday 26 May 2025, informed the court that he had been briefed very shortly before the hearing, as had his instructing attorney and that neither of them had yet had the opportunity to acquaint themselves with the papers. By agreement the matter stood down until 10h00 on Thursday 29 May 2025 to enable the defendants legal representatives to consider whether they elected to argue the matter on the papers as they stood or possibly request a postponement to file further papers.
5. When the matter was called on the Thursday the court was informed that counsel intended to argue the matter on the papers as they stood, and the matter proceeded.
6. The plaintiff is the owner of a property in Kempton Park (***the property***) which was occupied by the defendants (a married couple) pursuant to a lease concluded on 6 November 2018 (***the lease***). The lease was for a period short of twelve months, commencing on 12 November 2018 and expiring on 31 October 2019, subject to a right of renewal which had to be exercised on two months' notice prior to the expiry date. The rental was R30,000 per month and the

defendants were liable for the municipal charges in respect of electricity, water, refuse and sewage.

7. The defendants neither exercised the right to extend the lease on notice, nor did they vacate the property and their tenancy continued on a month-to-month basis on the same terms as had applied prior to the expiry of the written lease.
8. From February 2020, the defendants fell into arrears. As of February 2023, their indebtedness had grown to R619 946.27, but in March 2023, payments in the amounts of R200 000 and R3000 were made on 16 and 18 March 2023 respectively.
9. On 23 February 2023, the defendants were given written notice of summary termination of the lease agreement and notice to vacate the property by 26 March 2023. In the particulars of claim the allegation is made that the lease terminated on 23 February, alternatively 26 March 2023. It seems to me that the plaintiff was not entitled summarily to terminate the month-to-month lease agreement, but nothing turns on that, firstly because both the notice to terminate and the notice to vacate were ignored by the defendants who continued to hold over. The plaintiff's purported summary termination of the lease had no legal effect, but the one month's notice to vacate in my view constitutes reasonable notice of termination of the month-to-month lease.
10. The balance outstanding as of March 2023 was R119 946.27, being the arrears less the total payments totalling R500 000 made in March 2023.
11. The balance of the plaintiff's claim is R382 949.98 comprising rental at R30 000 per month, and municipal charges (excluding assessment rates and taxes) up to the end of January 2024.

12. The reconciliation of all rental and municipal charges less payments received accompanied the letter of termination to the defendants, and it discloses that rental lower than R30 000 was levied up to November 2020, whereafter rent was charged at R30 000 per month, despite a 6% per annum escalation rate agreed in the lease agreement. It would therefore appear that in terms of the month-to-month lease, the plaintiff simply held the rent at R30 000 per month.
13. It appears both from a note on the plaintiff's reconciliation and from correspondence between the plaintiff and the first defendant attached to his affidavit resisting summary judgment, that the lower rental was because of credits being accorded to the defendants in lieu of certain painting and other improvements to the leased premises.
14. Defendants in their plea do not dispute the lease agreement but allege that the lease agreement expired and "*was superseded by the offers to purchase dated 18 March 2020 and 20 November 2021 which required the Defendants to pay occupational rent in the sum of R30 000 to the Plaintiff's conveyancers.*" The defendants deny concluding any other lease agreement (presumably a reference to the month-to-month lease agreement, which clearly preceded any offer to purchase on the dates alleged by the defendants) and state that the offers to purchase are attached to the plea marked B1.
15. Attached to the plea is an unmarked annexure being an offer to purchase in the name of Ba-Biya Geomatics & Civils Trading (Pty) Ltd (whereafter the names of the defendants, originally included in manuscript, are crossed out) and another document, apparently part of the offer to purchase, which lists the details of the defendants, thus contradicting the identity of the purchaser as per the agreement. The latter document contains information required for the purpose of

transfer, and records that unless inconsistent with the offer to purchase, it is deemed to be incorporated therein. The offer to purchase was signed by the plaintiff on 18 March 2020 and by the first defendant only, on 18 February 2020.

16. A further offer to purchase is attached to the plea. It lists the plaintiff as seller and the defendants as the purchasers. Confusingly, it then records: "*In the event of a legal personae, represented by BaBryn Family Trust...*" (with an IT registration number.)
17. This offer to purchase is signed both by the plaintiff and seemingly by both defendants on 20 November 2021. In terms of this agreement occupation was to be granted on registration of transfer. There is no allegation by any party that transfer ever took place. I was informed from the bar that the defendants have since institution of the action vacated the property.
18. By February 2023 the defendants had fallen into arrears with payment of rent and municipal accounts for water and electricity. Some of the arrears were made-up in two payments totaling R500,000, leaving a balance of R119,000. Written notice was given on 26 February 2023 for the defendants to vacate the premises by no later than 26 March 2023. They failed to do so.
19. In consequence of the fact that the plaintiff considered the lease as at an end with effect from 23 February 2023, alternatively 26 March 2023, he claims damages based on the defendants' holding over beyond that date and for the period up to 30 January 2024 when the summons was served.¹

¹ As to the nature of a damages claim based on holding over, see *Hyprop Investments Ltd and Another v NCS Carriers and Forwarding CC and Another* 2013 (4) SA 607 (GSJ) at para 42.

20. Plaintiffs claim is in two parts, claim A and claim B. Claim A is for arrears up to termination of the lease agreement. Claim B is a damages claim for holding over.
21. Both claims are liquidated claims. The rental is as per the month-to-month agreement, save for credits allowed, as referred to above. The balance is made up of amounts levied by the municipality for services. The municipal charges constitute disbursements for which the defendants were liable under the lease agreement and under the month-to-month lease thereafter.
22. The case argued on behalf of the defendants was essentially that from when the first offer to purchase was signed, the party entitled to occupation and liable for occupational rental was the named purchaser, a company, and not the defendants. That agreement also provided for occupational rent of R30 000 per month.
23. As pointed out by counsel for the plaintiff, the flaw in that proposition was that pursuant to the offer to purchase, the purchaser was only entitled to occupation from date of transfer or such other date as the parties might agree after all suspensive conditions had been fulfilled. The suspensive conditions clause was inchoate in that there were blanks required to be filled in without which the clause was meaningless and those spaces were left blank. There was in any event no allegation of an agreement that the purchaser would take occupation on any given date. There was therefore no allegation or evidence on the basis of which to conclude that the parties to the purchase agreement ever agreed to an occupation date. Therefore, the occupation enjoyed by the defendants was not pursuant to any change in tenant and simply extended their "*holding over*" period.
24. The existence of the subsequent offer to purchase dated more than a year later is consistent with there having been no attempt to execute the first one. The party

relying on both agreements, namely the defendants, failed to take the court into their confidence as to what had become of those agreements, nor was their argument predicated on the company becoming an occupier of the premises pursuant to the first offer to purchase canvassed in the affidavit resisting summary judgment. Nor for that matter does the first defendant in his affidavit explain why the existence of the second offer to purchase which provided for occupation on registration of transfer constitute any kind of defence to the plaintiff's claims.

25. It was clear that at least by February 2023, the parties regarded the defendants' occupancy of the premises as having been pursuant to a month-to-month lease agreement based on the terms of the original written lease agreement. The existence of the first and second offers to purchase does not feature in that correspondence and this remains unexplained.
26. The plea goes no further than to say that the first written lease agreement was superseded by the first and the second offers to purchase. Copies are attached, but the plea fails to spell out how the defence is fashioned based on those two documents.
27. The affidavit resisting summary judgment fares no better. The defendants allude in their affidavit resisting summary judgment to certain improvements to the property for which the defendants apparently feel entitled to reimbursement, assuming that these have not already been credited as rent reductions. There is no reference to this in the defendants' plea. Any such claim ought to have the subject of a counterclaim which would ordinarily have been delivered together with the defendants plea, in which the defendant could have requested a stay of the claim in convention, or part thereof. There is no such counterclaim. In any

event, even if there was a properly articulated counterclaim for an unliquidated sum, that would not *per se* be an answer to the application for summary judgment.² Nothing prevents the defendants from claiming those amounts in due course if they are so advised.

28. It their plea, the defendants incorrectly assert that in terms of the expired lease, the plaintiff was responsible for municipal charges, which include water, electricity, refuse collection and sewage. That plainly is not the case. Clause 4.2 provides that the lessee shall be liable for, and shall on due date thereof, pay to the relevant authority, the charges in respect of electricity, water, refuse and sewage. Clause 4.3 provides that the municipal account pertaining thereto will be in the name of the lessor. For completeness, clause 4.1 provides that the lessor will pay the assessment rates and taxes.
29. For the rest the plea contains bare denials.
30. In the affidavit resisting summary judgment, reference is made to corrections sought to the plaintiff's reconciliation on which the amounts outstanding are tabulated. The defendants allege in correspondence with the plaintiff's attorney that their disputes are noted on the attached reconciliation. No such document is attached to the affidavit, nor is its contents dealt with in the affidavit resisting summary judgment.
31. I am accordingly satisfied that the defendants have no bona fide defence to the plaintiff's claims. I am also satisfied that the plaintiff's claims are liquidated claims.³

² *Citibank NA, South Africa Branch v Paul NO and Another* 2003 (4) SA 180 (T) at paras 37 and 38.

³ *Standard Bank of South Africa Ltd v Renico Construction (Pty) Ltd* 2015 (2) SA 89 (GJ) at para 15.

32. I was not made aware of any mora date other than the date on which summons was served, which was 30 January 2024.
33. Plaintiff's counsel sought costs on scale B, whereas the defendant's counsel considered that scale C would be appropriate. In my view, scale B is appropriate.
34. In the circumstances I make the following order against the defendants, jointly and severally, the one paying other to be absolved:
1. Payment of the sum of R502 896.25
 2. Interest in that amount at 11.75% per annum from 30 January 2024 to date of payment.
 3. Costs of the suit as between party and party, on scale B.

REGISTRAR



**CE WATT-PRINGLE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be Monday 1 December 2025.

Date of hearing: 9 May 2025
Date of judgment: 30 November 2025

Appearances

Counsel for the Plaintiff: L Lipshitz
Attorneys for the Plaintiff : Raees Chothia Attorneys

Counsel for the First and Second Defendants: Adv Mhlanga
Attorneys for the First and Second Defendants: Precious Muleya Attorneys Inc