IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-052134

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

SIGNATURE DATE

In the application by

LISINFO TRADING (PTY) LTD	First Applicant
SAUNDERS, STUART ALAN JOHN	Second Applicant
and	
LUNEM LEARNING CENTRE (PTY) LTD	First Respondent
LUNEM LEARNING CENTRE SCHOOL	Second Respondent
XOLISWA KARENGA	Third Respondent
THE MEC OF EDUCATION, GAUTENG	Fourth Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Eviction –premises used for business of a school – agreement cancelled – applicant entitled to order ejecting the first and second respondents from commercial premises

Order

[1] In this matter I made the following order on 23 June 2023:

1. *Directing that the second applicant be permitted to represent the first applicant in the proceedings;*
2. *Ordering the first and second respondents and all who occupy by or through them to vacate the property situate at Erf No. 388, Portion No. 97 of the farm Diepsloot, Johannesburg, also known and described as Plot 97, Ridge Road, Diepsloot, Johannesburg before or on 30 September 2023;*
3. *Directing and authorising the Sheriff of the High Court to take such steps as are necessary to evict the first and second respondents and all who occupy by or through them in the event of any of them failing to vacate the property before or on 30 September 2023 or returning to occupy the property;*
4. *Directing the first and second respondents to return all keys to the property to the first applicant on or before 30 September 2023.*

[2] The reasons for the order follow below.

Introduction: Urgency

[3] This is an urgent application for the ejectment of the first and second respondents from the applicant's commercial premises situate at Erf No. 388, Portion No. 97 of the farm Diepsloot, Johannesburg.

[4] The application came before me on Tuesday, 13 June 2023. I stood the matter down until Thursday, 15 June 2023 at 10h00 and gave directions for the filing of answering and replying affidavits.

[5] The first, second and third respondents ("the respondents") argued that the matter was not of sufficient urgency to merit a hearing in the Urgent Court.

[6] I found that the matter was indeed one of commercial urgency. The property, the occupation of which forms the subject of the application, has been sold and transfer to the purchaser is expected to take place in August 2023. The applicant as seller is under an obligation to provide the purchaser with the occupation of the property bought and paid for.

[7] It is not disputed that the first and second respondents have refused to vacate the property and have not been meeting their financial obligations. The first and second respondent use the property to earn revenue but without paying rent.

[8] The applicant made a last attempt to resolve the issue without having to approach the Court on 21 May 2023, but without success.

[9] Reference is made in the papers to 'boarders' at the school but this aspect was not addressed in argument. Nothing in this judgment affects the rights of and protection afforded to any person by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998.

The second applicant's application for leave to appear on the behalf of the first applicant

[10] The second applicant is a qualified and admitted advocate and the sole director of the first applicant ("the applicant"). He is not in private practice and is not briefed by an attorney in this matter.[1] The sole shareholder of the applicant is a trust that he is the representative of and the applicant is his *alter ego* in business.

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[1] See section 33 of the Legal Practice Act, 28 of 2014.

[11] It was held in *Yates Investments (Pty) Ltd v Commissioner for Inland Revenue*[2] that a company must be represented by counsel in court proceedings. The Appeal Court did not however address the question of a judicial discretion to allow a company to be represented by a director of the company under appropriate circumstances.

[12] This question was considered by the Supreme Court of Appeal in *Manong v Minister of Public Works*.[3] Ponnan JA referred to the following dictum by Lord Denning MR:[4]

> *"It is well settled that every court of justice has the power of regulating its own proceedings; and, in doing so, to say whom it will hear as an advocate or representative of a party before it. As Parke J said in Collier v Hicks ((1831) 2 B & Ad 663 at 672, 109 ER 1290 at 1293): "No person has a right to act as an advocate without the leave of the Court, which must of necessity have the power of regulating its own proceedings in all cases when they are not already regulated by ancient usage".*

[13] In South Africa the power of the High Court to regulate its own process is regulated by section 173 of the Constitution of the Republic of South Africa, 1996.

[14] In deciding to allow the applicant to represent the company that was his *alter ego*, Ponnan JA said in *Manong*:

> *"[9] The main reasons for relaxing the rule are, I suppose, obvious enough: a person in the position of the controlling mind of a small corporate entity can be expected to have as much knowledge of the company's business and financial affairs as an individual would have of his own. It thus seems somewhat unrealistic and illogical to allow a private person a right of audience in a superior court as a party to proceedings, but deny it to him when he is the governing mind of a small company which is in reality no more than his business alter ego.*

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2 *Yates Investments (Pty) Ltd v Commissioner for Inland Revenue* 1956 (1) SA 364 (A).

3 *Manong v Minister of Public Works* [2009] ZASCA 110 para 8. See also *Mittal Steel South Africa Ltd t/a Vereeniging Steel v Pipechem CC* 2008 (1) SA 640 (C) para 51, *Ex Parte California Spice & Marinade (Pty) Ltd and others in re Bankorp v California Spice & Marinade (Pty) Ltd and others* [1997] 4 All SA 317 (W) para 13, and *Arbuthnot Leasing International Ltd v Havelet Leasing Ltd and others* [1991] 1 All ER 591 (Ch) 595.

4 *Engineers' and Managers' Association v Advisory, Conciliation and Arbitration Service and another* (No 1) [1979] 3 All ER 223 (CA) 225.

In those circumstances the principle that a company is a separate entity would suffer no erosion if he were to be granted that right. There may also be the cost of litigation which the director of a small company, as well acquainted with the facts as would be the case if a party to the dispute personally, might wish to avoid. Such companies are far removed from the images of gigantic industrial corporations which references to company law may conjure up."

[15] I therefore grant such an order. The second applicant (whose joinder as such is not explained – he has at most a financial interest in the proceedings but not a legal interest) is of course not entitled to a fee and no cost order is made.

The merits of the application.

[16] On 11 January 2022 the applicant and the first and second respondents entered into a one-year lease[5] of the property in Diepsloot. The lease expired on 1 January 2023 and thereafter continued on an *ad hoc*, month-by-month basis as is provided for in clause 1.12. The respondents use the premises for commercial purposes, namely the operation of a school for profit. It is not disputed that one of the sources of income is monthly fees of a R1 000 for each of the one hundred and sixty learners, amounting to R1 920 000 per year.

[17] The parties noted in clause 2.11[6] of the agreement that it was the intention of the applicant to sell the property. The respondents were granted a pre-emptive right but this right fell away if the rental or services payment were in arrears for more than seven days. It is common cause that the payments due were in arrears and it follows that the pre-emptive right did not survive. The first and respondents are however still of the opinion that they are entitled to enforce the pre-emptive right but they have taken no steps to do so.

[18] Clause 14.1[7] of the lease agreement provides that in the event of a failure by the lessees to comply with their obligations within seven days of written demand, the

[5] CaseLines 173.
[6] CaseLines 179.
[7] CaseLines 190.

applicant as lessor shall be entitled to cancel the lease.

[19] By the end of July 2022 an amount of R344 900 was overdue in respect of arrear rental. The respondents made but did not adhere to undertakings to make payment.

[20] By the end of October 2022 the arrear rentals amounted to R474 900 and the amount due for the consumption of electricity (payable by the applicant to Eskom) was R193 793.35.

[21] The amount of R577 900 was in arrears on 31 December 2022.[8]

[22] On 27 February 2023 the applicant demand payment of the arrears within ten days, and advised the respondents of its intention to cancel the lease if payment was not forthcoming.[9]

[23] As from 1 January 2023 the lease continued as a monthly tenancy but by 28 February 2023 the arrear rentals (excluding other charges such as amounts due for electricity consumption) amounted to R685 900. An amount of R104 000 was paid leaving R581 900 outstanding on 28 February 2023. By the end of May 2023 the amount due was R899 900 excluding municipal rates and taxes, electricity, and interest.

[24] The applicant advised on 11 March 2023 that payment of R141 900 was required to stave off cancellation. On 31 March 2023 the amount of R680 000 was outstanding and the applicant advised that payment of R200 000 was now required to stave off cancellation.

[25] Payment was not forthcoming and the lease was cancelled in writing on 5 May 2023.[10]

[26] In summary, the applicant alleges that the total amount received from the respondents for the period January 2022 to 31 May 2023 in respect of rental (and holding over) was R675 100 while the amount of R1 575 000 was due and payable.

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8 CaseLines 273.
9 CaseLines 269.
10 CaseLines 208.

[27] The respondents conceded in argument that the account was in arrears but did not concede the exact amount of the indebtedness. However, the respondents made a bald denial and did put up any evidence to dispute the factual evidence of the applicant. If payments in addition to those admitted by the applicant were made, the onus[11] to prove the payments was on the respondents.

[28] The respondents' stance is that they require a two-year period to seek alternative accommodation for the school. They make this proposal without any tender to bring the arrears up to date or to pay any rent to the applicant or to the new owner.

The earlier proceedings

[29] The present respondents brought an application against the applicant that was heard on 18 May 2023. The judgment or order is not to hand but the respondents informs the court that the Court interdicted the applicant from evicting the respondents without following due process.

Conclusion

[30] The respondents are in breach of their obligations and can not hide behind the fact that the business operated by them is a school. The applicant is entitled to the order it seeks but I am of the view that in the interest of an orderly evacuation the respondents should be granted a time period in which to vacate. I therefore order in terms of Rule 45A that the respondents vacate the property by the end of September and not by the end of July 2023 as sought by the applicant.

[31] For the reasons set out above I make the order in paragraph 1.

J MOORCROFT

[11] *Pillay v Krishna and Another* 1946 AD 946 p 954 to 956.

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **26 JUNE 2023**.

COUNSEL FOR THE APPLICANTS:	SECOND APPLICANT IN PERSON
INSTRUCTED BY:	-
COUNSEL FOR FIRST, SECOND AND THIRD RESPONDENTS:	MR MOKALE
INSTRUCTED BY:	SMN ATTORNEYS
DATE OF ARGUMENT:	15 JUNE 2023
DATE OF ORDER:	23 JUNE 2023
DATE OF JUDGMENT:	26 JUNE 2023