

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 9334/2019

(1)	<u>REPORTABLE</u> <u>E: YES / NO</u>
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In the matter between:

TRIEME CC t/a APPLETONS VILLAGE

Applicant

and

**GENESIS HAIR STUDIO (PTY) LTD t/a
GENESIS HAIR STUDIO**
(Registration No: 2018/053455/07)

First Respondent

VENESHREE SOOKMUNGAL
(Identity No: [...])

Second Respondent

J U D G M E N T

MAKUME, J:

[1] In this matter the Applicant who is the owner of certain commercial premises described as Appletons Village Shopping Centre situated at Corner Hill and Malibongwe Drive, Ferndale, Randburg seeks an order evicting the First and Second Respondents from a unit known as Shop 11 Appletons Village Shopping Centre.

[2] It is common cause that there were two lease agreements concluded at separate occasions between the parties. The first lease agreement was concluded on the 6th November 2017 and was between the Applicant and the second Respondent which lease was to expire on the 30th November 2018. The second lease agreement was concluded on the 9th May 2018 between the Applicant and the first Respondent with the second Respondent signing as security for the first Respondent. The second lease agreement took effect on the 1st December 2018 and was to terminate the 30th November 2021

[3] In both lease agreements the Respondents were to use the leased premises being shop 11 Appletons Village Shopping Centre for purposes of operating a Hair Salon.

[4] It is common cause and not in dispute that from about December 2017 the second Respondent began defaulting on the payment premiums in respect of the first lease. She failed despite numerous letters of demand to make good on the arrears. This eventually led to the cancellation of that lease on the 4th October 2018.

[5] Notwithstanding cancellation the second Respondent remained on the leased premises conducting her business of a hair studio. When the second lease agreement kicked in she was still in occupation and still failed to make payment of the agreed rental amount. On the 22nd February 2019 the Applicant cancelled the second lease agreement as it was entitled to and informed the Respondents to vacate the leased premises by not later than the 28th February 2019. At that time Respondents were indebted to the Applicant in the sum of R60 658.40.

[6] The Respondent did not heed the call to vacate as a result the Applicant issued these proceedings on the 13th March 2019. The second Respondent only filed her answering affidavit on the 16th April 2019 and applied for condonation for late filing of the answering affidavit.

[7] In her answering affidavit the second respondent describes herself as the director of the first Respondent and that she is duly authorised to depose to the affidavit. Second Respondent has failed to file a resolution by the first Respondent authorising her to depose to the answering affidavit on behalf of the first Respondent.

[8] In her answering affidavit the second Respondent does not dispute that the Respondents owe money to the Applicant being arrear rental. All that the second Respondent says is the following which she says are her defences to the application for eviction namely:

8.1 That the leased premises were not in good condition and not suitable for the business of hair studio. As a result the Applicant had undertaken to advance to the Respondents an amount of money being installation fee to enable the Respondent to effect repairs to the fixed premises.

8.2 That the Applicant failed to make the advance as undertaken as a result the second Respondent's son had to take out a loan of R80 000.00 and she applied for a loan of R106 000.00 which amounts she used to effect renovations and fittings as well as purchased equipment for the business.

8.3 That as a result of the Applicant having unlawfully locked her out she lost customers.

[9] The Respondents have not raised any valid defence to the application and in my view whether I grant or refuse condonation for the late filing of the answering affidavit will not prejudice any of the parties. The Respondents remain in arrears and have not paid any rental to the Applicant since February 2019 and presently owe the Applicant an amount of R115 108.20.

[10] As regards the Respondents defence that she had to spend money to do renovations in order to make the premises suitable for purposes of a Hair Studio it is clear that the Respondent is simply buying time because in terms

of clause 13 of the lease agreement the Respondent had 14 days to complain about any defects to the Applicant or its agent, that was not done.

[11] The fact that the Respondent and her son had to make loans has got nothing to do with the cancellation of the lease which remains valid. On the second Respondent owns version she and the first Respondent were continuously making late and often incomplete payments in respect of monthly rentals and other costs. The Respondents have conceded that they have breached the lease agreements.

[12] In the result the Applicant was entitled to cancel the agreement. The Respondents have failed to demonstrate any legal entitlement to remain on the premises. Accordingly the Applicant is entitled to the relief it seeks and I therefore make the following order:

ORDER

1. The first and second Respondents together with all those person occupying through or under them are hereby evicted from Shop 11 Appletons Village Shopping Centre corner Hill and Malibongwe Drive Ferndale, Randburg.
2. The Respondents are ordered to vacate the premises referred to above within 30 days from date of this failing which the sheriff of

this court or his duly appointed deputy is hereby authorised to take all steps necessary to give effect to this order.

3. The first and second Respondent are ordered to pay the taxed costs of this application on an attorney and client scale jointly and severally the one paying the other to be absolved.

DATED at JOHANNESBURG on this the day of SEPTEMBER 2019.

**M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Appearances:

DATE OF HEARING	:	22 nd AUGUST 2019
DATE OF JUDGMENT	:	08 OCTOBER 2019
FOR APPLICANT	:	Adv Smith
INSTRUCTED BY	:	Lagoudis Lamberti Attorneys Tel: (011) 234 1518
FOR RESPONDENTS	:	Adv Khunou
INSTRUCTED BY	:	Messrs Maile & Associates Tel: (011) 333 0051