



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no.: 2025-197850

In the matter between:

YUSUF SULEMAN LOCKHAT N.O.

FIRST APPLICANT

AHMED MOOSA PANDOR N.O.

SECOND APPLICANT

ZUBAIR BAYAT N.O.

THIRD APPLICANT

HASSIM ISMAIL RANDEREE N.O.

FOURTH APPLICANT

MOOSA MOHAMED PARUK N.O.

FIFTH APPLICANT

AHMED SULEMAN CHOCHAN N.O.

SIXTH APPLICANT

ISMAIL YACOOB PARUK N.O.

SEVENTH APPLICANT

EBRAHIM YACUB DHAI N.O.

EIGHTH APPLICANT

ISMAIL DAWOOD PATEL N.O.

NINTH APPLICANT

IDRIS AHMED PANDOR N.O.

TENTH APPLICANT

ISMAIL ESSOP PARUK N.O.

ELEVENTH APPLICANT

ISMAIL EBRAHIM MAHOMEDY N.O.

TWELFTH APPLICANT

and

FRENDOS CHICKEN CC

FIRST RESPONDENT

GHULAM FAREED AWAN

SECOND RESPONDENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for the handing down of the judgment is deemed to be 24 August 2026 at 09h30.

ORDER

The following order is granted:

1. Condonation is granted for the late delivery of the respondents' answering affidavit.
2. The first and second respondents, and all persons occupying through them, must vacate the commercial premises at 4[...] D[...] P[...] K[...] Street, Durban, within 30 calendar days after service of this order.
3. If the respondents fail to comply with paragraph 2 above, the Sheriff is authorised to eject them and all persons occupying through them and to restore possession of the premises to the applicants.
4. The respondents are ordered to pay the applicants' costs jointly and severally, the one paying the other to be absolved, on scale C.

JUDGMENT

Bramdhew AJ

Introduction

[1] The applicants are the trustees of the Anjuman Islam Juma Masjid Trust, which owns the commercial premises situated at 4[...] D[...] P[...] K[...] Street, Durban ("the premises"). The first respondent is the lessee under the written lease concluded between the parties on 14 November 2024 and operates a food business from the

premises. The second respondent signed as surety and occupies and controls the premises through the first respondent. The applicants seek the eviction of both respondents and all persons occupying through them.

[2] The written lease concluded on 14 November 2024 records a monthly tenancy. The respondents contend that it was orally cancelled in December 2024 and replaced by an oral lease for a fixed term ending on 30 September 2030. Alternatively, they seek rectification of the written lease to reflect that fixed term instead of a monthly tenancy.

The parties' contentions

[3] The applicants rely on the written lease of 14 November 2024. Its schedule records a monthly tenancy and permits use of the premises as a food outlet. The applicants contend that notices dated 27 November and 17 December 2024, followed by a further notice dated 30 April 2025, terminated the monthly tenancy.

[4] The applicants also rely on a notice of breach dated 14 August 2025. A fire had occurred at the premises in April 2025. The applicants attribute the fire to the respondents' staff having failed to properly switch off the gas cylinders. The breach notice relied on the respondents' failure to maintain the public-liability insurance required by clause 8.2 of the written lease and the alleged occupation or control of the premises a third party, Mr Ali. This resulted in a written notice of cancellation dated 26 August 2025.

[5] The respondents say that they had occupied the premises since October 2021, had paid arrears owed by a previous tenant and had invested substantially in the business on the strength of an assurance of long-term occupation. They describe the written lease concluded in November 2024 as a formality which mistakenly recorded a monthly tenancy.

[6] Their principal version is that, at a meeting in mid-December 2024, the second respondent, Mr Awan, and the first applicant, Mr Yusuf Lockhat, orally

cancelled the written lease and agreed on a replacement lease ending on 30 September 2030. They allege that all other terms would be those under which the parties had operated since October 2021, including use of the premises as a food and chicken outlet. They do not allege that all the terms of the 2024 written lease continued.

[7] The respondents further state that the notice of 27 November 2024 was withdrawn and that the applicants' subsequent acceptance of rental supports their version.

[8] The respondents describe the fire as a minor incident involving oil splashing onto a burner. They say that Mr Ali was employed as the manager of the business and was not a subtenant. They also contend that the alleged oral lease did not require public-liability insurance, although they state that they were willing to obtain such insurance if required by the court.

[9] The applicants dispute the respondents' account of the alleged meeting in December 2024 and deny that the written lease was orally cancelled or that a replacement lease was concluded. They further contend that Mr Lockhat could not, without a resolution of the trustees, cancel the written lease or conclude a replacement lease. They point out that the letter of 17 December 2024, which required the respondents to vacate the premises by 30 May 2025, is inconsistent with the alleged withdrawal of the earlier notice. They say that subsequent payments were accepted as holding-over damages and not as recognition of a lease until 2030.

Condonation

[10] The respondents delivered their answering affidavit out of time. Although their explanation for the delay is not entirely satisfactory, the applicants delivered a comprehensive replying affidavit and have not demonstrated that the delay caused them any material prejudice. In these circumstances, and in the interests of determining the dispute on its merits, condonation for the late delivery of the answering affidavit is granted

The alleged oral lease

[11] Clause 18 of the written lease provides:

‘No variation, amendment or *cancellation of this lease* or of any of its terms shall be binding unless reflected in writing and signed by both the Landlord and the Tenant and shall be strictly interpreted as referring only to the matter in respect of which the same had been given.’ (My emphasis)

[12] It is common case that the alleged cancellation and replacement lease were not reduced to writing and signed.

[13] As held in *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren en Andere*,¹ the parties are bound by the formalities upon which they agreed. The judgment of *PA Kalil NO v Coobah Development CC and Others*² similarly supports the conclusion that, where a contract expressly requires consensual cancellation to be in writing, an unwritten cancellation is ineffective.

[14] The respondents relied on *Ocean Echo Properties 327 CC and Another v Old Mutual Life Assurance Company (South Africa) Ltd*³ in support of their submission that the written lease could be cancelled orally notwithstanding clause 18. That decision is, however, distinguishable from the present matter. The clause considered in *Ocean Echo* prohibited alteration, variation or addition to the lease, but did not expressly include cancellation.⁴ The matter was also decided on exception, where the pleaded facts were assumed to be correct, and the Supreme Court of Appeal emphasised that its conclusions were not final findings made after the receipt of evidence.⁵ By contrast, clause 18 of the lease in the present matter expressly provides that any cancellation must be recorded in writing and signed by both parties.

[15] As the applicants seek final relief in motion proceedings, the application must be determined on the facts alleged by the respondents, together with the admitted

¹ *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren en Andere* 1964 (4) SA 760 (A).

² *PA Kalil NO v Coobah Development CC and Others* [2025] ZAFSHC 315.

³ *Ocean Echo Properties 327 CC and Another v Old Mutual Life Assurance Company (South Africa) Ltd* [2018] ZASCA 9; 2018 (3) SA 405 (SCA).

⁴ *Ibid* para 4.

⁵ *Ibid* paras 9 and 16.

facts stated in the applicants' affidavits. On the respondents' own version, both the alleged cancellation of the written lease and the conclusion of the alleged replacement lease occurred orally.

[16] It must accordingly be found that the alleged cancellation did not comply with clause 18 and was therefore not binding. The written lease consequently remained in force. The alleged oral lease did not replace it.

Rectification

[17] The respondents contend, in the alternative, that the written lease should be rectified to reflect a fixed term ending on 30 September 2030. No notice of counterapplication for rectification appears in the indexed papers.

[18] It is nevertheless necessary to consider the factual basis of the rectification because the respondents rely on it to resist eviction. The signed schedule to the lease expressly records a monthly tenancy. There is no prior agreement, draft, trustees' resolution or other objective evidence showing that, when the written lease was concluded, both parties intended it to endure until 30 September 2030. The respondents' case is that the fixed-term lease was agreed upon orally in December 2024, after the written lease had already been concluded. That alleged later agreement does not establish that the written lease incorrectly recorded the parties' common intention when they signed it. The respondents' reliance on rectification therefore does not establish a right to remain in occupation.

Termination and breach

[19] The applicants' basis for termination is the written notice given in respect of the monthly tenancy. The notices of 27 November and 17 December 2024 informed the respondents that the tenancy was being terminated and ultimately required them to vacate the premises by 30 May 2025. The notice of 30 April 2025 reiterated that position.

[20] The respondents were afforded substantially more than one month's notice. In the circumstances, reasonable notice was given and the monthly tenancy terminated no later than 30 May 2025.

[21] The notice of breach dated 14 August 2025 and the notice of cancellation dated 26 August 2025 constitute a further basis upon which the applicants place reliance. The breach notice dealt with the respondents' failure to produce the public-liability and risk insurance required by clause 8.2 of the written lease and the alleged involvement of Mr Ali in the occupation or control of the premises. The respondents' contention that the alleged oral lease contained no insurance obligation does not assist them because the written lease remained binding.

[22] The respondents contend that the applicants' reliance on breaches allegedly committed after 30 May 2025 is inconsistent with their assertion that the monthly tenancy had terminated by that date. They submit that the later breach and cancellation notices lend support to their version that the written lease had been cancelled and replaced by an oral lease.

[23] I do not agree. The notice of breach dated 14 August 2025 expressly referred to the applicants' earlier notices terminating the monthly tenancy and recorded that the respondents had failed to vacate the premises. The applicants invoked the additional breaches without prejudice to their earlier demands. The notice is therefore not inconsistent with the applicants' continued reliance on the prior termination of the monthly tenancy. Nor does it constitute an admission that the written lease had been cancelled orally and replaced by a lease enduring until 2030. At most, it records additional grounds upon which the applicants sought to secure the respondents' vacation of the premises.

Rental payments

[24] The applicants' acceptance of payments did not revive the tenancy or establish a lease until 2030. Clauses 14.1.3 and 16 of the written lease specifically provide that payments accepted while cancellation is disputed do not constitute a waiver and may be treated as holding-over damages. The payments must also be

considered in the context of the repeated notices requiring the respondents to vacate and the institution of this application.

Respondents' monetary claim

[25] In their answering affidavit, the respondents attempt to advance a conditional claim for compensation for their alleged loss of investment and future profits if an eviction order is granted. No counterapplication was placed before the Court. Accordingly, on the papers before the Court, there is no properly constituted counterapplication upon which monetary relief may be granted.

Conclusion

[26] The alleged oral agreement did not validly cancel or replace the written lease, and the respondents' reliance on rectification does not establish a right to occupy the premises until September 2030. The written monthly tenancy remained in force until it was terminated on reasonable notice. The applicants are therefore entitled to eviction.

[27] A period of 30 days from service of the granting of this order is a reasonable period for the respondents to vacate the premises.

Costs

[28] There is no reason to depart from the ordinary rule that costs follow the result. The applicants have succeeded in obtaining the substantive relief sought. Having regard to the nature and complexity of the matter, costs on scale C are appropriate. The respondents are to pay those costs jointly and severally, the one paying the other to be absolved.

Order

[29] The following order is made:

1. Condonation is granted for the late delivery of the respondents' answering affidavit.

2. The first and second respondents, and all persons occupying through them, must vacate the commercial premises at 4[...] D[...] P[...] K[...] Street, Durban, within 30 calendar days after service of this order.
3. If the respondents fail to comply with paragraph 2 above, the Sheriff is authorised to eject them and all persons occupying through them and to restore possession of the premises to the applicants.
4. The respondents are ordered to pay the applicants' costs jointly and severally, the one paying the other to be absolved, on scale C.

Bramdhew AJ

Case information

Heard on: 20 August 2026

Judgment delivered: 24 August 2026

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