



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

Case Number: A2022-046908

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
2 February 2026	
SIGNATURE [REDACTED]	

In the matter between:

MARINDAFONTEIN (PTY) LTD

Appellant

(Applicant in the Court *a quo*)

and

16TEN PROPERTIES (PTY) LTD

Respondent

(First Respondent in the Court *a quo*)

Coram: Dippenaar, Crutchfield JJ et Pullinger AJ

Heard: 03 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it onto the electronic platform. The date for hand-down is deemed to be 2 February 2026.

Summary: Appeal against dismissal of eviction application – respondent breached various provisions of the lease agreement concluded between the parties – demand sent not to the respondent but to a third party, the director of the respondent – demand defective – appellant did not prove a complete cause of action – fatal to relief sought.

ORDER

On appeal from: The Gauteng Division of the High Court, Johannesburg (Noko J sitting as the court of first instance)

1. The appeal is dismissed with costs, including the costs of counsel on scale B.

JUDGMENT

CRUTCHFIELD J (DIPPENAAR J and PULLINGER AJ CONCURRING).

- [1] The appellant, Marindafontein (Pty) Ltd, appeals against the dismissal by the court *a quo* of its application for the eviction of the respondent, 16Ten Properties (Pty) Ltd, from Hangar H10/2 at the Petit Airfield and relief ancillary thereto.

- [2] This appeal comes before us with the leave of the Supreme Court of Appeal against the entirety of the judgment and costs order of Noko J, save for those aspects of the judgment in terms of which the court *a quo* dismissed the three points *in limine* raised by the respondent, and found that it was irrelevant whether Hangar H10/2 was owned by the appellant or the respondent.
- [3] The respondent opposes the appeal.
- [4] The appellant is the registered owner of the immovable property on Rudi Street, Benoni on which the Petit Airfield is situated.
- [5] On 13 May 2019 the appellant entered into a written lease agreement with the respondent for a portion of land within the Petit Airfield measuring 205.4m² and defined as "the premises"¹ ("the Lease Agreement").
- [6] The terms of the Lease Agreement entitled the respondent, at its own cost, to erect a hangar, garage or structure of a movable nature for the exclusive purpose of aircraft storage and aviation related activities save that, with the appellant's prior written consent, it could also be used for purposes of personal storage and other personal uses.
- [7] The erection of the aforesaid structure was subject to the submission of building plans, diagrams and engineering requirements to the relevant local authority and its approval.
- [8] The Lease Agreement prohibited, without the appellant's prior written consent, any sub-letting or parting with occupation or control of the premises or any part thereof, the cession, assignment, making over, alienation, charging or encumbering of rights in terms of the Lease Agreement and, upon termination of the lease period, the respondent would be entitled to remove that structure.

¹ The "premises" is defined in clause 1.1.3.5. as meaning "*the ground footprint of the hanger (sic) used by the Lessee.*" Clause 2.2 states "*it is recorded that the Lessee only leases the premises...*" and clause 2.3 provides "*Ownership of the hanger (sic), garage or any other structure erected or purchased by the Lessee shall only vest in the Lessee and shall not at any time transfer to the Lessor.*"

- [9] In the event that the respondent breached the Lease Agreement, the appellant would be obliged to provide written notice to the respondent to remedy such breach within 30 days whereupon the appellant would be entitled to cancel the Lease Agreement.
- [10] The Lease Agreement contained a "whole agreement" clause and stipulated that no variations to, additions or deletions or agreed cancellation would be of any force or effect unless reduced to writing and signed by the parties.
- [11] At all material times, a structure, Hangar H10/2, or H9 as it became known after the extensions and renovations made thereto ("the Hangar"), was erected on the Premises. The respondent occupied the Hangar as did certain third parties who were cited as the second respondent in the court *a quo*. These third parties did not participate in this appeal.
- [12] The appellant contends that the respondent breached or repudiated the Lease Agreement culminating in the valid cancellation thereof.
- [13] During November 2022, the appellant instituted an application for the eviction of the respondent, and the third parties, in this court. Noko J heard the application on an opposed basis. The learned judge dismissed the appellant's application with costs.
- [14] This is the appeal of Noko J's judgment.
- [15] In issue before us is, firstly, the question whether the respondent breached the Lease Agreement, secondly, the validity of the appellant's termination of the Lease Agreement and, thirdly, whether the respondent repudiated the Lease Agreement and whether the appellant accepted the repudiation.

- [16] In this matter, the appellant bears the onus to prove the alleged breach upon which it relies and to show that it made a valid demand of the respondent.² Proper demand is a necessary precursor to the right of cancellation.
- [17] In the discussion that follows, we commence with an analysis of the demand on which the appellant relies for its assertion that it validly cancelled the Lease Agreement. If there was no valid demand made on the respondent or it was bad or ineffectual then the appellant was not entitled to cancel the Lease Agreement and the appeal on these grounds must fail. We then interrogate the grounds upon which the appellant contends for the respondent's breach of the Lease Agreement, whether these grounds have been established and found the appellant's case for the repudiation of the Lease Agreement. For these purposes, a demand in terms of the Lease Agreement is unnecessary.³ If the appellant established a repudiation of the Lease Agreement, it was open to the appellant to accept that repudiation which, upon communication thereof, brings the Lease Agreement to an end.⁴ In this case, the appellant communicated its acceptance of the respondent's alleged repudiation by service of its application.⁵
- [18] It is common cause that the respondent sub-let the Hangar and affected additions and alterations thereto. I return to the effect of these facts on the appellant's case below.
- [19] The demand clause in the Lease Agreement provides that:

"18.1. Should the lessee - ...

18.1.2. breach any term or condition of this lease and fail to remedy such breach within thirty (30) days of receipt of written notice calling upon the lessee to remedy such breach; or ..."

² *G & C Shelf 103 (Pty) Ltd v Chemical Specialities (Pty) Ltd* 2012 (4) SA 335 (KZD) at [26].

³ *Discovery Life Ltd v Hogan* 2021 (5) SA 466 (SCA) at [19] and [20].

⁴ *Nash v Golden Dumps (Pty) Ltd* 1985 (3) SA 1 (A) at 22 D – F.

⁵ *Thelma Court Flats (Pty) Ltd v McSwigin* 1954 (3) SA 457 at 462 B/C to E/F.

Then and in such event the Lessor shall be entitled to terminate this lease without prejudice to any rights or the Lessor to sue for and recover any payment or monies due, together with interest as herein provided for, or damages for breach of contract or otherwise howsoever."

[20] The demand takes the form of correspondence dated 4 October 2022, sent by the appellant's attorneys to the respondent's attorneys. The demand is headed "Marindafontein (Pty) Ltd / George Mienie".

[21] The demand records

- "1. We act for Marindafontein (Pty) Ltd.
2. Your client, Mr. George Mienie, entered into a lease agreement with our client, in terms of which he leased a hangar at the Petit Airfield.
3. In terms of the agreement your client may not sub-let the hangar without my client's consent. It has come to my client's attention that your client is currently sub-letting the hangar without the necessary consent.
4. This letter serves as a demand that unless your client terminates the sub-lease of the hangar within 30 (thirty) days of this letter our client will terminate its lease agreement with your client.
5. It is also our instruction that your client has made certain improvements and/or alterations to the hangar. In terms of the contract that should have been done only with the written consent of our client. Our client also does not have the written consent nor the relevant building plans, diagrams and engineering requirements of the local authority for the improvement/alterations to the hangar, nor the latter's approval. Should your client have these documents he is requested to forward it to us as a matter of urgency. If not, our client's rights are reserved."

[22] *Ex facie* the demand, it is one made on behalf of the appellant, to Mr George Mienie ("Mr Mienie") represented by a firm of attorneys.

[23] The demand is in two parts.

23.1. The first part states that Mr Mienie entered into a lease agreement with the appellant for the lease of the Hangar. It purports to record a contractual prohibition on Mr Mienie to sub-let the Hangar without the appellant's consent. It states that it had come to the appellant's attention that Mr Mienie was sub-letting the hangar without the necessary consent. The first part concludes with a demand that unless Mr Mienie terminated the sub-lease of the hangar within thirty days of the date of the demand, the appellant would terminate the lease agreement with Mr Mienie.

23.2. The second part of the demand deals with the allegedly unauthorised improvements and/or alterations to the Hangar by Mr Mienie. He is requested to provide certain documents, if they are in his possession, to the appellant's attorneys. The second part concludes "[i]f not, our client's rights are reserved."

[24] The demand is defective in every manifestation.

24.1. Mr Mienie is not a party to the Lease Agreement. The demand does not refer to 16 Ten Properties (Pty) Ltd. As there is no privity of contract between the appellant and Mr Mienie, the appellant does not enjoy any contractual right arising from the Lease Agreement that it can enforce against him – even if he is a member or director of the respondent - our law recognises the clear distinction between a juristic entity and its members or directors.⁶

24.2. The demand requires Mr Mienie to terminate the sub-lease of the Hangar within thirty days of the demand of 4 October 2022, failing which the appellant would terminate its lease with him. The subject of the Lease Agreement is not, however, the Hangar. There is no

⁶ *Salomon v Salomon and Co Ltd* [1897] AC 22 (HL) at [30]; *Dadoo Ltd v Krugersdorp Municipal Council* 1920 AD 530 at 550 to 551; *City Capital SA Property Holdings Ltd v Chavoness Badenhorst St Clair Cooper and Others* 2018 (4) SA 71 (SCA) at [27].

prohibition on sub-letting the Hangar in the Lease Agreement. The Lease Agreement makes numerous clear distinctions between the “premises”, being the subject of the Lease Agreement, and the “structure” which the respondent was entitled to erect and use. Again, our law requires the court to determine contracting parties’ rights and obligations towards each other with reference to the terms of the contract in its contextual setting,⁷ regard being had to the principle that a change in language is *prima facie* taken to import a change in intention.⁸

- [25] The purpose of a demand is to place the debtor in *mora*. A demand serves to give notice of the alleged breach to the defaulting party, to inform the latter of the action required of it in order to remedy the breach, the time period in which it must rectify the breach, and, to give notice to the defaulting party of the consequence/s to it if it does not rectify the breach within the time period specified in the demand.
- [26] In order for a demand to be valid, it must identify the parties clearly and correctly, unequivocally identify the obligation to be performed by the debtor, the time in which the debtor is required to perform the obligation and stipulate the consequences of a failure by the debtor to perform the obligation.⁹ In addition, the demand must be received by the debtor.
- [27] The respondent’s attorneys, in the latter’s response of 25 October 2022, very properly state that they act on behalf of both Mr Mienie and the respondent, 16Ten Properties (Pty) Ltd. The fact that the respondent’s attorneys act on behalf of the respondent as well as Mr Mienie does not serve to assist the

⁷ *Bothma-Botha Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) at [12]; *Wilkinson and Another v Crawford N.O and Others* 2021 (4) SA 323 (CC) at [42]; *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC) at [80] and [81].

⁸ *Port Elizabeth Municipal Council v Port Elizabeth Electric Tramway Co Ltd* 1947 (2) SA 1269 (A) at 1279/1280; *Saidi and Others v Minister of Home Affairs and Others* 2018 (4) SA 333 (CC) at [77].

⁹ *Kragga Kamma Estates CC v Flanagan* 1995 (2) SA 367 (A) at 374 D – 375 B.

appellant as the demand was not addressed to the respondent nor sent to the respondent's attorney on behalf of the respondent.

- [28] The appellant's reliance on the respondent's attorneys admitting receipt of the demand in the latter's response, does not assist the appellant. It matters not that the correspondence came to the attention of the respondent's attorneys as the demand was directed to Mr Mienie, not to the respondent.
- [29] In addition to the foregoing, the demand does not sustain a claim for the cancellation of the Lease Agreement based on the alleged unlawful additions and alterations to the Hangar. The appellant did not place the respondent in *mora* in respect of the alleged unlawful additions and alterations.
- [30] Properly construed, the second part of the demand is a request that the appellant's attorneys be provided with certain documents (if in the respondent's possession) coupled with a reservation of rights – the purpose of which is not readily understood in the context of the demand – but may be a reference to clause 10.12 of the Lease Agreement.¹⁰ If that is the case, the appellant did not avail itself of that remedy.
- [31] The respondent disputes that proper demand, in terms of the Lease Agreement, was made of it. I agree.
- [32] The demand did not place the respondent in *mora*. It follows that the appellant's purported cancellation of the Lease Agreement is bad.
- [33] Notwithstanding the respondent's attorneys alerting the appellant's attorneys that they did not conclude the lease with Mr Mienie and that Mr Mienie was not the appropriate party upon whom demand could be made, the appellant

¹⁰ The clause provides: "*In the event of any non-compliance with the Lessor's written approval or the requirements of the engineer or local authority, the Lessor shall be entitled to appoint its own contractors to prepare the necessary plans, diagrams etc, and thereafter to employ a contractor of its' choice, to complete or rectify any structure/hanger/garage to which this lease agreement applies.*"

proceeded with this litigation based on a demand made by appellant on Mr Mienie, not on the respondent.

- [34] In the circumstances, the finding of the court *a quo* that the appellant did not make demand of the respondent in terms of the Lease Agreement was not contrary to the common cause facts, as contended by the appellant. Thus, the conclusion of the court *a quo* cannot be faulted.
- [35] In these circumstances, absent a valid demand, the appellant did not establish its cause of action based on a breach and cancellation of the Lease Agreement.
- [36] The further questions that arise are whether the sub-lease and the additions and alterations were effected in accordance with the Lease Agreement; whether these constitute a breach or breaches of the Lease Agreement that found a case for repudiation, entitling the appellant to cancel the Lease Agreement.
- [37] On the issue of repudiation, the case in the founding affidavit is two-fold. It is said to be the respondent's insistence on a right to sub-let the premises (and its continued sub-letting thereof in the face of the demand) and the respondent's failure to have obtained building plan approval in respect of additions to the Hangar.
- [38] As stated in *Datacolor*,¹¹ the test for determining repudiation is objective. It requires an unequivocal intention no longer to be bound by the agreement or the obligations forming part of the contract. The intention to repudiate is to be determined objectively-thus to act in a manner that would lead a reasonable person in the position of the appellant to believe that the respondent did not intend to fulfil or completely fulfil their part of the agreement.¹²

¹¹ *Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd* 2001 (2) SA 284 (SCA) at [16].

¹² *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC) at [104].

- [39] In this context, the appellant advanced three sets of facts, *prima facie*, constituting breaches of the Lease Agreement, without more, as the sole basis upon which it contends for respondent's conveyance of its unequivocal intention to not perform any obligation it owes the appellant under the Lease Agreement.
- [40] In *Discovery Life*,¹³ the question of repudiation was determined by an examination of "the entire factual matrix" leading to, what it found, was a repudiation of an insurance contract by the insured. But, in *Discovery Life*, the facts and the effect of those facts are very different.¹⁴ The respondent, in that case, not only expressly advised Discovery Life that she was cancelling her policy, she instructed her bank not to pay the premium. On this basis, the respondent's conduct, the court held, could not be interpreted any way other than that she no longer wished to be bound to the terms of the policy.¹⁵
- [41] The dearth of facts adduced by the appellant in its founding affidavit herein make it very difficult to infer that the respondent's objective intention is to not perform in terms of the Lease Agreement. The criterion for that inference is the objective conclusion to be drawn from the respondent's conduct.¹⁶
- [42] So, while the respondent's reliance on the oral or impliedly written consent of the appellant's representative to the sub-lease or the appellant's knowledge of the sub-lease and that this does not meet the requirement that such consent must be written, it does not demonstrate an outright refusal to have sought and obtained that consent.
- [43] Moreover, it is doubtful that any sub-lease of the Hangar is axiomatically a breach of the Lease Agreement. The Lease Agreement stipulates in respect of sub-letting that the sub-letting of the premises, being "the ground footprint" of the hangar used by the respondent, requires the appellant's prior written

¹³ *Supra* at [14].

¹⁴ *Supra* at [15].

¹⁵ At [15] and [18].

¹⁶ *Discovery Life* at [17] citing *Datacolor supra*.

consent. The Hangar does not form part of the definition of “premises”. The Lease Agreement does not refer to the Hangar or a sub-lease of the Hangar and the ownership of the Hangar vests, at all times, in the respondent. It is trite that one cannot simultaneously be the owner and the lessee of the same property and that being so, there is no “sub-lease” of the Hangar that came into being. Accordingly, the sub-letting of the Hangar does not, axiomatically, constitute a breach of the Lease Agreement.

- [44] The submission in the appellant’s heads of argument that the sub-letting constituted a repudiation of the Lease Agreement, cannot be sustained.

- [45] On the issue of the alterations and renovations, the respondent’s reliance on the appellant’s representative being made aware of and consenting to the renovations and alterations the respondent would undertake, and the WhatsApp messages and email communications between the parties’ respective representatives adduced by the respondent, do not, properly interpreted, demonstrate that the respondent obtained the appellant’s consent.¹⁷ The fact that the appellant was aware of the alterations and did not object thereto, does not equate to prior written consent to the proposed additions and alterations as required by the Lease Agreement. Again, the respondent’s conduct, while not in precise accordance with the terms of the Lease Agreement, is not demonstrative of a refusal to be bound to the terms thereof.

- [46] Finally, and on the issue of the building plans, the respondent relies on the appellant’s representative being present throughout the renovation work and not raising the issue whilst, at the same time, labouring under the impression that building plan approval from the local authority was not required given the alleged zoning of the land and that no other hangars on that land had been

¹⁷ On a contextual, purposive and grammatical interpretation as envisaged in *Natal Joint Municipal Pension Fund v Endumeni* 2012 (4) SA 593 (SCA). See, further, *KPMG Chartered Accountants (SA) v Securefin Ltd and Another* 2009 (4) SA 399 (SCA) at [39].

erected with building plan approval. This is not, as I see it, a refusal to obtain building plan approval if it is necessary to do so.

- [47] On a conspectus of the evidence, the respondent's conduct viewed objectively does not unequivocally demonstrate its refusal to be bound by the terms of the Lease Agreement.¹⁸
- [48] In the result, the appeal must fail. It is trite that an appeal lies against an order and not against the reasons for the order.¹⁹ Although there are certain findings made by the court *a quo* with which we do not agree, the ultimate conclusion of the court *a quo* in dismissing the application, cannot be faulted.
- [49] As to the costs of the appeal, there is no reason why the costs of the appeal should not follow the result.
- [50] Both parties made use of senior junior counsel. The appeal is relatively complex. In the light thereof, the respondent is entitled to costs on scale B. Costs on scale C is not warranted.
- [51] Accordingly, the following order issues:

1. The appeal is dismissed with costs, including the costs of counsel, on scale B.


 CRUTCHFIELD J
 JUDGE OF THE HIGH COURT
 JOHANNESBURG

¹⁸ *Datacolor* at [1]; *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC).

¹⁹ *Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd* 1948 (3) SA 353 (A) at 355; *Cape Empowerment Trust Ltd v Fisher Hoffman Sithole* 2013 (5) SA 183 (SCA) at [39].

For the Appellant:

Adv L Hollander instructed by Alice
Swanepoel Attorneys.

For the Respondent:

Adv A Bishop instructed by Dewey
McLean Levy Inc.

Date of the hearing:

3 September 2025.

Date of the judgment:

2 February 2026.