



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Not reportable

Case Number: **2025-173705**

In the matter between:

**STRÜMPFER INVESTMENTS (PTY)
LTD T/A KAYS CARAVAN PARK**

Applicant

and

NEVILLE ERNST VAN VUUREN

First Respondent

CHANTEL ROBERTHA NAYLOR

Second Respondent

DUNCAN JAMES VAN VUUREN

Third Respondent

LAILA JANE VAN VUUREN

Fourth Respondent

ALL OTHER OCCUPIERS

Fifth Respondent

CITY OF CAPE TOWN

Sixth Respondent

Coram: Greig AJ

Heard: 6 May 2026

Delivered: 14 May 2026

Summary: Lease — termination — notice — equivocality — Letter purporting to cancel lease with immediate effect while simultaneously affording time to vacate and demanding payment of arrears unacceptably equivocal — not constituting valid termination or notice to rectify — Consumer Protection Act 68 of 2008, ss 14(2)(b)(ii) and 14(2)(d) — Plascon-Evans rule — unrepresented respondents' failure to initially plead pertinent facts in answering affidavit excusable — version, though belated, not rejected as untenable, especially having regard to applicant's hearsay version.

ORDER

- [1] The application is dismissed;
- [2] The counterclaim/counter-application is dismissed;
- [3] There is no order as to costs save that the first to fourth respondents are ordered to pay the applicant's costs of the counter-application on the Magistrates' Court scale.

JUDGEMENT

Greig AJ

INTRODUCTION

- [1] This is an opposed eviction application in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act'). The property to which the application relates is known as plots [...] and 1 [...], Kays Caravan Park, L[...] R[...] Road, Strand, Western Cape, owned by the applicant, Strümpfer Investments (Pty) Ltd, which trades as Kays Caravan Park ('the applicant' or 'Strümpfer').
- [2] The property is one amongst many at Kays Caravan Park. Photographs attached by the respondents to their answering affidavit show that the dwelling is not a formal brick and mortar house but instead made of wood, galvanised iron and other assorted materials.
- [3] The first to fourth respondents, who I will call 'the respondents', are a family, the Van Vuurens. The first respondent is retired and lives with the second to fourth respondents, his wife, Chantel van Vuuren, his son Duncan van Vuuren, and his daughter, Laila van Vuuren. The fourth respondent's child, Jamie van Vuuren, is also resident at the property.
- [4] The respondents have lived in Kays Caravan Park for several years. Initially they resided in a family tent and later in a caravan. However, they were offered more permanent accommodation in Kays Caravan Park and moved into the above 3-bedroom structure around September 2023, where they still reside.
- [5] The application came before me on 6 May 2026. The respondents were not legally represented at the hearing.

BACKGROUND

The lease agreement

- [6] It is common cause that the respondents first took occupation of the dwelling in September 2023 pursuant to a lease agreement. It is also common cause that the initial rental payable was R 6,300 per month.
- [7] However, at this point the parties' versions of the lease agreement diverge. The applicant alleges that occupation was taken in terms of a written lease agreement which was since lost in a flood. The applicant attaches a pro forma written lease agreement in 'blank' form which it says it uses for all its tenants, and would have been the basis of the written lease between the applicant and the respondents.
- [8] This blank written lease agreement states under the heading 'Lease Period' that the lease would be 'on a month-to-month basis'. Somewhat anomalously for a 'month-to-month' lease, it also contains, in clause 18, a provision relating to a 'Renewal Period' whereby the tenant was permitted to 'apply to the Landlord in writing, for the lease period to be extended at least 2 calendar months before the Termination Date.' The written lease also contains a provision whereby electricity would be for the account of the respondents. The written lease agreement on its face also states that the lessor is 'Kays Caravan Park, Lana Strümpfer de Goede, identity number ...'.
- [9] The lease agreement therefore contains several anomalous or self-contradictory provisions, not least of which is the fact that the lessor is not clearly reflected as the applicant company.
- [10] It is further relevant that clause 24.1 of the pro forma lease stipulates the manner in which a party may cancel for breach, as follows:

‘Should any amount payable by the Tenant not be paid on due date or should the Tenant commit any breach of any other condition of this agreement, the Landlord will give the Tenant seven (7) days written notice requiring the Tenant to make such payment or to remedy any breach. Should the Tenant fail to remedy any breach, the Landlord shall be entitled to cancel this agreement by giving notice to the Tenant to vacate.’

[11] The respondents’ answering affidavit does not deal with these issues head-on. As to the identity of the lessor, the answering affidavit contends that Kays Caravan Park is operated by a registered non-profit company, Kays Community NPC, which was incorporated in December 2023, after the conclusion of the lease agreement. The respondents do not state in terms, however, with whom the lease was.

[12] As to the nature of the lease agreement, the respondents ‘vehemently’ deny that any written lease agreement was concluded. They allege that the pro forma blank lease which Strümpfer alleges was the basis of the written lease agreement, was only utilised later by Kays Community NPC, and therefore could not have been the lease which applied.

[13] The respondents also allege that, had they been presented with such a written lease, they would not have signed it. They say so for various reasons, including that they would have declined liability for payment of electricity. They also raise various issues with the terms of the written lease agreement which they say render the agreement non-compliant with the Consumer Protection Act (‘CPA’).¹ The answering affidavit does not state what the duration of the lease was to be, but does not contradict the applicant’s assertion that it was a ‘month- to-month’ lease.

[14] The respondents further initiated a ‘counterclaim’, raising various disparate grounds as a basis to claim wide-ranging relief, including a declaration that

¹ Consumer Protection Act 68 of 2008

the dwelling is in fact an unlawful structure due to contraventions of zoning and safety regulations, and consequently that no arrears are payable; and that rental monies received by Strümpfer, totalling R 73,400, should be reimbursed to the respondents. This ‘counterclaim’ is at least partly based on a claim for remission of rental based on the fact that the third bedroom, actually a toolshed, as well as the kitchen and bathroom, were allegedly unusable since September 2023 and April 2024 respectively, because of a leaking roof. For this they rely on the Rental Housing Unfair Practices Regulations, Western Cape², section 5(3) which provides that

‘where the repairs, conversion or refurbishments are necessary only to a part of the building and the tenant continues to occupy the remaining part, the tenant must receive a commission in rental, the amount of which must be proportionate to the extent of the tenant’s deprivation’.

[15] Aside from the above, the respondents do not expressly rely on any common law remission of rental. They further do not quantify this remission in any meaningful way, whether proportionally to the total leased area or otherwise.

[16] The respondents in an answering affidavit opposing condonation for the late filing of the replying affidavit, under the rubric of ‘merits’, provided more detail about the conclusion of the lease agreement, none of which had been included in the answering affidavit in the main application. They say that the second respondent, Chantel van Vuuren, and her daughter, Laila van Vuuren met at the office of the erstwhile manager of Kays Caravan Park, Kathleen (Cathy) Marsh on 30 August 2023, by which stage they had been staying at Kays Caravan Park since 3 February 2023.

² Rental Housing Act Unfair Practices Regulations, Western Cape, 2002, Provincial Gazette 5822

[17] They allege that Ms Marsh told them that the property would be becoming available in September 2023, and that they could no longer stay in the camping section. The respondents asked for a day to consider their position. On 31 August 2023, Ms Marsh again called them to the office to discuss the issue. The respondents accepted the offer, reasoning that, if they declined, they might be homeless from 31 August 2023.

[18] They therefore advised Ms Marsh that, having lost everything after the Covid-19 pandemic, they needed somewhere to stay on a permanent basis and that they would accept the property ‘if it would be a fixed arrangement for a minimum of two (2) years as [the respondents] wanted enough time to try and get “back on our feet”... and did not want to be troubled by finding other accommodation...’

[19] Ms Marsh told them that they would not be able to view the premises as it was still occupied and would only be vacated on 3 September 2023. They were, however, told that the premises had 3 bedrooms and a bathroom, and that they would no longer have to use the ablution block. The rental would be R 6,300 per month, with annual increases. (Apparently, this was a surprise as they had expected the rental would be in the region of R 4,500 per month).

[20] They say that Ms Marsh ‘agreed to the two-year period’, and even remarked that she herself had a 99-year lease, and that it ‘would not be a problem as many residents have lived on the property for 20 years or more.’

[21] Their discussions concluded on this basis and Ms Marsh told the respondents that they should pay the first month’s rent by 1 September 2023, which they did.

[22] The second respondent summarises the resulting position in the affidavit by stating ‘I firmly believe that I concluded a verbal two-year lease, in the presents [sic: presence] of my daughter, with Cathy, the erstwhile manager of Kays Caravan Park, on 30 August 2023, and that no other lease agreement exists...’. This is confirmed in an affidavit deposed to by her daughter, Laila van Vuuren, the fourth respondent.

[23] In response to the above, the applicant (sensibly given that the respondents are laypeople) agreed to deal with these factual allegations rather than to seek to strike out those portions of the respondents’ affidavit.³ Unfortunately, the resultant affidavit is not particularly edifying. It contains much by way of argument (with which I will deal presently), but few facts. Notably the erstwhile manager, Ms Marsh, with whom the respondents say they dealt when they completed the lease agreement, did not depose to any affidavit contradicting the respondents’ version.

[24] Instead, the deponent to the further affidavit, Ms Strümpfer, alleges that ‘the applicant never enters into fixed term agreements with occupiers given the nature of the property and the fact that residents often reside there only temporarily’.

[25] Ms Strümpfer further says that

‘Ms Marsh was a receptionist in my office. I doubt that Ms Marsh would have said the respondents could enter into a fixed term lease for 2 years and, even if she did, Ms Marsh never had any authority to enter into any lease agreements on behalf of the applicant. Accordingly, no such lease agreement could have come into existence.’

[26] Thus, at a factual level, what one is left with is ‘doubt’ that Ms Marsh would have concluded such a lease, and an assertion that she would have

³ I note in this regard that during the hearing I granted condonation for the late filing of the replying affidavit and for the filing by the parties of various further affidavits.

had no authority to do so.⁴ However, it is not clear that such authority would not have been ostensible; and Ms Strümpfer, even at this juncture, provides no insight as to who (other than Ms Marsh) might have concluded the agreement.

[27] That then is the state of play on the papers as to the nature and terms of the lease agreement.

Termination of the lease

[28] The respondents fell into arrears with their rental payments and on 28 March 2025 the applicant delivered, by Sheriff, a termination letter (‘the termination letter’) stating as follows:

‘It has come to our attention that you: (1) are occupying the property in terms of a lease agreement which is on a month-to-month basis (2) Are outstanding with your monthly payments to the amount of R 46,420. It is our instruction to write to you and all other occupiers at the premises as we hereby do, and inform you, and all other occupiers, that: (1) our client herewith cancels your lease agreement and/or right of occupation together with any right that you may feel you have regarding your occupation and inform you that you are required to vacate the property by 30 April 2025. (2) you are demanded to pay the outstanding amount of R 46,420 plus legal fees in the amount of R 2,500 on or before 30 April 2025. Should you fail to comply with this letter you will be in unlawful occupation and further legal steps will be taken against you. Kindly note that we have further been instructed that there is no copy of the lease agreement, due to the most recent flooding. Should you possess a copy of the said lease agreement, kindly provide same to writer hereof....However if we do not receive a copy of the lease agreement, we will assume that the lease agreement is of a verbal nature.’

⁴ Further noteworthy is the fact that the applicant’s attorneys’ termination letter expresses no firm instructions as to the nature of the agreement, indicating to the respondents that, if the written agreement was not provided, then the applicant would assume the agreement was ‘verbal’ (presumably a reference to an oral agreement). This draws into question the later positive affirmation in the founding affidavit that the lease was concluded based on pro forma lease, and gives credence to the respondents’ scepticism based on their contention that this pro forma only came into use after Kays Community NPC took over the management.

[29] The respondents say that the above letter was not a valid termination of the lease as it failed to provide them with 20 days notice to rectify which was required in terms of section 14(2)(b)(ii) of the CPA.

[30] The applicant, in its replying affidavit, contested the relevance of section 14(2)(b)(ii) of the CPA, contending that it only applies to fixed term agreements and not to a month-to-month lease. I deal with these issues in the discussion below.

APPLICABLE LEGAL PRINCIPLES

[31] Before the provisions of the PIE Act come into play, a common law right to eviction must be established. When the owner acknowledges that an occupier has or had a right of occupation (for example in terms of a lease), the owner must, in addition to ownership, also prove that the occupier's right no longer exists or is no longer enforceable, for example that the lease between the parties has expired or been cancelled lawfully.⁵

[32] At common law a fixed term lease terminates automatically after the effluxion of the relevant period.⁶ Periodical leases continue in being until terminated by due notice.⁷ The period of the notice differs according to the nature of the lease, and must be reasonable and given for a commercial reason.⁸ In relation to month-to-month leases, generally one calendar month's notice is sufficient.⁹

⁵ *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20A; *Ndlovu v Ngcobo*; *Bekker and Another v Jika* 2003 (1) SA 113 (SCA) at paras 46 – 47.

⁶ *Tiopaizi v Bulawayo Municipality* 1923 AD 317 at 325.

⁷ *Tshabalala v Van der Merwe* 1926 TPD 75 at 78.

⁸ *Putco Ltd v TV & Radio Guarantee Company (Pty) Ltd* 1985 (4) SA 809 (A)

⁹ See e.g. *Moyce v Estate Taylor* 1948 (3) SA 822 (A) at 830.

[33] As held in *Ntsobi v Burlington Mission Society*¹⁰ and *Sebola v Standard Bank of South Africa Limited*,¹¹ a notice of termination must be clear, unconditional and unequivocal.¹²

[34] The common law rule that a lease terminates automatically has been altered by the provisions of section 14(2)(d) of the CPA. In terms of that provision, upon the expiry of a fixed term consumer agreement, the agreement is not terminated but continues automatically on a month-to-month basis, subject to any material changes of which the supplier has given notice, unless the consumer expressly directs the supplier to terminate the agreement on the expiry date or agrees to a renewal for a further fixed term.

DISCUSSION

[35] The issue as to whether the lease was for an indefinite period, on a month-to-month basis, or for a two-year period as is now alleged in the affidavit opposing condonation, is relevant to whether the contract was a fixed term contract, and therefore whether section 14(2)(b)(ii) of the CPA applies.¹³

[36] However, for reasons which I will explain, the outcome in this case also hangs on terms of the termination letter. My reasons for this appear from what follows below.

Resolution of conflicting versions of the lease agreement

[37] This is a claim for final relief and therefore falls to be assessed on the respondents' version unless the allegations are 'so far-fetched or clearly

¹⁰ *Ntsobi v Burlington Mission Society* 1924 TPD 378 at 380.

¹¹ *Sebola v Standard Bank of South Africa Limited* 2012 (8) BCLR785 (CC) at para 120.

¹² Followed in *Putco Ltd v TV & Radio Guarantee Company (Pty) Ltd* 1985 (4) SA 809 (A) at 830 E. See further *Sebola v Standard Bank of South Africa Limited* 2012 (8) BCLR785 (CC) at para 120.

¹³ In *Makah v Magic Vending (Pty) Ltd* 2018 (3) SA 241 (WCC) it was held that these provisions do not apply, to a month-to-month residential lease, and that they only applied to fixed term agreements.

untenable that the Court is justified in rejecting them merely on the papers'.¹⁴

[38] As mentioned, the applicant's version of the lease is that it was on a month-to-month basis and was concluded in writing. The written lease was since lost in a flood, and only the pro forma version remains.

[39] The high-water mark of the challenge to this in the answering affidavit was a denial that the agreement was in writing. Although the respondents proffered various reasons why they would not have signed the pro forma lease, they made no positive allegations as to the terms that they contended actually applied, whether in relation to duration or otherwise. They further did not deny that the lease agreement was on a month-to-month basis. Thus, though they raised a point in terms of section 14(2)(b)(ii) of the CPA that the termination was invalid because the requisite 20-day written notice to rectify their material failure to comply with the agreement had not been given, they did not lay a factual basis for this by alleging a fixed term lease, nor was there any denial that the lease agreement was on a month-to-month basis.

[40] In a supplementary answering affidavit, the respondents pointed to a notification of a rental increase and statement of account which they received from the applicant, contending that this was 'a clear indication that the agreement of lease exists'. Again, however, nothing was said in this affidavit as to the duration of the lease.

[41] Then in the replying affidavit, the applicant pointed out that the respondents' reliance on section 14 of the CPA was misplaced given that the section only applies to fixed term lease agreements.

¹⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)

[42] It was in these circumstances that, the day before the hearing, and in the context of an affidavit opposing condonation, the respondents made further allegations that the agreement negotiated with Ms Marsh was for a fixed two-year contract term, and was not on a month-to-month basis.

Which is the correct version of the lease agreement?

[43] Whilst it is customary in claims for final relief on motion to assess whether the respondent's version is so untenable or far-fetched that it may be rejected merely on the papers, I find it necessary in this matter to first set down some reflections on the version of the agreement proffered by the applicant. Some of my reservations would already have been clear from the background I have sketched above. Nonetheless, for the sake of completeness, I relate them, in no particular order, below:

- (a) The applicant avers in paragraph 14 of the founding affidavit a barebones version of the conclusion of the lease agreement: 'the Applicant, and the First to Fourth Respondent entered into a written agreement of lease in or about September 2023.' It does not state who represented the applicant, nor who represented the respondents.
- (b) The agreement itself is on its face not consistent with many of the allegations made in the founding affidavit. It appears to have been entered into by 'Kays Caravan Park, Lana Strümpfer de Goede', whose identity number is given. Paragraph 2 does state that 'the lease shall be on a month-to-month basis', but paragraph 18 anomalously allows for the 'lease period to be extended at least two (2) calendar months before the Termination Date.'¹⁵

¹⁵ There is no indication of the 'termination date', however.

(c) Whilst the founding affidavit states that the lease agreement was in writing, the termination letter served by Sheriff on 28 March 2025¹⁶ requests a copy of the lease agreement from the respondents, and thereupon states ‘however, if we do not receive a copy of the lease agreement, we will assume that the lease agreement is of a verbal nature.’ Again, this speaks more to the applicant’s ignorance of the nature and terms of the lease agreement than anything else; and it is consistent with the lease agreement having been negotiated and concluded orally by the applicant’s former employee, Ms Marsh.

[44] As to the respondents’ version, as I have mentioned, at first it consisted of little more than a denial that the agreement was in writing; only on the day before the hearing were allegations made that a fixed two-year lease was entered into.

[45] Counsel for the applicant submitted that the above was clearly a situation where the facts were being ‘reverse engineered’ by the respondents to fit the legal contention that no proper notice to rectify had been given in terms of section 14 of the CPA. On this basis counsel submitted that the version proffered by the respondents should be rejected on the papers as being an untenable attempt to avoid the ‘pinch of the shoe’. He referred to the oft-quoted dictum in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*¹⁷ that ‘a real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to

¹⁶ It is dated the previous day, 27 March 2025.

¹⁷ *Wightman t/a JW construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA)

be disputed', and that when a respondent signs the answering affidavit, they commit themselves to its contents, even if inadequate.¹⁸

[46] The above submission has much force. However, ultimately, I do not accept the submission for the following two reasons:

- (a) *First*, belated as it may be, the version of the terms of the lease proffered by the respondents is a detailed factual version from two witnesses who say they were actually present when the agreement was concluded. The version relates the context of the negotiations in the office at Kays Caravan Park: the fact that Ms Marsh provided something of an ultimatum to move to a more permanent abode; the time taken to consider the offer; the concerns the respondents had if they did not accept the offer; the fact that an inspection could not be conducted; and Ms Marsh's assurances that the property had 3 bedrooms and a bathroom, and that the respondents would no longer have to utilise the ablution block.
- (b) The context in which the fixed term was negotiated was further elaborated upon by Chantel van Vuuren in her affidavit. She says that she negotiated the two-year fixed term because, after the Covid-19 pandemic, the respondents did not want a situation where they would again be troubled by finding other accommodation. The response from Ms Marsh to this request is also laid out in some detail: she said that a two-year lease would not be a problem as she herself had a 99-year lease, and many residents had lived on the property for 20 years or more.
- (c) Most importantly, the above version is uncontradicted by the applicant except by unsubstantiated hearsay and argument: whilst it may be that

¹⁸ *Wightman t/a JW construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA).

Ms Marsh was herself evicted by the applicant, and perhaps would be disinclined to provide an affidavit confirming her version of the events, the fact remains that she has not done so.

(d) Thus, the position is that the only factual averments in relation to the conclusion of the agreement which go beyond hearsay and speculation are those of Laila and Chantel van Vuuren. Though their version is a belated one and arguably made to relieve the ‘pinch of the shoe’, I would be reluctant to reject it as untenable on the papers when it is the only version on oath of persons who have direct knowledge of the conclusion of the agreement.

(e) *Second*, the above conclusion is reinforced by the fact that the respondents are laypeople and therefore their failure to raise these pertinent facts upfront in the answering affidavit is more excusable than it would have been had they been legally represented. In this regard I note that the remarks in *Wightman*,¹⁹ whilst not limited to the context of a legally represented respondent, certainly reference the duties of a legal representative in such circumstances to advise the client to be sure to include all relevant allegations and substantiated denials in an answering affidavit. This is a benefit which the respondents in this case did not have.

[47] Based on the above I am therefore of the view that the respondents’ version must be accepted on these papers, viz. that the lease agreement was for a fixed period of 2 years, and that accordingly the provisions of section

¹⁹ *Supra*.

14(2)(b)(ii) of the CPA applied, and the respondents were entitled to 20 days' notice to rectify.²⁰

[48] However, the issue does not end there. Counsel for the applicant argued that, even if this was the case, in effect the respondents did receive 20 days notice because the termination letter gave a full calendar month's notice for the respondents to vacate. This is the nub of the issue, to which I now turn.

Did the termination letter validly terminate the lease?

[49] As I understood the applicant's argument it was that, on a proper interpretation, the termination letter constituted (1) a demand for payment and (2) separately, the giving of a calendar month's notice in relation to the month-to-month lease.

[50] However, in my view, at best the termination letter is equivocal as to whether it provided an opportunity to rectify the default; constituted an immediate cancellation; or was a notice to vacate on one calendar month's notice.

[51] I accept that, if the letter had been phrased along the lines, 'in light of the fact that you are a bad payer Kays has decided to terminate, giving you one calendar month's notice to vacate by 30 April 2025, and reminding you that you are in arrears in the amount of R 46,420', then perhaps there would, on the applicant's version, have been a valid termination of the month-to-month lease. Neither section 14(2)(b)(ii) of the CPA, nor any contractual or common law duty to provide an opportunity to rectify the breach, would

²⁰ The sub-section states as follows 'the supplier may cancel the agreement 20 business days after giving written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time'. I also note that, in any event, the respondents were entitled to an opportunity to rectify the breach in terms of clause 24.1 (giving 7 days written notice), on the applicants' version, or on their version (at common law) by being given reasonable notice to rectify the breach.

have been triggered, as the letter would have been clear that the applicant was terminating the lease by notice, rather than cancelling the lease for breach.

[52] But this is not what the termination letter says. The cancellation is immediate, and follows a complaint about outstanding rental. Though the respondents are afforded a calendar month to vacate, at least on one interpretation it is implied that compliance ‘with the letter’ (which comprehends both vacation and payment)²¹ could render occupation lawful again.

[53] Counsel for the applicant submitted that the correct interpretation of the phrase ‘should you fail to comply with this letter, you will be in unlawful occupation, and further legal steps will be taken against you’, must be that, if the respondents remained in occupation after the notice period expired on 30 April 2025, their occupation would be unlawful.

[54] Whilst that does make some sense, the submission overlooks the fact that the demand in the letter is not only to vacate but also to comply ‘with this letter’, which encompasses payment as well. It also sits uncomfortably with the summary cancellation and demands for payment which precede it.

[55] Bearing in mind the requirement that the terms of a notice to terminate a lease must be clear, I do not think that the termination letter can constitute a valid termination in this instance. Indeed, confronted with this letter, one may ask what the respondents ought to have done. Should they have regarded the immediate cancellation as invalid, and ignored it? Should they have treated the letter as affording them the requisite 20-day opportunity in

²¹ As an aside, the suggestion in the termination letter that the respondents would be required also to pay an additional R 2,500 in legal fees to rectify their position is also questionable: this round number does not seem to be derived from tariff or scale, nor had litigation by that stage been initiated.

terms of the CPA to rectify the breach, when the demand to vacate was seemingly peremptory?

[56] The equivocality issue does not dissolve even on the applicant's version. If the lease was a month-to-month lease, should the respondents have regarded the calendar month's notice as being in terms of the contract, or some gratuitous period following what was evidently a summary cancellation? What of the requirements for cancellation in clause 24.1, did they not apply given the breach allegations?

[57] I am fortified in my view that the termination letter was unacceptably equivocal by the case of *Acire Property Holdings (Pty) Ltd v Banzi Trade 31 (Pty) Ltd t/a Brick-It*²² which involved a letter from the lessor purporting to terminate a month-to-month lease 'with immediate effect', while simultaneously 'affording' the tenant time until a stated date to vacate. The relevant letter stated as follows:

'Our client has instructed us to hereby give you notice of termination of the lease agreement with immediate effect. Without derogating from the fact that the lease agreement is a month-to-month lease and whilst we reserve all of our rights in that regard, our client has decided to afford you until 31 December 2022 to vacate its property.'²³

[58] The issue was whether the above letter unlawfully communicated an immediate termination of the month-to-month lease agreement, as the respondent contended, or whether it communicated the termination with effect from the last day of December 2022, as the applicant contended.²⁴

²² *Acire Property Holdings (Pty) Ltd v Banzi Trade 31 (Pty) Ltd t/a Brick-It* (7889/2021) [2021] ZAGPPHC 542 (25 August 2021); 2021 JDR 1970 (GP).

²³ At para 4.

²⁴ At para 7.

[59] The court held that the fact that the letter afforded the respondent time to vacate the property did not derogate from the fact that the termination had been expressed as immediate:

‘Whilst I accept that a notice communicating the termination of the right of occupation but not specifying when the termination will take effect, coupled with a period during which the lessee is given notice to vacate, would ordinarily communicate the termination of the lease at the end of the period of notice, the plain words of the November letter preclude that outcome²⁵ ... At best for the applicant, however, the letter is equivocal when it is required to be clear and unequivocal to be effective.’²⁶

[60] The court further confirmed that, though the matter had not been raised in the parties’ affidavits, the point was a point of law and had been ‘covered by the affidavits in the sense that the respondent takes issue with the lawfulness of the termination of its tenancy.’²⁷ In this case the respondents, unrepresented litigants, questioned the validity of the termination *inter alia* on the basis of section 14 of the CPA. They did not, in terms, raise the equivocality of the termination letter, or the fact that the letter stated that the applicant ‘herewith cancels’; but the issue was nonetheless raised in a general way in the answering affidavit. In any event, as with the court in *Acire*, I do not see the failure to pertinently raise this issue in the answering affidavit as material.

[61] I further accept that *Acire* is distinguishable on some grounds. The wording of the termination letter is of course not precisely the same, for instance in

²⁵ See *Molusi and Others v Voges NO and Others* 2016 (3) SA 370 (CC) which the court referred to in this context.

²⁶ The decision of the full bench of this court in *A.S and Another v J.C and Others* (A63/2017) [2019] ZAWCHC 71; [2019] 3 All SA 425 (WCC) (19 June 2019) is also instructive and followed similar reasoning, holding that that failure to comply with a contractual breach clause requiring a 14-day notice to remedy precluded the landlord from relying on cancellation for breach.

²⁷ At para 16.

its use of the phrase: ‘without derogating from the fact that the lease agreement is a month-to-month lease and whilst we reserve all of our rights in that regard’. But the principle remains: a notice of termination must be clear, as held in *Ntsobi and Sebola*,²⁸ and an expression of immediate cancellation coupled with time to vacate (and in this case, arguably also time to remedy a breach) introduces an unacceptable degree of equivocality into the termination such that it cannot stand.

[62] Finally, as regards the requirements of clause 24.1 of the pro forma lease, which would have applied to cancellation for breach even on the applicant’s version, see *Hano Trading CC v J R 209 Investments (Pty) Ltd and Another*²⁹ where the SCA held that, if the contract provides that, in the event of the one party committing a breach of any of the terms of the agreement and failing to remedy such breach within a stated number of days after receipt of a written notice to do so, the party seeking to rely on such failure to cancel the agreement must show that it has complied strictly with the peremptory provisions of the clause. This too would have resulted in unlawful termination on the applicant’s version given the equivocation in the termination letter.

Did the lease in any event expire by effluxion of time?

[63] In the further affidavit in response to the new allegations made about the duration of the lease by the respondents, the applicant states that:

‘even if the respondents’ latest version were correct (which I deny), it is still no defence to the applicant’s eviction application. On their own version, the alleged agreement would have come to an end by September 2025.

²⁸ *Supra*.

²⁹ *Hano Trading CC v J R 209 Investments (Pty) Ltd and Another* 2013 (1) SA 161 (SCA) at paras [31] to [34]

[64] The same contentions were raised before me in oral argument, the applicant laying emphasis on the fact that the respondents stated that, aside from the two-year fixed term lease, ‘no other lease agreement exists’, and that, after the termination of the lease by the effluxion of time at the end of September 2025, there could have been no tacit relocation thereof.

[65] I do not agree with the above contentions. Firstly, the hypothetical situation posited by the applicant, if the fixed term lease had run its course, namely that the lease would have expired by effluxion of time by end September 2025, is not the only scenario which may have eventuated. For instance, had a proper and unequivocal notice to rectify been sent on 28 March 2025, the rental arrears may have been settled, or the parties may have reached some arrangement. In that case, the lease may have been tacitly relocated at the end of September 2025. Furthermore, after the equivocal termination notice was sent on 28 March 2025, the parties came to be in dispute. The respondents’ resistance to this summary cancellation of the lease was justified: the termination letter was equivocal (and probably a repudiation of the lease). In short, it is awkward to superimpose upon this factual situation various hypotheticals, even if they accord with the version presented by the respondents that the lease was for a fixed term of two years and would (at common law) have expired automatically after the effluxion of two years.³⁰

[66] There is a further reason why the above argument cannot be accepted. As mentioned, in terms of section 14 (2) (d) of the CPA:

‘On the expiry of the fixed term of the consumer agreement, it will be automatically continued on a month-to-month basis, subject to any material changes of which the supplier has given notice, as contemplated in paragraph (c), unless the consumer expressly- (i) directs the supplier to terminate the agreement on the expiry date; or (ii) agrees to a renewal of the agreement for a further fixed term.’

³⁰ See *Tiopaizi* supra.

[67] Accordingly, on the expiry of the fixed term lease, it automatically continued on a month-to-month basis, and (given the invalid termination) continues on this basis to this day.

The counterclaim / counter-application

[68] The ‘counterclaim’ instituted by the respondents is better thought of as a counter-application. The point raised by the applicant, that the ‘counterclaim’ should be disregarded as ‘irregular’, is not a point of substance.

[69] Nonetheless, much of the relief claimed in the counter-application is incompetent. Non-compliance with zoning or fire and safety regulations would not render the lease per se unlawful,³¹ nor would it have the result that all rental payments previously made are now repayable to the respondents.

[70] As to the claim for remission, this is based on section 5(3) of the Rental Housing Unfair Practices Regulations, Western Cape, 2002.³²

[71] However, the quantification of the claim for remission is vague. There is no calculation of the amount claimed in the affidavit supporting the counterclaim. In argument the submission was made that one could make a rough approximation based on the fact that one of the 3 bedrooms, and the bathroom and kitchen, were unusable for various periods. But in my view it would be inappropriate to determine the issue without (for example) details of the relevant square meterage of the affected rooms, and the exact nature and extent of the deprivation suffered.

³¹ See e.g. *Wierda Road West Properties (Pty) Ltd v Sizwe Ntsaluba Gobodo Inc* 2018 (3) SA 95 (SCA).

³² There is no explicit reference to the common law in this regard.

[72] There are thus insufficient facts stated upon which a finding could be made in terms of section 5(3) of the Rental Housing Unfair Practices Regulations, Western Cape to determine remission of rental “proportionate” to the tenant’s deprivation.

[73] In addition, the contention by the applicant that this is not a convenient forum for consideration of claims for remission of rental is also persuasive. The applicant does not claim payment of arrear rental but rather the eviction of the respondents. A counterclaim for remission of rental can only sensibly be considered in relation to claims for arrear rental. Should a further action be instituted for arrear rental then the trial of that action would be the appropriate forum to consider claims for remission of rental.

[74] For the above reasons I intend to dismiss the counter-application.³³

CONCLUSION

[75] For the reasons set out above, the applicant has failed to establish that the respondents are in unlawful occupation of the property. On these papers, the lease agreement was for a fixed term of two years. The purported termination of the lease by service of the termination letter on 28 March 2025 was invalid by reason of its equivocality and its failure to provide the requisite notice in terms of the CPA. The application must therefore be dismissed.

[76] The counter-application also falls to be dismissed in large measure as the claims it raises are incompetent, though the remission of rental claim may later be raised by the respondents in the appropriate forum.

³³ However, a claim for remission of rental may again be raised in an appropriate forum. To this extent the order I intend to grant is more akin to one of absolution.

[77] The further issues in relation to whether eviction would be just and equitable in terms of the PIE Act do not arise given the findings I have made in relation to the ineffective termination of the lease.

COSTS

[78] The respondents were not represented and accordingly no costs award is competent in relation to their opposition to the applicant's claim for eviction.

[79] The counterclaim or counter-application, though not properly quantified, could not exceed the claim for arrear rental which the applicant put at R 73,400, and was thus within the jurisdiction of the Magistrates' Courts. As the applicant was largely successful in opposing the counterclaim, I intend to grant costs on the Magistrates' Court's scale in relation to the counter-application.

ORDER

[80] I accordingly make the following order:

- (a) The application is dismissed;
- (b) The counterclaim/counter-application is dismissed;
- (c) There is no order as to costs save that the first to fourth respondents are ordered to pay the applicant's costs of the counter-application on the Magistrates' Court scale.

M. GREIG

ACTING JUDGE OF THE HIGH COURT

WESTERN CAPE

Appearances:

For Applicant: Adv R de Wet

Instructed by: A Niewoudt, Gideon Engelbrecht Inc.

For Respondents: In person