REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 18482/2022

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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DATE
SIGNATURE

In the matter between:

DOVEPIRE PROPERTIES (PTY) LTD **APPLICANT**

and

INSURANCE SECTOR EDUCATION AND TRAINING AUTHORITY **RESPONDENT**

J U D G M E N T

MAHALELO J:

Introduction

[1] The applicant is Dovepire Properties (Pty) Ltd, a private company registered in accordance with the Company laws of the Republic of South Africa. The respondent is the Insurance Sector Education and Training Authority, a legal entity constituted in terms of the Skills Development Act 97 of 1998, as amended.

Relief claimed

[2] The applicant seeks the following interim interdictory relief against the respondent:

1. Interdicting the respondent from listing the applicant on National Treasury's list of tender defaulters or from blacklisting the applicant from conducting business with organs of the State;
2. Interdicting the respondent from implementing its cancellation of a lease agreement concluded between the parties in March 2020 ("the 2020 Lease Agreement ").

[3] The interim interdictory relief is sought pending the final determination of action proceedings to be instituted against the respondent for a final interdict and a declaratory order that the cancellation of the 2020 lease agreement is unlawful.

[4] The relief sought by the applicant is opposed by the respondent.

Background Facts

[5] The applicant is the owner of the premises situated at 37 Empire Road Parktown, Johannesburg (the premises). The premises is an A grade commercial office building comprising three stories above a parking area. The building comprises of 122 basement parking bays and 69 open parking bays. The respondent has been a tenant of the applicant in this building since 2013, under various leases which are not relevant to the present application.

[6] On 16 February 2018, the applicant and the respondent concluded a written lease agreement in terms of which the applicant let to the respondent, who rented from the applicant the premises. The 2018 lease agreement commenced on 1 March 2018 and terminated on 31 March 2020.

[7] In terms of the 2018 lease agreement, the respondent was given an option to renew the agreement for a further period of 24 calendar months on the same terms, at a rental agreed to by both parties. If the respondent wished to exercise this option, it was required to furnish the applicant with written notice of at least six calendar months prior to the expiry of the lease period.

[8] The respondent did not exercise the renewal option, but indicated to the applicant that it would issue a new tender for a five-year lease.

[9] On 26 March 2020, the applicant and the respondent concluded a written lease agreement (the 2020 lease agreement) pursuant to a public tender process relating to the very same premises as those governed by the 2018 lease agreement. The lease agreement was for a period of five years. The 2020 lease agreement is the subject matter of the present application. This lease agreement was implemented with the parties performing their respective obligations in terms of the lease agreement.

[10] On 1 December 2021, the respondent addressed a letter to the applicant indicating the following:

> "35.1 in terms of its Supply Chain Management Policy it shall investigate any allegations against an employee or other role - player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with the Policy and take appropriate steps against such employee or role player when justified; and to cancel a contract awarded to a person if the person concerned committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person .
>
> 35.2 Clause 23.1 of [the general conditions] provides that [the respondent] may terminate the contract (in this case, the lease agreement) if amongst others, the supplier

has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

35.3 Pursuant to the conclusion of the lease agreement, [the respondent] conducted a forensic investigation to determine the tender process for the lease agreement after this contract was flagged by the Auditor General. It was concluded and found that the tender process was intended to create a false legal basis to award a new five-year lease agreement to [the applicant] so that [the respondent] would remain in the very same premises. The investigation also found that [the respondent's] representative, Mr Jay had meetings with [the respondent's] Chief Financial officer to discuss, amongst others, the conclusion of the lease agreement during the bid evaluation process, which means that the process was compromised thus the contract was declared irregular.

35.4 Based on the findings of the aforesaid investigation, [the respondent] has come to the conclusion that it is in law entitled to cancel the lease agreement and hereby gives [the applicant] 12 months' notice to cancel the lease agreement. The lease agreement will accordingly come to an end on 30 November 2022 on which date [the respondent] shall vacate the leased premises.

35.5 Should [the respondent] secure suitable premises prior to the 12-month period, [the respondent] shall vacate the premises, and thus the lease agreement will come to an end on an earlier event taking place."

[11] On 9 December 2021, the applicant received a further letter from the respondent, calling upon the applicant to make representations to show cause why it should not be blacklisted or restricted by the National Treasury from conducting business for a period not exceeding 10 years, with an organ of State.

[12] In a letter dated 13 December 2021, the applicant rejected the respondent's repudiation of the 2020 lease agreement and denied all allegations of wrongdoing during the tender process. The applicant called for proper and detailed particulars as to why the respondent alleged that the award of the tender was premised upon a false legal basis and how and why it alleged that the applicant participated in creating a false legal basis to award the 2020 lease agreement to it.

[13] In response to the applicant's demand, the respondent once again asserted that it was entitled to terminate the lease agreement for the reasons stated in its repudiation letter.

[14] The applicant persisted that the respondent's purported cancellation of the 2020 lease agreement was unlawful, hence the present application.

The applicant's case

[15] The applicant submitted that a proper case has been made out for the interlocutory relief sought against the respondent, pending the institution of an action to declare the respondent's termination of the 2020 lease agreement unlawful. It was submitted that the respondent had not placed any primary facts before the court to support its contention that the tender process, which led to the conclusion of the 2020 lease agreement, was irregular. The applicant's case is that the respondent's cancellation of the lease agreement was unlawful. The applicant submitted that the tender has, despite the respondent's allegations of irregularity, fraud and threats of blacklisting the applicant, still not been set aside. The applicant contended that the respondent's submission that this court does not have a discretion to enforce an invalid administrative act, is predicated on wrong legal principles as administrative acts are treated as valid until set aside by the court.

[16] It is the applicant's case that an award of a tender to the applicant is an administrative act as defined in Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), which was supposed to have been reviewed and set aside by the respondent in a court of law.

[17] With reference to *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others*,[1] it was submitted that administrative acts, such as the award of a tender, are treated as valid until a court pronounces, authoritatively, on its invalidity. Therefore, the respondent was required to approach the court to have the tender awarded to the applicant, set aside before it was entitled to terminate the 2020 lease agreement.

[1] 2004 (6) SA 222 (SCA).

[18] In *Ouderkraal*, the court said:

> "[26] … But the question that arises is what consequences follow from the conclusion that the Administrator acted unlawfully. Is the permission that was granted by the Administrator simply to be disregarded as if it had never existed? In other words, was the Cape Metropolitan Council entitled to disregard the Administrator's approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view it was not. **Until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked.** The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. **No doubt it is for this reason that our law has always recognized that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside**." (emphasis added)

[19] The applicant also referred to *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye Laser Institute*,[2] where the majority, per Cameron J, applied the *Ouderkraal* principle and held:

> "[82] All this indicates that this Court should not decide the validity of the approval. This would be in accordance with the principle of legality and also, if applicable, the provisions of PAJA. PAJA requires that the government respondents should have applied to set aside the approval, by way of formal counter-application. They must do the same even if PAJA does not apply. To demand this of government is not to stymie it by forcing upon it a senseless formality. It is to insist on due process, from which there is no reason to exempt government. On the contrary, there is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution's primary agent. It must do right, and it must do it properly." (footnotes omitted)

[2] 2014 (3) SA 481 (CC).

[20] The applicant placed reliance on the dicta in the case of *Magnificent Mile Trading 30 (Pty) Ltd v Celliers NO and Others,*[3] where the court said the following:

> "[50] What appears to be at the heart of the concurring judgment's concerns is what the rule of law dictates. The concurring judgment makes the point that it would be at variance with the rule of law to enforce unlawful administrative action. It is true – as the concurring judgment says – that the Magnificent Mile award, which was made contrary to statutory prescripts, is inconsistent with the principle of legality, an incident of the rule of law. It is also true that the supremacy clause of our Constitution decrees that '(t)his Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled'. Crucially though, the *Oudekraal* rule itself is informed by the rule of law. Imagine the spectre of organs of state and private persons ignoring or giving heed to administrative action based on their view of its validity. The administrative and legal chaos that would ensue from that state of affairs is unthinkable. Indeed, chaos and not law would rule.
>
> [51] It is for this reason that the rule of law does not countenance this. The *Oudekraal* rule averts the chaos by saying an unlawful administrative act exists in fact and may give rise to legal consequences for as long as it has not been set aside. The operative words are that it exists 'in fact'. This does not seek to confer legal validity on the unlawful administrative act. Rather, it prevents self-help and guarantees orderly governance and administration. That this is about the rule of law is made plain by *Kirland*:
>
> > 'The fundamental notion – that official conduct that is vulnerable to challenge may have legal consequences and may not be ignored until properly set aside — springs deeply from the rule of law. The courts alone, and not public officials, are the arbiters of legality. As Khampepe J stated in *Welkom*—
> >
> > > "(t)he rule of law does not permit an organ of state to reach what may turn out to be a correct outcome by any means. On the contrary, the rule of law obliges an organ of state to use the correct legal process."

[3] 2020 (4) SA 375 (CC).

> For a public official to ignore irregular administrative action on the basis that it is a nullity amounts to self-help.' [Emphasis added]
>
> [52] The concern of the concurring judgment that the effect of the *Oudekral* rule is to enforce constitutionally invalid administrative action is ameliorated by the fact that the action is open to challenge through the court process. Until a court process has taken place, the rule of law must be maintained. The alternative of a free-for-all is simply not viable." (emphasis added, footnotes omitted)

[21] The applicant contented further that it is not for the respondent to determine whether or not the tender process was flawed and thus entitled to repudiate the 2020 lease agreement. This is the sole domain of the court.

Respondent's case

[22] The respondent contends that the applicant is not entitled to the relief sought due to the fact that it has not satisfied the requirements of an interim interdict. The respondent submitted that the applicant does not have the right to enforce the 2020 lease agreement because the 2020 lease agreement was concluded pursuant to a sham tender process, therefore it is unlawful. The respondent submitted that the tender process was a sham because it was conducted to create a false legal basis to award a five-year lease agreement to the applicant. It is the respondent's case that on the applicant's own version, it engaged with the chairperson of the bid adjudication committee about the subject matter of the tender during the adjudication process of the tender, which gave birth to the 2020 lease agreement. The respondent contended that there is no legal basis to protect and enforce a contractual right acquired pursuant to an unlawful and misleading tender process.

[23] The respondent referred to *Premier of the Free State Provincial Government and Others v Firechem Free State (Pty) Ltd*,[4] where the court, dealing with an unlawful award of a tender, held that:

[4] 2000 (4) SA 413 (SCA).

> "[36] The delivery contract has to be ignored because to give effect to it would be to countenance unlawfulness. The Province was under a duty not to submit itself to an unlawful contract and entitled, indeed obliged, to ignore the delivery contract and to resist Firechem's attempts at enforcement. Its acts in doing so did not amount to an unlawful repudiation."

[24] The respondent further contented that it has an obligation to refer the applicant's conduct to the National Treasury to have it blacklisted because the applicant's engagement with Malapo of the respondent, about the subject matter of the tender process during adjudication, was unlawful and its consequences is being reported to the National Treasury and termination of the 2020 lease agreement.

[25] The respondent indicated that it will vacate the leased premises and cease payment of its rental obligations, thereby implementing its repudiation of the agreement. According to the respondent, this will not constitute irreparable harm to the applicant and it does not justify the interdictory relief which the applicant seeks. Further, the listing of the applicant on National Treasury database of people barred from doing business with organs of State also does not cause irreparable harm because the applicant can always be removed from the list if its entry was unlawful. To the extent that such entry may have caused financial harm, the respondent contends, that too is not and does not constitute irreparable harm.

[26] The respondent submitted that if the interim interdict is not granted and the applicant is successful in the intended action proceedings, the court dealing with the action will grant such remedy as it is appropriate to address the harm which the applicant would have proved to have suffered. On the other hand, if an interdict is granted but the applicant is not successfully in its intended action, the respondent will suffer harm which far outweighs that which the applicant stands to suffer if the interdict is not granted because the respondent and its officials would have been found guilty of irregular expenditure. The respondent's case is that if the termination of the 2020 lease agreement is found to be unlawful, the remedy available to the applicant is a claim for damages.

The Requirements for Interim Interdicts

[27] The four well-known requirements to be proven by an applicant for interim relief to be successful are the following:[5]

> "a. a *prima facie* right, even if it is subject to some doubt;
>
> b. a reasonable apprehension of irreparable and imminent harm if an interdict is not granted and ultimate relief is eventually granted;
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> c. the balance of convenience favours the granting of the interdict;
>
> and
>
> d. the absence of any other satisfactory remedy."

[28] In *Webster v Mitchell*,[6] the court enumerated the test for interim interdict. The test was populated as follows:

> "In an application for a temporary interdict, applicant's right need not be shown by a balance of probabilities; it is sufficient if such right is *prima facie* established, though open to some doubt. The proper manner of approach is to take the facts as set out by the applicant together with any facts set out by the respondent which applicant cannot dispute and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up in contradiction by respondent should then be considered, and if serious doubt is thrown upon the case of applicant he could not succeed.
>
> In considering the harm involved in the grant or refusal of a temporary interdict, where a clear right to relief is not shown, the Court acts on the balance of convenience. If, though there is prejudice to the respondent, that prejudice is less than that of the applicant, the interdict will be granted, subject, if possible, to conditions which will protect the respondent."

[5] *Setlogelo v Setlogelo* 1914 AD 221 at 227.
[6] 1948 (1) SA 1186 (WLD) (Headnote).

[29] In the opening paragraph in *Webster*,[7] Clayden J referred, with approval, to a passage in *Setlogelo*[8] dealing with the need to show irreparable harm. The passage reads thus:

> "That element is only introduced by him in cases where the right asserted by the applicant, though prima facie established, is open to some doubt. In such a case he says the test must be applied whether the continuance of the thing against which an interdict is sought would cause irreparable injury to the applicant. If so, the better course is to grant relief if the discontinuance of the act complained of would not involve irreparable injury to the other party."

[30] *Setlogelo* was applied and adapted to the Constitutional precepts of our democratic state by Moseneke DCJ in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others ("OUTA")*[9] when he stated as follows:

> "Under the *Setlogelo* test the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation *pendente lite*."

[31] Although the Constitutional Court held that the *Setlogelo* test, as adapted by case law, still remains a handy and ready guide to the bench and practitioners in the magistrates and high courts, "*the test must now be applied cognisant of the normative scheme and democratic principles that underpin our Constitution*." It continued: "*When considering to grant an interim interdict a court must promote the objects, spirit and purport of the Constitution."* Consequently, the Constitutional Court stated the following:[10]

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[7] Above.
[8] Above.
[9] 2012 (6) SA 223 (CC) at para 50.
[10] *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* above at paras 45 and 46.

"If the right asserted in a claim for an interim interdict is sourced from the Constitution it would be redundant to enquire whether that right exists. Similarly, when a court weighs up where the balance of convenience rests, it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought."

[32] It is necessary, at this stage, to quote the following from *OUTA*:[11]

"… It must assess carefully how and to what extent its interdict will disrupt executive or legislative functions conferred by the law and thus whether its restraining order will implicate the tenet of division of powers. While a court has the power to grant a restraining order of that kind, it does not readily do so, except when a proper and strong case has been made out for the relief and, even so, only in the clearest of cases.

… What this means is that a court is obliged to ask itself not whether an interim interdict against an authorised state functionary is competent but rather whether it is constitutionally appropriate to grant the interdict.

Evaluation of the Evidence and submissions by the parties

Prima Facie right

[33] The *OUTA* judgment quoted above makes it clear that courts considering granting temporary restraining orders against the exercise of statutory power, shall only do so in exceptional cases and when a strong case has been made out.

[34] The Constitutional Court acknowledged, in *National Gambling Board v Premier, Kwazulu Natal and Others,*[12] that an interim interdict is a court order preserving or restoring the status quo pending the determination of rights of the parties, that it does not involve a final determination of these rights and does not affect their final determination.

[35] In order to adjudicate the first requirement of a *prima facie* right, it is necessary to consider whether the respondent has placed any evidence that it was entitled to

[11] paras 65 and 66.
[12] 2002 (2) SA 715 (CC) at para 49.

terminate the 2020 lease agreement for any lawful reason. The respondent has pertinently relied upon clause 23.1 of the General Conditions of Contract, which records that the respondent may terminate the 2020 lease agreement if the applicant has engaged in fraudulent practices in competing for or in executing the contract. The respondent never furnished the applicant with a copy of the forensic report which allegedly contains the findings that the applicant was "*engaged in corrupt fraudulent practices in competing for or in executing the contract*." It has also never granted the applicant an opportunity to see, much less refute those very serious claims against it. That report is also not attached to these papers. The respondent has adduced no evidence, apart from what is common cause between the parties. In any event, whether the tender process was irregular or not and whether the conclusion of the 2020 agreement is unlawful or not, are questions to be determined by the court in due course at a trial after all of the evidence has properly been ventilated and tested; not vaguely and baldly by the respondent simply declaring this to be so. This is in line with the *Oudekraal, Kirklan* and *Tasima* decisions.

[36] The respondent's award of the tender to the applicant gave rise to the contractual rights contained in the 2020 lease agreement. The applicant is entitled to rely on those contractual rights until such time that a Court pronounces that the award of the tender to it must be set aside. It is, for this reason that the applicant enjoys the right to approach the court for an (interim) interdict.

[37] I agree with the applicant's counsel that on application of the *Ouderkraal* principle, the 2020 lease agreement remains of full force and effect until the tender process is reviewed and set aside by a court and that it is not open to the respondent to side-step this mandatory process, irrespective of whether it believes there are good grounds to do so or not.

Irreparable harm

[38] I am satisfied that if the interim relief is not granted, the applicant stands to suffer irreparable harm. The applicant has spent a significant amount of time and money and gone to great lengths to implement the 2020 lease agreement. If the applicant is not

granted interim relief, it will suffer irreparable harm not only through lost income, but also through the reputational damage that it will undoubtedly suffer by being endorsed on the register of tender defaulters.

[39] The harm that would be suffered by the applicant by being named on the register is manifest and would certainly materially affect its ability to earn an income as a commercial property lessor. For the respondent to suggest otherwise, is disingenuous.

[40] Furthermore, Section 28 of the Prevention and Combating of Corrupt Activities Act[13] states:

> "**28 Endorsement of Register**
>
> (1)(a) A court convicting a person of an offence contemplated in section 12 or 13, may, in addition to imposing any sentence contemplated in section 26, issue an order that-
>
> (i) the particulars of the convicted person;
>
> (ii) the conviction and sentence; and
>
> (iii) any other order of the court consequent thereupon,
>
> be endorsed on the Register."

[41] Section 13 of the Act further states:

> "**13 Offences in respect of corrupt activities relating to procuring and withdrawal of tenders**
>
> (1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as-
>
> (a) an inducement to, personally or by influencing any other person so to act-

[13] Act 12 of 2004.

(i) award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

(ii) upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderee to accept a particular tender; or

(iii) withdraw a tender made by him or her for such contract; or

(b) a reward for acting as contemplated in paragraph (a) (i), (ii) or (iii),

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.

(2) Any person who, directly or indirectly-

(a) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or the benefit of another person, as-

(i) an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

(ii) a reward for acting as contemplated in subparagraph (i); or

(b) with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agrees or offers to give any gratification to any person who has made a tender in relation to that contract, whether for the benefit of that tenderer or for the benefit of any other person, as-

(i) an inducement to withdraw the tender; or

(ii) a reward for withdrawing or having withdrawn the tender,

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders."

[42] From the reading of these sections of the Act it appears that the respondent would need to lay charges against the applicant in terms of the contravention of section 13 of the Act and prove its case before a court would be entitled to endorse the name of the applicant on the register of defaulters under section 28 of the Act. For the respondent to take that action without following the appropriate procedure could have the effect that the applicant's dignity, good name and reputation would be tarnished and irreparably impugned in the event that it is to be labelled a tender defaulter.

Balance of convenience

[43] I have taken due notice of the manner in which courts must consider the balance of convenience in these kind of applications. The Constitutional Court has made itself clear in paragraphs 65 and 66 of *OUTA* as quoted above. The balance of convenience favours the granting of the interim relief because the prejudice which the applicant will suffer, in my view, far outweighs any prejudice the respondent might suffer if the interim order is granted. If an order is granted, the status quo ante remains and the 2020 lease agreement, which will have been in place for thirty-two months, will simply continue as before until the tender is set aside by a competent court. If interim relief is not granted, the applicant will suffer financial prejudice having regard to its loss of income and having to try and find another commercial tenant whilst having to clear its reputation as a tender defaulter.

No alternative remedy

[44] There is no alternative satisfactory remedy. In my view, the applicant had no other option but to approach the court for interim relief in order to mitigate the losses it may suffer as a result of a finding by the trial court that the respondent's termination of the 2020 lease agreement is unlawful. A claim for damages is, in my view, not a suitable alternative remedy.

Conclusion

[45] I conclude therefore that the applicant has proven the four requisites for an interim interdict and consequently, the application must succeed.

In the result, I make the following order:

1. An interim interdict is granted against the respondent from entering the applicant, its directors, officers, associates and/or any other person whom the respondent might determine to wholly or partly exercise or have exercised or who may exercise control over the applicant on National Treasury's list of Tender Defaulters, or to otherwise blacklist the applicant and/or any of the foregoing from conducting business with the public sector, pending determination of an action to be instituted by the applicant against the respondent for a final interdict in the above regard.
2. An interim interdict is granted against the respondent against implementing its purported cancellation of the 2020 lease agreement, directing that the respondent abide by and perform all obligations incumbent upon it under and in terms of the 2020 lease agreement pending final determination of an action to be institution against it for a declarator that its purported cancellation of the said lease agreement is unlawful.
3. The applicant is directed to institute an action for final relief as set out in paragraphs 1 and 2 above, within thirty (30) days from date of order.
4. Costs of the application will be costs in the action to be instituted in terms of paragraph 3 above.

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M B MAHALELO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was delivered electronically by circulation to the parties' legal representatives by e-mail and uploading onto CaseLines. The date and time of hand down is 12 April 2023 at 10h00.

APPEARANCES

For the Applicant	: Adv A W Pullinger
Instructed by	: Hutcheon Attorneys
For both Respondent	: Adv J G Wasserman SC and Adv R Naidoo
Instructed by	: Kayoori Chiba Chiba Attorneys
Date of hearing	: 15th November 2022
Date of judgment	: 12th April 2023