

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-116243

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
08/04/2026	
DATE	SIGNATURE

In the matter between:

DA COSTA N.O., AUGOSTINHO NUNES

First Applicant

DA COSTA N.O., ANTONIO NUNES

Second Applicant

DA COSTA N.O., JOAO PEDRO NUNES

Third Applicant

DA COSTA N.O., MARY-ANNE

Fourth Applicant

DA COSTA N.O., MARIA FIOMENA

Fifth Applicant

FERRAZ N.O., VERONICA

Sixth Applicant

THE BEST TRUST COMPANY JHB (PTY) LTD N.O.

Seventh Applicant

and

**COLLINS ARHIN DARKO TRADING AS
FIRST CHOICE HAIR SALON**

First Respondent

**JULIET ASIEDUA OFORI TRADING AS
FIRST CHOICE HAIR SALON**

Second Respondent

EKURHULENI METROPOLITAN MUNICIPALITY

Third Respondent

JUDGMENT

DJ Smit, AJ

Introduction

- [1] This is an application for leave to appeal against an eviction order granted on 9 March 2026.
- [2] Despite receiving notice, Mr Collins Arhin Darko and Ms Juliet Asiedua Ofori (*tenants*) did not appear at the hearing of this application. They were notified of the date and time of the hearing, and the link for the virtual platform, by email and by the post of a widely shared note on CaseLines. The email used to notify them of the hearing was the same email as the tenants used to file their notice of application for leave to appeal on 12 March 2026. My secretary also attempted to contact them on a cell number they had furnished in their previous practice note.
- [3] The court accordingly proceeded to deal with the application for leave to appeal in their absence.

Discussion of the grounds for leave to appeal

- [4] The tenants filed a notice of application for leave to appeal in which they raised their grounds of appeal. At the hearing, counsel for the landlord addressed each of these grounds.
- [5] The tenants alleged that their occupation of the premises was not unlawful, as they had signed a lease agreement in 2024. They are mistaken in that: the last lease was signed on 24 June 2022, by both tenants (who also both furnished copies of their passports to the landlord when they signed the agreement).
- [6] As I noted in the main judgment, this lease agreement was lawfully terminated, at the latest when the eviction application was instituted in December 2024. If further authority is needed for the proposition that the institution of an eviction

application itself constitutes a valid termination of a lease, counsel for the landlord referred me to *Magic Vending (Pty) Ltd v Tambwe* 2021 (2) SA 512 (WCC) para 12 (and the authorities referred to there).

- [7] In addition, the damages claim instituted by the tenants against the landlord for allegedly unlawfully terminating their access to water and electricity has no bearing on whether they are occupying lawfully or not. That case must be disposed of on its own merits.
- [8] I therefore conclude that there is no prospect that another court would conclude that the tenants are currently (and at least since December 2024) in lawful occupation of the premises.
- [9] In relation to whether an eviction is just and equitable, the tenants alleged that the Ekurhuleni Metropolitan Municipality erred in taking into account the salary of Mr Darko (the first respondent in the main application) in forming the view that the tenants' income exceed the threshold where emergency accommodation would be offered as a matter of course.
- [10] The difficulty with this argument is that Mr Darko lives on the property and co-signed the lease agreement as tenant with Ms Ofori, his wife. Their joint income and personal circumstances must therefore be considered in the analysis whether the eviction would be just and equitable. Their joint income appears to justify the conclusion that they would be able to find alternative accommodation with relative ease.
- [11] For this reason, there is no prospect that another court would conclude that an eviction would not be just and equitable.

Order

- [12] I make the following order:
 - a. The application for leave to appeal is dismissed.
 - b. The first and second respondents are ordered to pay the costs of the application for leave to appeal, on Scale A.




DJ SMIT
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 8 April 2026

Date of judgment: 8 April 2026

For the Applicants (respondents in the application for leave to appeal):

KM Boshomane instructed by Harris Incorporated

For the First and Second Respondents (applicants in the application for leave to appeal):

No appearance