



**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

Case 2025/046832

Date: 09 June 2026

In the matter between:

**PETERSON, IZAK SMOLLY N.O.**  
in his capacity as trustee of **MERGENCE AFRICA  
PROPERTY INVESTMENT TRUST**

First Plaintiff

**ASMAL, RIDWAAN N.O.**  
in his capacity as trustee of **MERGENCE AFRICA  
PROPERTY INVESTMENT TRUST**

Second Plaintiff

**AZIZOLLAHOFF, BRIAN HILTON N.O.**  
in his capacity as trustee of **MERGENCE AFRICA  
PROPERTY INVESTMENT TRUST**

Third Plaintiff

**JUNKOON, JUJDEESHIN N.O.**  
in his capacity as trustee of **MERGENCE AFRICA  
PROPERTY INVESTMENT TRUST**

Fourth Plaintiff

and

**PHETOGO SALES (PTY) LTD t/a BOKAMOSO SALES**

First Defendant

**MAKGATHO PETER MANKU**

Second Defendant

**RACHEL LUCIA MOHLABI**

Third Defendant

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## JUDGMENT

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DU PLESSIS J

### *Introduction*

[1] This is an opposed application for summary judgment arising from alleged arrears in rent and related charges, said to be due in terms of a written lease agreement, together with relief against the second and third defendants as sureties.

[2] A plaintiff requesting summary judgment must meet the criteria of Rule 32 as developed through case law and prove to the court that the defendant has not presented a legitimate defence to the claim. In the oft-cited case of *Maharaj v Barclays National Bank Ltd*,<sup>1</sup> the Appellate Division laid down the rule: where the defence is based on facts, in the sense that the facts alleged by the plaintiff in his summons are disputed and new facts are alleged in the plea, the court hearing the summary judgment does not attempt to decide the disputed issues or determine where the balance of probabilities lies. Instead, the inquiry is on whether the defendant has fully disclosed the nature and basis of the defence, along with the material facts they depend on, and whether, based on those facts, the defendant appears to have a defence that is bona fide and legally sound.

[3] In *Breitenbach v Fiat SA (Edms) Bpk*<sup>2</sup> the court similarly emphasised that it is sufficient if a defendant raises a defence, valid in law, in a manner that is not inherently and seriously unconvincing, and sets out the material facts with enough detail to persuade the court that, if proved at trial, they would constitute a defence.

[4] During argument, counsel for the plaintiffs submitted that, even on the defendants' version, the plaintiffs were at least entitled to rent until November 2024, and suggested that the court grant summary judgment to that extent. Judgment was

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<sup>1</sup> 1976 (1) SA 418 (A) at 427.

<sup>2</sup> 1976 (2) SA 226 (T) at 229.

reserved to reflect on the submission in light of the pleaded defences and the material placed before the court.

[5] Upon a closer rereading of the papers, it is evident that the principal issue between the parties is whether the contractual relationship is governed by the written lease relied upon by the plaintiffs or by the oral, alternatively tacit, lease claimed by the defendants. This question is fundamental to the case. It underpins the plaintiff's cause of action and it determines the terms of the lease, duration, the basis upon which rent and related charges, as well as other issues such as reletting the property and the counterclaim.

[6] This is because the defendants' case is that, after the plaintiffs signed the written lease, they addressed an email stating that they did not wish to proceed on those terms, and that no binding written lease was therefore concluded between the parties. The plaintiff, on the other hand, relies on the written lease (signed only by the plaintiff) and the defendants' subsequent conduct to establish a binding agreement. In these circumstances, it is not only the existence of a written lease but also the precise terms on which the parties contracted that are genuinely in dispute.

[7] I will not express a definitive opinion on the case's merits—that is for the trial court. However, based on these papers, the defendant's account is not so far-fetched or untenable as to warrant dismissal outright. The defendants have placed before the court material that, if proven at trial, may constitute an answer to the plaintiff's claim. This includes the submission that they are at least entitled to judgment up to November 2024.

[8] Having reconsidered the matter in light of those authorities and after a closer reconsideration of the pleadings and affidavits, I am unable to conclude that the plaintiffs' case is unanswerable at this stage.

[9] There are, in addition, related disputes concerning the quantification of the claim, including the basis for certain utility and related charges, and the legal effect, if any, of the alleged lock-out and the counterclaim said to arise from it. Those issues

only support the conclusion that the matter is not suitable for final determination by summary judgment.

[10] As a result, the plaintiffs have not shown that they have an unanswerable case. The defendants are entitled to leave to defend. Costs to be costs in the cause.

*Order*

[11] The following order is made:

1. The application for Summary Judgment is dismissed.
2. The defendants are granted leave to defend the action.
3. The costs of the summary judgment application are costs in the cause.

  
**WJ du Plessis**

Judge of the High Court, Gauteng Division,  
Johannesburg

Date of hearing:	18 March 2026
Date of judgment:	9 June 2026
For the applicant:	J Dobie instructed by Rooseboom Attorneys
For the respondent:	B Brammer instructed by J Booysen Barker & Lesaba Inc