


## REPUBLIC OF SOUTH AFRICA


 IN THE HIGH COURT OF SOUTH AFRICA  
 GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 17544/14

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
<b>6 November 2014</b> DATE	
 ..... SIGNATURE	

In the matter between

IPS INVESTMENTS [PROPRIETARY] LIMITED

PLAINTIFF

and

JOHANNESBURG POLYTECH INSTITUTE

DEFENDANT

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 J U D G M E N T
 

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CORAM: RE MONAMA J:

- [1] The applicant is the registered owner of the immovable property situate at the corner of De Villiers, Eloff and Plein Street, in Johannesburg. This property comprises the office block



- [2] The respondent is a non-profit organisation and runs a primary and high schools businesses from the property mentioned in paragraph 1 above.
- [3] During 16May 2014, the applicant launched the eviction proceedings against the respondents. The applicants alleged that the lease has expired. The proceedings are opposed. The respondent contends that the alleged notice of termination is invalid because the lease was extended when it exercised the two options.
- [4] During 16 October 2007 the parties duly represented executed a valid agreement of lease. The subject of the lease was the property mentioned in paragraph 1. The initial rental was agreed to in the sum of R195842. 88 per month. The rental was subject to yearly increases. The duration of the lease was five years and months. The lease was scheduled to terminate on 31 January 2013. When the lease expired the respondent was still in occupation. The landlord invoiced the respondent and same was paid accordingly. On 23 May 2013 the parties held a meeting



where the respondent was informed that a notice of termination would be issued. The tenancy was formally terminated on 27 May 2013 and the tenant was instructed to vacate the premises on 30 June 2013. Numerous attempts to extend the lease were unsuccessful.

[5] The legal issues for the determination are crisp. Firstly, the court must determine whether the termination notice of 27 May 2013 was valid as alleged by the applicant. And secondly, whether the lease agreement was extended in terms of the alleged two options.

[6] The application is not governed by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, nor is it governed by the National Credit Act.

[8] The applicant's version is straightforward. It contends that the lease agreement expired by effluxion of time. It disputes the allegations of tacit relocation and option.



- [9] The application here is opposed by the respondent who alleges that the lease agreement between the applicant and respondent has been varied and they were varied in terms of two documents that the Court has been referred to. One document relied upon is a letter dated 28 May 2008. The contents thereof are very clear, short and precise. It says:

“Reference to your recent letter we confirm that a 10 to 15 years’ lease agreement is guaranteed.”

and this letter emanates from the applicant.

- [10] The other document relied upon is a letter also emanating from the applicant which clearly convey to them that the building is not for sale, but it has a clause in it, which reads as follows:

“You have a privilege to rent and renew your lease.”

The respondent relied on these two documents. These documents are crucial as well as the two further defences



of tacit relocation of the lease agreement of the 17<sup>th</sup> October 2007 and the invoices and payments effected post the 31 January 2013.

[11] The law governing the non-variation covenant are settled.<sup>1</sup> The Shifren<sup>2</sup> principle confirms the notion that the agreements are binding - *pacta sunt servanda*.

[12] The Shifren principle excludes any subsequent verbal and written amendments to the lease agreement not done according to the procedure agreed upon. Regards being had to the clause in the lease agreement which enshrines the so-called Shifren principle in my view, these documents can not by any stretch of any imagination be said to constitute a variation to validly give them additional time. The argument that the clause curtails the parties' common law freedom to contract is untenable. The opposite is actually the correct position.

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<sup>1</sup>Cecil Nurse (Pty) Ltd v Nkola 2008 (2) SA 441 SCA @ Para 7 P443

<sup>2</sup> SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren en Andere 1964 (4) SA 760 (A.A) at 766 H – 767 D.



[13] The submission that the invoices and payments created the tacit relocation is, with respect, legally untenable.

[14] Upon the termination of this lease agreement the respondent became to be known as the so-called common law tenants. It means they were month-to-month tenants. Respondent argued that by the applicant's conduct of receiving additional payment and invoicing the respondent, the applicant resuscitated their contract. Firstly, that would have gone against the principle in the Shifren case, secondly, it would be absurd because they would have to occupy building rent free. The submission does not make business or commercial sense. The applicant is in business of letting and hiring the properties. The reason why they were given sufficient notice to vacate the premises was a human accommodation to enable the respondent to fulfil its obligations to the students with minimum disruption.



[15] The applicants have made out a case for the relief sought.

The respondent was not frank in its presentation. During the negotiations that requested an indulgence to:

‘ continue and prepare its exit in good faith.’

Notwithstanding the above request and which by necessary implication conceded to the termination it mounted spurious defence. The applicant raised issues of fraud. I do not intend to get into the greater details thereof. The submissions in that regard have not been refuted by the respondent in their reply. In my view, the applicant made a compelling case for the order sought.

[16] In the circumstances I make the following order:

1. THAT the respondent and any person or entity claiming title through or under the respondent be evicted from immovable property being the South Wing of the building known as the University of Johannesburg Building situated at Corner Plein, Eloff and De Villiers Street, Johannesburg (*“leased premises”*).



2. THAT the execution of the order in terms of 1 above be suspended to 7 December 2014.
3. THAT the sheriff or his lawful Deputy be authorised and directed to take such steps as are required in order to give effect to the order in terms of 1 (as read with 2 above).
4. THAT the Sheriff or his lawful Deputy be authorised to request any person, including members of the South African Police Services, to assist the Sheriff or his lawful Deputy in the eviction of the respondent from the leased premises and/or any person or entity occupying the leased premises through or under the respondent.
5. THAT the costs of this application be paid by the respondent on the scale as between attorneys and own client. The costs of senior counsel are ordered.



**RE MONAMA**

**JUDGE OF THE HIGH COURT**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**



**Appearances**

Counsel for the Plaintiff: Adv AG Sawma SC

Instructed by: TWB and Partners, Sandton

Counsel for the defendant: Adv M Jorge

Instructed by: Afzal Lahree Attorneys, Kelvin

Date of hearing: 6 November 2014

Date of judgment: 6 November 2014