REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: ~~YES /~~ NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES /~~ NO
(3) REVISED: ~~YES /~~ NO

21 April 2026 ______________________

DATE SIGNATURE

CASE NUMBER: 2024-087390

In the matter between:

NUVUE INVESTMENTS (PTY) LTD **APPLICANT**

And

MMASELLO BUSINESS ENTERPRISE CC

t/a KEYALENA PHARMACY **RESPONDENT**

Heard: 2 March 2026

Delivered: 21 April 2026

JUDGMENT

WINDELL J:

Introduction

[1] The applicant, Nuvue Investments (Pty) Ltd**,** seeks an order for the eviction of the respondent, Mmasello Business Enterprise CC t/a Keyalena Pharmacy, from commercial premises situated at the F[…] G[…] Shopping Centre. The application is framed as a so-called "no-fault" commercial eviction, in that the applicant relies on the termination of the lease on notice, rather than any breach on the part of the respondent. The application is opposed.

[2] In addition, the notice of motion includes a claim for damages arising from the respondent's alleged holding over. The claim for damages is not persisted with.

[3] The central issue is the nature of the lease agreement and whether it has been validly terminated. The applicant contends that the respondent occupies on a month-to-month basis following tacit relocation of an earlier signed lease agreement, which terminated on 31 March 2019. The respondent disputes this and contends that the relationship is governed by an amended offer to lease ('OTL') concluded in September 2021, alternatively a binding agreement arising from acceptance by conduct.[1]

Background

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[1] See *Reid Bros (South Africa) Ltd v Fischer Bearings Co Ltd* 1943 AD 232; *Tactical Reaction Services CC v Beverley Estate II Homeowners Association* (2007/16441) [2010] ZAGPJHC 102 (5 November 2010).

[4] The applicant is the owner of the F[…] G[…] Shopping Centre, within which the respondent conducts the business of a retail pharmacy from Shop FG13.

[5] The respondent has occupied the premises since February 2014, initially in terms of a written lease concluded with the previous owner of the shopping centre, Balvest CC. That lease expired on 31 March 2019.

[6] During 2019, the shopping centre was sold to the applicant, together with the existing tenant occupancy and lease arrangements. The respondent remained in occupation of the premises after the expiry of the initial lease.

[7] The applicant's case is that, following the expiry of the written lease, the respondent continued to occupy the premises on a month-to-month basis arising from tacit relocation on the terms of the original lease.

[8] The respondent disputes this. It contends that, although no formal written lease was concluded immediately after March 2019, he parties continued their relationship on terms substantially similar to those of the previous lease, subject to agreed increases, until 2021. In or about July 2021, the applicant, through its managing agent, presented the respondent with a written offer to lease (the 'OTL'), which set out the terms upon which a further lease would be concluded.

[9] The respondent raised concerns regarding certain provisions of the OTL. It amended certain clauses, signed the document on 24 September 2021, and returned it to the applicant. The respondent contends that this was done with the knowledge and agreement of the applicant.

[10] The applicant's case is that the amended OTL, which was annexed to the founding affidavit, constituted a counter-offer which it did not accept. The respondent, however, contends that the OTL was accepted, alternatively that a binding agreement arose through the conduct of the parties.

[11] In support of that contention, the respondent relies on the subsequent conduct of the parties, including the implementation of the terms reflected in the OTL, the issuing of invoices consistent with those terms, and the provision of a bank guarantee in favour of the applicant.

[12] It is common cause that no formal lease agreement, as contemplated in the OTL, was subsequently signed. During May 2024, the applicant, through its attorneys, addressed a letter to the respondent purporting to terminate the respondent's right of occupation on one month's written notice, requiring the respondent to vacate the premises by 30 June 2024.

[13] The respondent did not vacate the premises and disputed the validity of the termination. It contended that the relationship between the parties was governed by the OTL and that the applicant had not validly terminated the agreement in accordance with its terms.

[14] The present application was thereafter instituted for the respondent's eviction.

Evaluation

[15] The dispute between the parties centres on the nature of the lease agreement governing the respondent's occupation and, in particular, whether the applicant validly terminated that agreement.

[16] In my view, it is not necessary to resolve the factual dispute between the parties as to the precise characterisation of the lease agreement. In motion proceedings, where disputes of fact arise, the matter must be determined on the respondent's version, together with those facts admitted by the applicant, unless the respondent's version is so far-fetched or untenable that it can be rejected on the papers. If, on that version, the applicant is entitled to relief, the court may grant it without resolving the dispute.[2]

[17] I proceed accordingly on the respondent's version. On that version, the relationship between the parties is governed by the OTL, which the respondent contends constitutes a binding agreement, alternatively one arising through the conduct of the parties.

[18] Clause 28 of the OTL provides that the landlord has the right, in its sole discretion, to cancel the offer to lease if the formal agreement of lease is not signed and returned within 30 days of delivery to the tenant.

[19] Clause 32.4 further provides that, should the tenant fail or refuse to sign the landlord's standard agreement of lease within 30 days, the OTL will constitute the agreement of lease between the parties, subject to a right of termination at the instance of the landlord on one calendar month's written notice.

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[2] See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A); *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA).

[20] Clause 32.7 specifically provides that:

'*The Landlord reserves the right to terminate this agreement by giving the tenant 1 (one) months written notice of termination.'*

[21] It follows from these provisions that the agreement was terminable at the instance of the landlord on one calendar month's written notice. This arises both from failure to conclude a formal lease agreement within the stipulated period and from the express termination right reserved to the landlord.

[22] It is common cause that the respondent did not sign a subsequent formal lease agreement as contemplated in the OTL. It is further not disputed that the applicant, through its attorneys, delivered a written notice of termination on 10 May 2024, terminating the respondent's right of occupation on one month's notice, with effect from 30 June 2024.

[23] While the notice of termination cited several reasons, including the respondent's failure to conclude a formal lease agreement, it is well established that a party terminating an agreement is not confined to the reasons stated in the notice and may rely on any valid ground for termination that existed at the time. The enquiry is accordingly whether, on the facts, a lawful basis for termination existed.[3]

[24] The respondent further contends that the applicant's termination was motivated by a desire to accommodate a competing tenant and was therefore improper. That contention does not avail the respondent. The motive for termination is, in any event,

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[3] *Putco Ltd v TV & Radio Guarantee Co (Pty) Ltd and other related cases* 1985 (4) SA 809 (A) at 832C-D; *Datacolor International (Pty) Ltd. v Intamerket (Pty) Ltd* 2001 (2) SA 284 (SCA) at para 28.

legally irrelevant. In *Montle and Neo Transport Service*,[4] the Court, relying on *Bredenkamp*,[5] reaffirmed that a party invoking a contractual right of termination is not required to justify its reasons for doing so. A termination on notice may be effected for commercial or subjective reasons, whether well-founded or not. What is decisive is whether the contractual right to terminate exists and has been properly exercised.

[25] The respondent does not dispute receipt of the notice of termination. Its case is rather that the applicant, having pleaded a month-to-month lease and having denied that the OTL governed the relationship between the parties, is not entitled to rely on the termination provisions of the OTL. That contention cannot be sustained. The matter falls to be determined on the respondent's version. On that version, the OTL governs the relationship between the parties and contains the termination provisions now in issue.

[26] The respondent's reliance on the amended OTL gives rise, at best, to a dispute as to the contractual framework governing the relationship between the parties, including the terms upon which any holding over would be assessed. That dispute may have been relevant to a claim for damages. It does not, however, establish a right to remain in occupation.

[27] Moreover, the respondent's version contains an inherent inconsistency. It seeks to rely on the amended OTL as governing the relationship between the parties, while at the same time contending that the applicant cannot rely on the termination provisions

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[4] *Montle and Neo Transport Service and Another v Engen Petroleum Limited and Another* (20420/2022) [2023] ZAWCHC 212 (18 August 2023).
[5] *Bredenkamp and Others v Standard Bank of South Africa Ltd* 2010 (4) SA 468 (SCA).

contained therein. That is not a sustainable position. The respondent cannot both rely on the OTL and deny the operation of its terms.

[28] Properly considered, the respondent's reliance on the amended OTL does not constitute a defence to the eviction claim. The OTL expressly permits termination on one calendar month's written notice. The respondent's case therefore does not demonstrate that the applicant was not entitled to terminate the agreement.

[29] The respondent raised a number of further defences, including that the application is premature, that the applicant impermissibly sought to make out a new case in reply, and that the applicant failed to comply with the provisions of the Consumer Protection Act 68 of 2008. None of these defences avail the respondent.

[30] The prematurity argument is founded on the contention that the applicant is not entitled to rely on the termination provisions of the OTL. For the reasons already given, the matter falls to be determined on the respondent's version, on which the OTL governs the relationship between the parties. That argument cannot be sustained.

[31] The respondent's complaint that the applicant impermissibly sought to make out a new case in reply is unfounded. The applicant's case has consistently been that the respondent's right of occupation has been validly terminated. The reliance on the provisions of the OTL arises in response to the respondent's own version that the OTL governs the relationship between the parties. In determining the matter on the respondent's version, the court is entitled to have regard to the contractual provisions relied upon by the respondent. This does not amount to the making out of a new case, but rather constitutes a proper engagement with the respondent's defence.

[32] As to the Consumer Protection Act, the respondent contends that, by virtue of clause 34 of the OTL, the agreement is subject to the Act where its annual turnover falls below the prescribed threshold. It further contends that the applicant was required to afford it an opportunity to remedy any alleged breach prior to termination.

[33] The respondent has not established, on the papers, that the Act applies to the agreement in question. In any event, the termination relied upon by the applicant is not based on breach, but on the exercise of a contractual right to terminate on notice. There is accordingly no basis to conclude that the provisions of the Act would preclude termination in the circumstances of this case.

[34] In the result the following order is made:

1. The respondent is ordered to vacate the premises known as Shop F[…], F[…] G[…] Shopping Centre, within 14 days of this order.

2. In the event that the respondent fails to vacate the premises within that period, the Sheriff is authorised to evict the respondent and all those holding under it.

3. The respondent is ordered to pay the costs of the application on Scale B.

L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

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 21 April 2026.

APPEARANCES

For the applicant:	S Mohammed
Instructed by:	Dasoo Attorneys
For the respondent:	E A Lourens
Instructed by:	Ramabulana Attorneys
Date of hearing:	2 March 2026
Date of judgment:	21 April 2026