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

CASE NO: 248625/25

HEARD ON: 22 JANUARY 2026

JUDGMENT: 23 JANUARY 2026

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

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

(3) REVISED.

DATE: 23 JANUARY 2026

SIGNATURE:

In the application of:

Wandering Investments (Pty) Ltd

Applicant

and

Muk Bus Trucks and Trailers (Pty) Ltd

Respondent

JUDGMENT

Strijdom J

1. This is an urgent application in terms of Rule 6(12) in which the applicant, the registered owner of the immovable property known as ERF 5[...] Willow Park Manor X65 ("the property"), seeks the eviction of the respondent following the cancellation of a commercial lease agreement.

2. The applicant seeks that this matter be heard as one of urgency on the basis that it is presently being deprived of possession and use of the property which it lawfully owns.

3. Condonation was granted for the late filing of the respondent's answering affidavit.

4. The urgency was in dispute on mainly two bases: that the applicant has not shown an inability to be afforded substantial redress at a hearing in due course, because they can always sue for damages; and that the urgency was self-created.

5. As to the first point: Rule 6(12) provides (my emphasis):

"(12) (a) in urgent applications the court or a Judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall be as far as practicable be in terms of these Rules) as to it seems meet.

(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances in which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."

6. The reference to "substantial redress" does not in my view, refer to some other remedy, but to the remedy that the applicant brings before the court for determination in its urgent application.

7. It was conceded by counsel for the respondent that this is a matter of commercial urgency.¹

¹ See *Mbita Consulting Services CC v Passenger Rail Agency Of South Africa (Pty) Ltd trading as PRASA Real Estate Solutions* [2019] 7 ALL SA 794 (GJ) and *Avis Southern Africa (Pty), Ltd and Others v Porteous and Another* 2024 (2) SA 396 (GJ).

8. As to self-created urgency, I am of the view that the applicant explored the possibility of resolving the present impasse with the respondent, prior to bringing these proceedings.

9. In *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC), the Constitutional Court recognizes that a litigant, faced with an urgent situation, acts prudently and salutary if it engages with the respondent before rushing to Court.

10. I am therefore prepared to condone non-compliance with the provisions of Rule 6 in this case, and I rule that this matter is urgent.

11. That brings me to the substance of the application. The following facts are either common cause or not in dispute between the parties:

11.1 The applicant is the registered owner of the property;

11.2 The parties concluded a written commercial lease agreement ("the Lease") on 11 April 2024, commencing 1 May 2024 and terminating 30 April 2027.

11.3 The material terms of the Lease Agreement included *inter alia*:

11.3.1 The agreed monthly rental of R105 812,50 (exclusive of VAT) was payable monthly in advance, together with utilities and other charges (without deduction).

11.3.2 The respondent was prohibited from holding over, deferring or making any deductions from rental payable.

11.3.3 The respondent is to remedy any breach within 7 days of notice.

11.3.4 In the event that the respondent:

11.3.4.1 breaches any term of the agreement and thereafter breaches again within a 12 month period; or

11.3.4.2 consistently breaches the agreement

11.3.4.3 the applicant is entitled to immediately cancel the Lease or give one month notice and cancel the Lease.

11.3.5 The respondent will be deemed to have breached the Lease consistently for clause 26.1.5 to 26.1.7 to be exercised if

two or more notices have been sent to the respondent in terms of clauses 26.1.1

11.4 The respondent persistently failed to pay rental and associated charges timeously and in full.

11.5 Numerous written notices of breach and demands were addressed to the respondent.

11.6 On 28 October 2025 the applicant sent a Notice cancelling the Lease on one month notice in terms of clause 26.1.6.

11.7 On 7 November 2025, the applicant demanded the respondent to vacate the property by 30 November 2025.

11.8 The respondent failed to vacate by 30 November 2025 and remains in occupation.

12. Despite undertakings to regularize the arrears, the respondent:

12.1 Failed to pay May and June 2025 rental;

12.2 Made only partial payments thereafter;

12.3 Continued to default notwithstanding written demands;

12.4 Has made no payment since 22 October 2026.

13. In light of the multiple breaches the applicant issued multiple breach notices in compliance with cause 26 of the Lease.

14. Despite termination, the respondent has failed to make any payments and vacate and continue to hold over.

15. The respondent disputes that the Lease was validly cancelled on the basis that the applicant failed to comply with clause 35 when exercising clause 26.

16. It was argued by the respondent that the applicant varied the Lease agreement and ignored clause 35. It was further argued that the applicant went and

looked for a new tenant whilst the Lease agreement still subsists and signed a new agreement with another tenant.

17. Clause 35 of the Lease agreement provides as follows:

"35. No variation, amendment or consensual cancellation hereof or addition hereto, shall have any force or effect unless reduced to writing and signed by the Lessor and the Lessee or their duly authorized agents. No indulgence, extension of time, relaxation or latitude shown. granted or allowed by the Lessor to the Lessee, shall in any way constitute a waiver by the Lessor of any of its rights hereunder, nor shall the Lessor be stopped from exercising any of its rights hereunder by virtue thereof and the Lessor shall not in any way, be prejudiced by its having shown, granted or allowed such indulgence, extension or time, relaxation or latitude to the Lessee."

18. Clause 35 of the Lease agreement regulates consensual variations and amendments and has no application to the exercise of a contractual right of cancellation expressly provided for in clause 26.

19. The Lease agreement expressly and specifically regulates the consequences of breach and cancellation in clause 26, which entitles the applicant, upon the respondent's material breach and failure to remedy after notices were given, to cancel the Lease and require the respondent to vacate the premises.

20. Where a contract contains both general and specific provisions dealing with the same subject matter, the specific provision prevails. This is in keeping with the legal *maxim lex specialis derogat legi generali*.

21. The applicant exercised an express contractual right of cancellation arising from the respondent's breach. In my view no variation or amendment occurred.

22. I conclude that the Lease agreement was lawfully cancelled. That the respondent's continued occupation is unlawful, and that the applicant, as the lawful

owner, is entitled to the evacuation relief sought in order to restore possession of its property.

23. In the result, the following order is made:

1. This application is heard as one of urgency in terms of Rule 6(12), and that the noncompliance with the ordinary forms, service and time periods prescribed by the Uniform Rules of Court is hereby condoned.

2. The respondent is hereby directed to provide vacant occupation within a period of 14 days from date of this order of the immovable property known as ERF 5[...] Willow Park Manor x65, situated at 5[...] G[...] Street, N4 Gateway Industrial Park, Willow Park Manor x65 ("the Property") to the applicant, failing which the Sheriff of this Court is hereby ordered and directed to take such necessary steps to provide the vacant occupation of the Property to the applicant, including evicting the respondent and any person (who holds under it) from the premises.

3. The respondent to pay the costs of this application on the scale as between attorney and own client.

Strijdom JJ
Judge of the Hight Court, South Africa
Gauteng Division, Pretoria

Appearances:

For the applicant: Adv FA Darby
Instructed by: Kisch Africa Inc

For the first respondent: Adv YK Ndziba
Instructed by: Risenga Attorneys