THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

Reportable

Case no: CA & R 78/2024

In the matter between:

JUMALO TRADING CC **APPELLANT**

and

MARIA HELENA VISAGIE N.O **RESPONDENT**

Neutral citation: *Jumalo Trading CC v Visagie N.O* (CA & R 78/2024) 8 May 2026.

Coram: PHATSHOANE DJP, MAMOSEBO J and TYUTHUZA AJ.

Heard: 17 November 2025.

Delivered: 8 May 2026.

Summary: *Law of Sale and Lease* – cancellation of commercial lease following the sale of the leased property – *rei vindicatio* – whether a registered owner of a property who has sold property but not yet transferred ownership retains *locus standi* to evict – plea of non-joinder of the landlord (purchaser of the property) raised – appeal dismissed.

ORDER

On appeal from: the Northern Cape Division of the High Court, Kimberley (Lever J, sitting as Court of first instance):

1. The appeal is dismissed with costs on an attorney and client scale.

2. Paragraph 1 of the order of the Court of first instance is varied as follows:

> '1. The Respondent, and all others occupying on behalf of or through it, are ordered to vacate the property being the remaining extent of portion 5 of Farm number 187, situated in the Sol Plaatje Municipality, and to do so within 30 days from the date of this order.'

JUDGMENT

Phatshoane DJP (Mamosebo J and Tyuthuza AJ concurring)

[1] The Court of first instance, Lever J, granted an order directing the appellant, Jumalo Trading CC (Jumalo), together with all those who either through it, or on its behalf, occupy a commercial property described as the remaining extent of portion 5 of Farm no 187, situated in the Sol Plaatje Municipality (the property), to vacate the said property within 10 days from the date of the order; authorising and directing the Sheriff of this Court to execute the order in the event Jumalo and those occupying the property fail or refuse to vacate. Judgment was also entered against Jumalo for the payment of R22 300 in respect of the October 2022 arrear rental. The order carried costs against Jumalo on an attorney and client scale.[1]

[1] *Visagie N.O v Jumalo Trading CC* (740/2023) [2024] ZANCHC 56 (7 June 2024).

[2] This is an appeal with leave of the Court of first instance and raises two questions. First, whether the respondent, Ms MH Visagie, the executrix in the estate of the late Mr Andre Visagie (Mr Visagie), had *locus standi* to bring an application for the eviction of Jumalo. Secondly, whether Season Find 890 CC (Season Find) ought to have been joined in the litigation. If the respondent lacked *locus standi*, or if Season Find ought to have been joined, the eviction order cannot stand and must be set aside.

[3] The factual background giving rise to this appeal is set out in some detail in the judgment of the Court of first instance. A suitably truncated recitation of the chronology is necessary to facilitate understanding of the issues arising for consideration. The late Mr Visagie was the registered owner of the property in issue, which naturally became part of his estate upon his death. He passed away on 8 June 2023, after the launch of the application to which this appeal relates. Prior to this, Mr Visagie and Jumalo entered into a lease agreement on 16 February 2019 under which Jumalo leased the property for a term that expired on 21 January 2021. Thereafter, the lease continued on a month-to-month basis.

[4] On 11 October 2022, Mr Visagie directed a WhatsApp message to Jumalo advising it of the pending sale of the leased property to Mr Engelbrecht; the purchaser's intention to keep Jumalo as a lessee of the property, and to negotiate with Jumalo regarding some improvements that had been effected on the property. It is not in dispute that Mr Visagie entered into an agreement of sale in terms of which the property was sold as a going concern to Season Find on 10 October 2022 for R3 300 000 payable in two tranches. A deposit of R2 500 000 payable within seven days from the date of signature of the agreement, and the balance upon the registration of the property. Possession and occupation of the property, subject to the lease, would be granted to Season Find upon payment of the deposit.

[5] Jumalo accepted that Season Find had substituted Mr Visagie as the landlord. Some correspondence was exchanged between Mr Visagie's attorneys and Jumalo during October and November 2022 regarding, inter alia, the payment of rental to Season Find. Jumalo had an option to purchase the property. In anticipation of exercising the option, it made certain improvements to the property, consisting of the

installation of a weigh bridge, fencing, and the construction of a warehouse, which it claims are valued at two and a half million rand. Jumalo, however, did not exercise the option while it was available to it and avers that some breaches of the lease by Mr Visagie stymied the exercise of the option.

[6] While the written exchanges were underway, Jumalo had already stopped paying rent, effective from October 2022. However, it remained in possession and occupation of the property on the basis of what it claims to be an improvement lien. On 26 January 2023, the attorneys acting for both Mr Visagie and Season Find directed a letter to Jumalo in terms of which the lease was cancelled. On 20 April 2023, Mr Visagie launched an application for the eviction of Jumalo and the payment of all the arrear rental, which was adjusted to one month's rental because Mr Visagie was not entitled to rental after October 2022 but Season Find. When the application was heard, and the judgment of the Court of first instance was handed down, the property had not yet been transferred to Season Find at the Deeds Office.

[7] Before the Court of first instance and in this Court, the question of *locus standi* of the executrix of the estate of the late Mr Visagie (deceased estate) to bring the application and the non-joinder of Season Find were argued. The Court of first instance rejected Jumalo's argument that the deceased estate had no standing. On the basis of these decisions: *Jadwat and Moola v Seedat*[2]; *Red Stripe Trading 68 CC v Khumalo (Red Stripe 1)*[3]; and *Red Stripe Trading 68 CC v Mahlomola and Another (Red Stripe 2)*[4], the Court found that the vindication of the right to possess could only be effected by the registered owner of the property, and that the sale agreement between Mr Visagie and Season Find did not change the position. Consequently, reasoned the Court, the only party with the necessary *locus standi* to prosecute the application was the deceased estate, the registered owner of the property.[5]

[2] 1956 (4) SA 273 (N).
[3] (31039/04) [2005] ZAGPHC 31 (23 March 2005); 2005 JDR 0705 (W); [2005] JOL 15486 (W).
[4] (2011/06) [2006] ZAGPHC 39 (28 April 2006); 2006 JDR 0351 (W); [2006] JOL 17294 (W).
[5] See also section 16 of the Deeds Registries Act 47 of 1937.

[8] On the question of the plea of non-joinder of Season Find, the Court of first instance found the argument contrived because, to begin with, the issue of the validity of the sale of the business was not an issue before the Court. In fact, it is clearly not being contested. Furthermore, Mr Visagie had brought the application to fulfil his obligation towards Season Find to deliver possession by virtue of the relevant sale. The joinder of Season Find was not necessary to achieve this object. Finally, the Court found that at all times material to the application, Season Find had full knowledge of the application as its representative was intimately involved in the presentation of the case of the deceased estate.

[9] It is common ground that the ejectment claim is based on the right of an owner to vindicate or reclaim possession of its property. The requirements for eviction based on *rei vindicatio* are trite. The owner, in instituting a *rei vindicatio*, needs to do no more than allege and prove that he is the owner and that the defendant is holding the *res*, the *onus* being on the defendant to allege and establish any right to continue to hold against the owner.[6] In addition, it must also be established that the thing which is vindicated is still in existence and clearly identifiable.[7]

[10] The thrust of Mr Bester's argument, for the appellant, on the question of *locus standi*, is that Mr Visagie expressly and with every intention to do so, relinquished every right and obligation an owner could have regarding his property, except that of being paid the balance of the purchase price and to pass the transfer of ownership to Season Find. Counsel invoked *Chetty v Naidoo*[8] (*Chetty*) as authority for the proposition that in order for a registered owner to bring a vindicatory application and/or rely on *rei vindicatio,* such owner should, at the very least, be entitled to exclusive possession of the property and not to have alienated and disposed of that right, as in this case. In *Chetty*, it was held that one of the incidents of ownership:

'. . . is the right of exclusive possession of the *res*, with the necessary corollary that the owner may claim his property wherever found, from whomsoever holding it. It is inherent in

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[6] *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20C-D.

[7] G Muller, R Brits, JM Pienaar and Z Boggenpoel *Silberberg and Schoeman's: The Law of Property* 6 ed (2019) at 270; see also *Barloworld Equipment Southern Africa a Division of Barloworld South Africa v Mekgopaze Nkosi Trading Enterprise (Pty) Ltd* [2024] 4 All SA 127 (KZP) para 58.

[8] 1974 (3) SA 13 (A).

the nature of ownership that possession of the *res* should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g. a right of retention or a contractual right).'[9] (Footnotes omitted.)

Chetty did not address the question of *locus standi* of the owner of a property to bring a vindicatory application against the occupier. Far from it.

[11] In amplification of his argument, Mr Bester relied on the following clauses of the deed of sale between Mr Visagie and Season Find as indicative of cession of vindicatory action by the deceased estate to Season Find. Clause 7.1, which is to the effect that possession and occupation of the property subject to the lease would be given to Season Find on the day of the payment of the two and a half -million-rand deposit. Clause 8.1, which stipulates that all risk, profit, and loss would, upon the date of possession and occupation, pass to Season Find. And clause 17.1, which provides that Season Find assumes liability for any claims by Jumalo regarding improvements to the property, indemnifies the deceased's estate, and that Season Find would consequently be responsible for any compensation that may be payable to Jumalo for any such claims.

[12] Relevant to the issue under consideration, as authority for his contention, Mr Van Niekerk, for the deceased estate, called in aid *Red Stripe 1*, but more importantly in his favour, *Red Stripe 2*. In *Red Stripe 1*, the applicant, Red Stripe Trading 68 CC, had applied for the eviction of the occupiers of specific erven in former townships under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) as "a person in charge as defined in PIE". The occupier of Erf 1[...] (the property) was one of the respondents. He was the registered owner of the property upon which a bond was registered in favour of Nedperm. He fell behind with his bond repayments. Nedperm foreclosed against him, and the property was sold in execution. Peoples Bank Limited bought the property and took transfer, becoming the registered owner of the property. Despite the sale and transfer of the property to Peoples Bank, the occupier and his family remained in occupation of the property. Peoples Bank later sold the property, together with a large number of other properties, to Get-a-Home CC.

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[9] *Ibid* at 20A-C.

[13] Later, Red Stripe executed a written deed of sale with Get-a-Home CC for the purchase of the property. Clause 2 of the deed of sale provided that:

'Possession of the property will be given to the Purchaser, who shall be obliged to take possession thereof, on the date of signature, from which date the property shall be the sole risk, profit, or loss of the Purchaser.'

Red Stripe's *locus standi* to apply for the eviction of the occupier under s 4 of PIE was questioned because the property had not yet been transferred to it. In dismissing the application for eviction brought by Red Stripe, due to its lack of standing, Gildenhuys J said:

'Because the applicant's right to obtain *vacua possessio* of the property is a mere personal right, it can only be enforced against the person from whom it was acquired. See *Nkadia v Mahlazi and Others* 1982 (2) SA 441 (T) at 447G-H. The applicant has no real right to the property in question. It also has no contractual relationship with the respondent. In the absence of a real right or contractual relationship, it has no *locus standi* to evict the respondent from the property. This is evident from the judgment of Caney J in *Jadwat and Moola v Seedat* 1956 (4) SA 273 (N) at 276C/D, where he said:

"Clearly the buyer of a property who has not obtained transfer (nor cession of the owner's cause of action) is not entitled to sue for ejectment."'[10]

And at paragraph 12, he said:

'It is evident from the authorities referred to above that, under common law, the applicant has no standing to institute legal proceedings to evict the respondent. The applicant did not rely on a cession of Peoples Bank's vindicatory action. Nor did Mr Booyens suggest that such a cession occurred. Although a vindicatory action (*rei vindicatio*) is capable of cession, such a cession will not be presumed unless the intention to make it was clear. See *Marcus v Stamper and Zoutendijk* 1910 AD 58 at 75 and *Vivier v Waterberg Ko-Operatiewe Landboumaatskappy Bpk* 1956 (2) SA 665 (T) at 672D-E.'

[14] In *Red Stripe 2*, the applicant's *locus standi* to bring an eviction application against the occupier also came to the fore. Blieden J agreed with the views articulated by Gildenhuys J in paragraph 10 of his judgment recited above, but expressed his dissent that a vindicatory action of an immovable is capable of cession as set out in paragraph 12 of the judgment by Gildenhuys J. In *Red Stripe 2*, Nedbank Ltd, the registered owner of the immovable property, had ceded its "*right,*

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[10] *Red Stripe Trading 68 CC v Khumalo* (31039/04) [2005] ZAGPHC 31 (23 March 2005) para 10.

title and interest" to the property to Ariano 124 CC (Ariano). This cession was described as "*unconditional, irrevocable, and binding on both parties to the agreement*".[11] Ariano also entered into a deed of sale with Nedbank for the said property.

[15] Almost a month later, Ariano ceded to Red Stripe its right, title, and interest in the property, inclusive of the *rei vindicatio* remedy. Pursuant to this, Red Stripe brought an application for the eviction of the occupiers as a purported cessionary of certain rights, rather than as the owner of the property. Blieden J held:

'The basic principle in Roman-Dutch law is that before delivery takes place, a purchaser or anyone in a position similar to him is not entitled to institute the *rei vindicatio* as he is not the owner of the thing. This view is made plain in *Voet* 6.1.20 where the following is stated:

"Furthermore, those who never obtained the ownership of property have no power to vindicate it. Instances are they to whom a thing has not yet been legally delivered after they have bought it and paid the price; or they to whom a thing has been donated by the making of an agreement or stipulation without delivery; since such persons have only a personal action for delivery."'[12]

[16] Blieden J cited a collection of cases in which the question considered was whether a party could avail itself of a vindicatory remedy by a cession. He noted that those cases, which included the cases referred to by Gildenhuys J in paragraph 12 of his judgment,[13] dealt with the transfer of rights to movables where ownership could pass in various ways other than the actual physical handing over of the subject matter so transferred. He then said:

'In the instant case, the relevant rights of vindication relate to immovable property. The law in this regard is clear, such property can only be transferred by registration in the deeds registry. As is made plain by Sonnekus in *Sakereg* (1994 at page 402) and the authorities relied upon by him, "*Eiendomsreg as saaklike reg is ten ene male nie in die Suid-Afrikaanse reg op 'n suiwer konsensuele wyse, sonder voldoening aan die betrokke publisiteitsvereistes (registrasie by onroerende en lewering by roerende goedere) oordraagbaar nie.*" As a *rei vindicatio* is an inseparable part of the ownership in land, it cannot be ceded without the

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[11] *Red Stripe Trading 68 CC v Mahlomola and Another* (2011/06) [2006] ZAGPHC 39 (28 April 2006) para 13.

[12] *Ibid* para 15.

[13] *Marcus v Stamper and Zoutendijk* 1910 AD 58 at 75 and *Vivier v Waterberg Ko-Operatiewe Landboumaatskappy Bpk* 1956 (2) SA 665 (T) at 672D-E; *Stern NO v Standard Trading Co (Pty) Ltd* 1955 (3) SA 423 (A) at 429A-B; *Smit v Saipem* 1974 (4) SA 918 (A); *Caledon & Suid-Westelike Distrikte Eksekuteurskamer Bpk v Wentzel* 1972 (1) SA 270 (A) at 274-275; *Air-Kel (Edms) Bpk h/a Merkel Motors v Bodenstein* 1980 (3) SA 917 (A).

property being transferred in terms of the law, which in the present case is by registration of transfer in the deeds registry. It must be stressed, as is made plain in the cases quoted above, that the *rei vindicatio* is only a remedy and not a right, it cannot be ceded separately from the right of ownership.'[14]

[17] The principle laid down in *Red Stripe 2* commends itself in this instance and is decisive on the question now before the Court. I see no conceptual difficulty in following that approach. To fortify this conclusion, s 16 of the Deeds Registries Act 47 of 1937 provides in part that the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar. On the principles and the authorities referred to, Jumalo's argument that certain specified clauses of the deed of sale signified a cession of the *rei vindicatio* remedy cannot avail it. Stated otherwise, the argument that the deceased estate divested itself, in the sale agreement, of every right and/or obligation an owner could possibly have, must falter.

[18] From the background already sketched, Mr Visagie's ownership could never have been of a "nominal character" as Jumalo sought to suggest with reference to the remarks in *Shimuadi v Shirungu*[15] where it was said:

'Should the defendant deny any one of these elements, namely that plaintiff is the owner or that defendant is in occupation, the *onus* is on the plaintiff to prove the truth of the element which is denied. The plaintiff would succeed in discharging the *onus* of proof in respect of ownership by proving registered title deeds in his favour. An inference that plaintiff is the owner would then justifiably be drawn. Should the defendant dispute the validity of the title deeds or that ownership, despite the deeds, is of a "nominal character" ("nominale aard"), as in the present case, the *onus* is on the defendant to prove this.'

Mr Visagie may well have parted with his possession, but it is manifest that he did not part with his ownership.

[14] *Red Stripe Trading 68 CC v Mahlomola and Another* (above fn 11) para 17.
[15] 1990 (3) SA 344 (SWA) at 347C-D.

[19] To further bolster its argument that the deceased estate rid itself of the right to possession and ceded all its rights and obligations to Season Find, Jumalo further relied on s 197 of the Labour Relations Act 66 of 1995 (LRA). In broad outline, s 197 of the LRA provides that where there is transfer of a business by one employer (the old employer) to another employer (the new employer) as a going concern, the new employer/purchaser, Season Find in this case, is automatically substituted for the old employer/seller as the employer in respect of all the existing contracts of employment. All rights and obligations between the old employer and the employees, at the time of transfer, continue to be in force as if they had been rights and obligations between the new employer and the employees. Jumalo's argument is somewhat misplaced. Section 197 of the LRA does not find application in this case.

[20] Jumalo does not challenge the Court of first instance's rejection of its defence based on an improvement lien, which was aimed at asserting its continuous physical control over the property and ward off Mr Visagie's *rei vindicatio* remedy because it was afforded leave to appeal on a restricted basis. In any event, clauses 9.1.2 and 27 of the lease agreement appear to render the defence untenable. They provide:

'9.1 The tenant shall-

. . .

9.1.2 not make any alterations or additions whatsoever to the premises without the prior written consent of the landlord. In the event of the landlord agreeing to any such alteration or addition to the premises, the landlord shall be entitled, on termination of this agreement, to require the tenant to restore the premises at the tenant's expense to the same condition it was in prior to such alteration or addition. On termination of the lease, the tenant shall be obliged to remove any/all of the alterations, additions, or improvements at the tenant's cost and be obliged to make good any damage incurred by such removal unless otherwise agreed in writing with the landlord. If the tenant does not remove all the alterations, additions or improvements by the expiry date or the date of termination, then the remaining items shall become the property of the landlord, who shall be entitled to remove and make good the affected areas at the tenant's cost or retain such alterations, additions, or improvements without compensating the tenant therefore.

. . .

27 The landlord grants the tenant permission to do improvements on the property at his own costs prior to exercising his option to purchase. Should the tenant make improvements to the property and, does not exercise the granted option to purchase, the costs of the

alterations will not be refunded by the landlord, and the landlord reserves the right to demand the property in its original condition, also at the cost of the tenant.'

[21] Finally, in *Minister of Police and Others v Fidelity Security Services (Pty) Ltd and Others*[16], the Constitutional Court trenchantly restated the distinction between ownership and possession as follows:

'Ownership, as the most comprehensive real right a legal subject can have in relation to a thing, is accorded recognition and protection in terms of art 17 of the Universal Declaration of Human Rights, and domestically in s 25 of the Constitution. Possession is one of the entitlements that traditionally flows from ownership, and it is constituted when "a person has physical control (*detentio*) of a thing together with the mental attitude (*animus possidendi*) that includes a consciousness of that control". Possession in itself, though, is something entirely different from ownership. Possession is characterised by being in control of an object, *and the right to possession is far more limited than a person's ownership rights over an object*.' (My emphasis.)

On the foregoing analysis, the deceased estate had *locus standi* to bring the eviction application as the registered owner of the property. Jumalo's tenancy was lawfully terminated, and it is therefore not entitled to resist ejectment.

[22] The remaining issue to consider is Jumalo's argument that Season Find ought to have been joined in the eviction proceedings. I hasten to say that this is not an objection of any great weight. A person must be joined as a party to the proceedings where their joinder is necessary. That would be the case if a party has a material direct or substantial interest in the relief claimed, unless it has waived that right. A direct and substantial interest is an interest in the right which is the subject matter of the litigation. A plain financial interest is an indirect interest and may not require joinder.[17] The mere fact that a party may have an interest in the outcome of litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings has accordingly been held to be limited.[18]

[16] 2022 (2) SACR 519 (CC) para 38.

[17] *Eugene Prinsloo v Donovan Theodore Majiedt N.O and Another* (257/2024) [2025] ZASCA 74 (30 May 2025); [2025] JOL 69060 (SCA) para 13.

[18] *Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA) para 12.

[23] Season Find is aware of these proceedings as its sole member attested to a confirmatory affidavit in support of some of the averments made by the deceased estate which concerned it. The overall assessment of this case demonstrates that the joinder of Season Find in this litigation was unnecessary to achieve the object of the application as determined by the Court of first instance. The Court, therefore, correctly rejected the joinder argument as contrived. The upshot of this is that Jumalo's appeal must fail.

[24] Jumalo urged, in the event that the appeal is not upheld, that it be afforded three months to vacate the property, and that the Court of first instance's award of costs on an attorney and client scale be substituted with one on a party and party scale. Taking into account the interest of the deceased estate, and further recognising that ownership is a constitutionally protected right, I am of the view that, regard being had to the length of the period in which Jumalo remained in occupation of the property, a period of one month to vacate the property would be just and equitable in the circumstances of this case. The variation of the Court of first instance's order, only to the extent of amending the period within which an order of ejectment ought to take effect, is therefore necessary.

[25] The Court of first instance's justification of attorney and client costs is anchored in clause 22 of the lease agreement. This appeal is not directed at the Court's exercise of discretion regarding the costs. In my view, there would be no rational basis to upset the finding and to depart from the terms of the agreement. To hold otherwise would render the agreements lawfully concluded ineffectual. An order is therefore issued:

Order:

1. The appeal is dismissed with costs on an attorney and client scale.

2. Paragraph 1 of the order of the Court of first instance is varied as follows:

    '1. The Respondent, and all others occupying on behalf of or through it, are ordered to vacate the property being the remaining extent of portion 5 of Farm number

187, situated in the Sol Plaatje Municipality, and to do so within 30 days from the date of this order.'

M V PHATSHOANE
DEPUTY JUDGE PRESIDENT
NORTHERN CAPE DIVISION

Appearances

For the appellant:	E Bester
Instructed by:	Adrian B Horwitz & Associates, Kimberley
For the respondent:	JG Van Niekerk SC
Instructed by:	Engelsman Magabane Inc, Kimberley.