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**REPUBLIC OF SOUTH AFRICA**  
**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

**Case No: 2025/107813**

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| Reportable: NO<br>Of interest to other Judges: NO<br>Revised: NO<br>Date: 03 July 2026    Shadrack Tebeile AJ<br>Signature: _____ |
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In the matter between:

NEW MARKET DEVELOPMENTS (PTY) LTD  
(Registration Number: 1996/000566/07)

Applicant

and

SPLIFF CAFE (PTY) LTD  
(Registration Number: 2024/020397/07)

Respondent

Heard on       :       21 April 2026  
Decided on   :       03 July 2026  
Coram         :       Tebeile AJ

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**JUDGMENT**

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TEBEILE AJ:

**Introduction**

[1] This is an opposed application in which the applicant seeks an order for the return of possession of certain commercial premises by way of the *rei vindicatio*.

[2] The applicant is the registered owner of the premises. The respondent occupies the premises and conducts business therefrom. The respondent opposes the application on the basis that it occupies the premises lawfully in terms of a written lease agreement concluded with the applicant on 21 January 2025, and which lease agreement the respondent says has not been validly terminated.

### **The parties**

[3] The applicant is New Market Developments (Pty) Ltd, with registration number: 1996/000566/07).

[4] The respondent is Spliff Cafe (Pty) Ltd, with registration number: 2024/020397/07.

### **Background**

[5] The applicant is the registered owner of Shop [...], situated on Erf [...] Hoogland Extension [...], Gauteng (“the premises”). The respondent is a company that conducts business from the premises.

[6] On 21 January 2025, the parties concluded a written lease agreement in terms whereof the respondent was granted the right to occupy the premises for a period of two years, commencing on 1 April 2025 and terminating on 31 March 2027. The lease agreement was duly signed by Mr Darin D’Oliveira (the director of the applicant) on

behalf of the applicant and by Mr Shanoor Singh (the director of the respondent) on behalf of the respondent.

[7] On 20 March 2025, before the commencement date of the lease, the applicant's attorney addressed a letter to the respondent purporting to cancel the lease agreement with immediate effect. The letter alleged that on 18 March 2025 a violent incident had occurred between the respondent's owner and a neighbouring tenant, which constituted a breach of clauses 11(b) and 23(ii)(a) of the lease agreement. The respondent was afforded until 30 April 2025 to vacate the premises and without a notice to remedy the alleged breach.

[8] The respondent, through its attorneys, responded on 16 May 2025 denying any breach, disputing the validity of the purported cancellation, and stating that it remained in occupation under the lease. The respondent continued to pay rental, which the applicant continued to accept.

[9] On 8 July 2025, the applicant launched the present application. In its founding affidavit, the applicant relied solely on its ownership of the premises and the *rei vindicatio*, making no mention of the lease agreement or the purported cancellation thereof. Only in reply did the applicant seek to address the lease and the alleged breaches.

[10] The matter was subsequently set down for hearing on the opposed motion roll.

### **The applicant's submissions**

[11] The applicant's case is founded on the *rei vindicatio*. It contends that it is the owner of the premises, that the premises exist and are identifiable, and that the

respondent is in possession thereof. The applicant argues that this is all that is required to succeed. The applicant relies on *Chetty v Naidoo*<sup>1</sup> for the proposition that the owner need only to prove ownership and possession by the respondent, whereafter the onus shifts to the respondent to establish a right to retain possession.

[12] The applicant further contends that the lease agreement was lawfully terminated by the letter dated 20 March 2025, that the respondent's continued occupation is therefore unlawful, and that the respondent's reliance on repudiation is misplaced because repudiation does not create a right of occupation.

### **The respondent's submissions**

[13] The respondent does not dispute the applicant's ownership of the premises. It admits that it occupies the premises. However, it contends that its possession is lawful by virtue of the written lease agreement concluded on 21 January 2025, which it says remains extant and enforceable.

[14] The respondent raises three principal defences. First, it contends that the applicant's purported cancellation of the lease is invalid because the applicant failed to comply with clause 23(ii)(a) of the lease agreement, which requires the lessor to give the lessee five business days' written notice to remedy any alleged breach before cancellation. It is submitted that no such notice was given to the respondent.

[15] Second, the respondent argues that the applicant's letter of 20 March 2025, which terminated the lease with immediate effect without affording the respondent an opportunity to remedy the alleged breach, constitutes a repudiation of the lease

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<sup>1</sup> 1974 (3) SA 13 (A).

agreement. The respondent has rejected that repudiation and insists on performance, and therefore the lease remains in force.

[16] Third, the respondent submits that there are material disputes of fact on the papers, particularly regarding whether the respondent breached the lease and whether the termination was valid, and which cannot be resolved in motion proceedings. The respondent points to the fact that the applicant deliberately omitted any reference to the lease in its founding papers and sought to introduce new evidence only in reply.

### **The legal principles and analysis of the case**

[17] The *rei vindicatio* is a remedy available to an owner to recover possession of his or her property from any person who possesses it unlawfully. In *Chetty v Naidoo*, the Appellate Division held:

“It is inherent in 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). The owner, in instituting a *rei vindicatio*, need, therefore, 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.”<sup>2</sup>

[18] However, as the same Court made clear in *Chetty v Naidoo* that, where the plaintiff concedes that the defendant would have had a right to occupy but for an alleged termination, the position is different. Jansen JA stated:

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<sup>2</sup> Id at 20C-E.

“If, however, the defendant relies on the right conceded by the plaintiff, the statement of claim, but at any stage. ... In either case the burden rests upon the plaintiff to prove the termination of the lease.”

[19] In this matter, the applicant concedes that the respondent occupied the premises pursuant to a written lease agreement. The applicant’s founding affidavit is silent on the lease, but in reply it admits the existence of the lease and asserts that it has been terminated. The respondent relies on that conceded right. Consequently, the onus rests on the applicant to prove that it validly terminated the respondent’s right of occupation.

[20] Furthermore, the respondent argues that there are material disputes of fact that cannot be resolved on the papers. The parties dispute whether the respondent breached the lease agreement, whether the incident of 18 March 2025 occurred as alleged by the applicant, whether the respondent’s conduct constituted a breach, and whether the respondent was given an opportunity to remedy any alleged breach. The respondent further argues that the applicant sought to introduce new evidence in reply—including an incident report and a confirmatory affidavit—without providing proper foundational affidavits from the witnesses concerned.

[21] It is trite that motion proceedings are designed for the resolution of legal issues based on common cause facts. Where material disputes of fact arise, a final order can only be granted if the facts alleged by the respondent, together with the facts alleged by the applicant that are admitted, justify such an order.<sup>3</sup> The Supreme Court of Appeal in *Zuma*<sup>4</sup> stated:

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<sup>3</sup> See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.

<sup>4</sup> *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA).

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers. The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version.”<sup>5</sup>  
(Footnotes omitted)

[22] A respondent's version cannot be rejected merely because it is disputed. It can only be rejected if it is so far-fetched or untenable that the court is justified in doing so on the papers alone. That is not the case here. That will appear below.

[23] In the present case, the material facts which are relevant for determination of the main dispute between the parties (whether there was lawful termination) are largely common cause. The applicant is the owner of the premises. The respondent occupies the premises. The parties concluded a written lease agreement on 21 January 2025 in respect of the premises. The lease agreement contains a clause (clause 23(ii)(a)) that requires the lessor to give the lessee five business days' written notice to remedy any alleged breach before cancellation. A letter from the applicant's attorneys dated 20 March 2025 purports to cancel the lease with “immediate effect” without any prior notice calling upon the respondent to remedy any alleged breach. The applicant asserted that the letter dated 20 March 2025 terminated the lease agreement with

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<sup>5</sup> Id at para 26.

“immediate effect” without prior notice calling the respondent to remedy any breach because the respondent’s conduct was of such a nature that it justified immediate termination. The letter dated 20 March 2025 stated:

**“RE: TERMINATION OF LEASE AGREEMENT - NEW MARKET DEVELOPMENTS (PTY) LTD // SPLIFF CAFÉ (PTY) LTD**

The above-mentioned matter as well as the incident reported on 18 March 2025 refers.

Kindly take note that we are acting on behalf of New Market Developments (Pty) Ltd in this matter hereinafter referred to as "our client".

We hereby formally notify you of our intention to cancel the lease agreement between yourself and our client dated 21 January 2025 for the premises located at Shop [...], R[...] Floor, N[...] Corner Shopping Centre, Hoogland Extension 25 in accordance with the provisions stipulated Clause 11 (b) and Clause 23 (ii) (a) of the signed lease agreement.

It was brought to our attention that on 18 March 2025 a violent incident occurred on or near the premises between yourself and the tenant at Shop 6A, Northlands Corner, that has created an unsafe and intolerable situation amongst the neighbouring tenants. This incident is clearly a breach of the lease terms and has significantly impacted the enjoyment and use of the property for the neighbouring tenants.

In light of the above our client decided to exercise his right as stipulated in Clause 23 (ii) (a) to terminate the lease agreement with immediate effect as per the aforementioned clauses. You are hereby afforded until 30 April 2025 to vacate the premises and arrange for and exit inspection with our client.

We trust that you will find the above to be in order.” (My emphasis and underling)

[24] As state above, most of the facts herein are common cause. In light of the above facts which are largely common cause and the contents of the letter dated 20 March



2025, I am of the view that, from the reading of the letter, the applicant terminated the lease agreement with immediate effect and without compliance with the express terms of clause 23(ii)(a) of the lease agreement. That clause provides for cancellation only if the breach is “not remedied by the lessee within 5 (five) business days after receipt by the lessee of written notice calling upon it to do so”. No such notice was ever given. The purported cancellation is therefore invalid.

[25] The applicant submitted that the respondent’s conduct was of such a nature that it justified immediate termination. However, the lease agreement itself sets out the procedure for cancellation. The parties are bound by their contract. The applicant cannot unilaterally disregard the very clause upon which it purports to rely. The failure to give the requisite notice renders the purported cancellation a nullity.

[26] I now turn to deal with the respondent’s reliance on repudiation. It is the respondent’s submission that the applicant’s letter of 20 March 2025, which terminated the lease with immediate effect without affording the respondent an opportunity to remedy the alleged breach, constitutes a repudiation of the lease agreement. It is further submitted that the respondent has rejected that repudiation and insists on performance, and consequently the lease remains in force. In my view, indeed the applicant’s letter of 20 March 2025, which terminates the lease with immediate effect without affording the respondent an opportunity to remedy the alleged breach, constitutes a repudiation of the lease agreement. In *Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd*<sup>6</sup> the Supreme Court of Appeal held:

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<sup>6</sup> 2001 (2) SA 284 (SCA).

“As such a repudiatory breach may be typified as an intimation by or on behalf of the repudiating party, by word or conduct and without lawful excuse, that all or some of the obligations arising from the agreement will not be performed according to their true tenor. Whether the innocent party will be entitled to resile from the agreement will ultimately depend on the nature and the degree of the impending non- or malperformance.”<sup>7</sup>

[27] The test for repudiation is objective: how would a reasonable person in the position of the innocent party interpret the conduct? In the present case, a reasonable person in the respondent’s position would undoubtedly interpret the applicant’s letter as an unequivocal intention not to be bound by the lease agreement. The applicant purported to cancel the lease before it had even commenced, without following the prescribed procedure set out in the lease agreement and demanded vacant possession. That is a clear repudiation.

[28] The respondent has rejected that repudiation. It has consistently maintained that the lease remains in force, and it has continued to pay rental, which the applicant has accepted. The consequence is that the lease agreement remains alive. The respondent’s occupation is therefore lawful.

[29] The applicant’s argument that repudiation cannot create a right of occupation misses the point. The respondent does not rely on repudiation as a source of a right of occupation. The respondent relies on the lease agreement itself.

[30] The repudiation argument is advanced to defeat the applicant’s contention that the lease has been validly terminated. The respondent says: you have not validly terminated the lease; your purported termination is a repudiation which I reject;

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<sup>7</sup> Id at para 17.

therefore, the lease continues. In my view, that is a legally coherent and well-founded position.

## **Conclusion**

[31] The applicant has not discharged the onus of proving that it validly terminated the respondent's right to occupy the premises. The purported cancellation of 20 March 2025 was invalid for non-compliance with clause 23(ii)(a) of the lease agreement. It also constituted a repudiation which the respondent has rejected, with the result that the lease remains in force. The respondent's occupation is therefore lawful.

[32] The applicant's reliance on the *rei vindicatio* cannot succeed where it has conceded the respondent's contractual right to occupy and has failed to prove the termination of that right. The application must therefore be dismissed.

## **Costs**

[33] The applicant has failed in its application. There is no reason to depart from the ordinary principle that costs follow the result. The respondent seeks costs on the scale as between attorney and client, but I am not persuaded that the applicant's conduct warrants such a scale.

[34] The applicant acted within its rights to approach the court following the incident of 18 March 2025 that took place at the premises, even if its application was ill-conceived. Costs must be awarded on the party and party scale on scale B.

## **Order**

[35] In the result, the following order is made:

1. The application is dismissed.
2. The applicant is ordered to pay the respondent's costs on party and party scale and on scale B.

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**Shadrack Tebeile**

**Acting Judge of the High Court of South Africa**

**Gauteng Local Division, Johannesburg**

For the Applicant:

Adv. C Erasmus instructed by Alicia van Wyk Incorporated.

For the Respondent:

Adv. D.L Williams (Heads of argument prepared by Adv. A.L Williamson) instructed by Alan Jacobs and Associates.