

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 2025-109269

In the matter between:

ISMAIL SAEED

APPLICANT

Versus

AHMED SAEED

RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant is seeking an interdict against Respondent *inter alia* not to disturb Applicant's business operations at [...] and [...] C[...] Street, Richmond, KwaZulu-Natal. Further that Respondent or his agents or persons acting under his command be interdicted and restrained from interfering and or disturbing the tenants occupying the said building and that any person acting under his command be prevented from entering onto the property which is occupied by Applicant, his employees, tenants, agents and contractors. Respondent also not go within 50 metres of the property; to not threaten, intimidate, harass or harm Applicants employees, tenants, agents,

contractors or tenants' employees. The relief is set out the notice of motion and it is not necessary to repeat it all herein. The Sheriff to be assisted by the South African Police Services to serve the order on Respondent and to prevent any of the conduct which is referred to. Respondent is also to pay the costs of the application as between attorney and client.

[2] Before dealing with the issues in the said application it may be helpful to briefly set out the background of this case.

[3] Applicant is the uncle of Respondent. From the documentation it appears that the property which is referred to as Bombay House and also Budget Building in C[...] street, Richmond, KwaZulu-Natal was sold by Applicant to Respondent on 18 December 2019 for the sum of R2 000 000.00. At that stage an amount of R1 300 000.00 had already been paid to Applicant. In the replying affidavit Applicant contends that he leased the premises to Respondent. Various lease agreements with tenants are attached to the papers and are all in respect of the said property and were all signed during December 2025. Action was instituted by Respondent against Applicant during 2023 for transfer of the property after he had offered to pay the balance of R196 000.00 in full and final payment of the R2 000 000.00. Applicant now denies he signed the deed of sale dated 18 December 2019.

[4] It is not in dispute that Respondent was given possession of the property during April 2019, that he let out the shops and that all the rent was paid to him until December 2024. From January 2025 the rental was no longer paid to him as Applicant alleged in a letter to the tenants that the lease with Respondent had been cancelled during December 2024, that he was the owner of the property, and instructed the tenants to pay the rental to him.

[5] As I already mentioned various lease agreements which have been entered into between Applicant with various tenants are as well as the summons, particulars of claim, the plea, the counter claim etc all dealing with this property are attached to the papers. This does not however assist in the determination of the main application before court except that it does relate to the counter application which was instituted by Respondent.

[6] In the counter application it is sought that various individuals who are listed therein are joined as Respondents in the proceedings. Further pending the outcome of the matter under case number 1048/2023P that Applicant does not interfere with any of the business operations situated at C[...] Street, Richmond, KwaZulu-Natal and does not collect rent from the tenants. Second to Seventh Respondent are directed to pay to First Respondent the rentals, alternatively to First Respondent's attorney or to Applicant's attorney. The rental so obtained shall then be invested in an interest bearing account. It also sets out the procedure to be followed in the event of any maintenance or repair that has to be done to the building and how this should be dealt with by the parties and the attorney to whom the rental is paid. That the costs of the application be reserved for decision by the court adjudicating the action.

[7] Applicant, in his founding affidavit, contends that the relief which is sought in the notice of motion is necessary as there is a genuine concern that Respondent will continue with his unlawful conduct. He contends that he is the owner of the property and that the action instituted by Respondent is defended. Due to the dispute in respect of the property, on 27 December 2024 he issued a notice to tenants advising them that the property belonged to him and all rental had to be paid to him.

[8] He contends that Respondent on 15 March 2025 forcibly ejected one of his tenants from a shop. The said tenant one Uddin brought a spoliation application in the Magistrates Court Richmond. This application was however not proceeded with nor

considered and no judgment was given therein. A confirmatory affidavit by the said Mr. Uddin is attached to the application papers. Applicant lists the persons with whom he has lease agreements and copies thereof are attached to the papers. All these lease agreements were only entered into during January 2025.

[9] In paragraph 20 of the founding affidavit Applicant sets out that one Shaming Mamun, one of the tenants, advised him that he had been told by a third party that if the rental was not paid to Respondent the same would happen to him as happened to Mr. Uddin. On 30 June 2025. Lindiwe Ntombela, another tenant, advised him that an agent acting on behalf of Respondent had approached her and also said that if the rental was not paid to Respondent the same would happen to her as to Uddin. Except for these persons mentioned above there are no confirmatory affidavits by any of the other tenants that they have been threatened etc.

[10] Based on these averments Applicant brings the application. What is set out in respect of Mr. Mamun is hearsay, not only in the first degree but far removed as the best it can state is “that a third party had told him”. There is no mention who this person is. The averment by Lindiwe Ntombela states that she was approached by an agent acting on behalf of Respondent. There is no indication who this agent is and on what basis it is contended that it is an agent of Respondent. The only other allegation is that of Mr. Uddin which Applicant relies on for the relief sought. As set out above that matter was never proceeded with.

[11] There is nothing in the founding affidavit that Respondent interfered with tenants except for Uddin, who is no longer on the premises or Masmun and Ntombela’s allegations I dealt with above. There is no evidence of any interference etc against the tenants mentioned in paragraph 19.1, 19.2 and 19.5 to 19.7. There is no evidence why Respondent may not go closer than fifty metres from the property nor any allegation or

evidence to support the relief claimed in paragraphs 3.3 to 3.6 and paragraph 4 of the notice of motion.

[12] It is trite that Applicant must make out a case for the relief claimed in his founding affidavit. In my view the allegations which are contained in the founding affidavit are hearsay and there is nothing further upon which the relief sought can be granted. Applicant has failed to make out a case for the relief claimed in the notice of motion.

[13] Respondent instituted a counter application as set out in paragraph 2 of the notice of motion in the counter application on page 013-3 to 013-5 of the papers. He seeks *inter alia* that the rental paid by the tenants be paid into the trust account of either Applicant's attorney or Respondent's attorney. Respondent also in paragraph 1 of the notice of counter application seeks that the tenants be joined in the proceedings. It is however, in my view, due to the conclusion reached herein not necessary to grant an order for the joinder of the Respondents as they do not have any specific interest in the application. It is also not in dispute that they are in occupation of the said business premises and have to pay rental. The order sought only instructs them where to pay the rental.

[14] It is apparent from the papers that there is a dispute between the parties as to whether an agreement of sale was signed, whether Applicant recalls signing it and whether there was a lease agreement. From 2019 until 2024 the rental was collected by Respondent. It was only after the letters of Applicant during December 2025 that Applicant contended he was the owner and the rentals were then to be paid to him.

[15] Due to the disputes mentioned to them the rental that has to be paid is in issue. This can only be determined during the trial where oral evidence will be led. It is necessary that this matter proceed to trial as soon as possible. The rental paid is

accordingly in issue until the action is finalised. The order which is *inter alia* sought by Respondent in the counter application that the rental be paid to an attorney pending the outcome of the matter under case number 1084/2023P appears to be a sensible solution to the problem. This matter should have been set down for trial long ago and it is unnecessary that it is dragging on at this rate.

[16] The tenants must be allowed to continue occupying the said premises and the rental is to be paid to an attorney to be kept in an interest bearing account pending the finalisation of the action. Counter Relief as set out in portions of the counter application is justified. Respondent has failed to make out a case for the relief sought in paragraph 2 (a), (b) and (c) of the notice of the counter application, relating to threats etc.

The following order is accordingly made:

1. The main application is dismissed with costs.
2. Pending the outcome of the matter under case number 1048/2023P the tenants of the respective premises at 8 C[...] Street Richmond who at present are as set out in paragraph 19.1 to 19.7 of Applicant's founding affidavit are to pay their monthly rental to Applicant's attorney J Leslie Smith and Company Incorporated, Athlone Centre 1 Montgomery Drive Pietermaritzburg.
3. An order is granted in terms of paragraph 2(d), 2 (e) and 2 (e) (iii) and 2 (f) of the notice of counter application on pages 013-4 and 013-5 of the papers.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED:

5 JUNE 2026

JUDGMENT HANDED DOWN ONLINE:

COUNSEL FOR APPLICANT:

T Q REDDY

Instructed by: J Leslie Smith & Company Inc

Pietermaritzburg

Tel: 033 845 9700

Email: naseebas@jleslie.co.za

Ref: N SADAQ/22JL0026

COUNSEL FOR RESPONDENT:

G REDDY

Instructed by: R Ramjathan and Associates

Chatworth

Ref: 17801

c/o: Masstross Naidoo Ori Inc.

Pietermaritzburg

Email: ori@mastross.co.za