

SOUTH AFRICA / JUDGMENT

Edenvale Panthers Rugby Club v Burnett t/a Offside Pub (070363/2023) [2025] ZAGPJHC 54 (29 January 2025) [2025] ZAGPJHC 54

COURT

South Gauteng High Court, Johannesburg

BEFORE

A Millar

CASE / FILE NUMBER

070363/2023

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

IN THE HIGH COURT

OF SOUTH AFRICA

(GAUTENG DIVISION,

JOHANNESBURG)

(1) REPORTABLE:

YES/NO

(2) OF

INTEREST TO OTHER JUDGES: YES/NO

(3)REVISED

29 January 2025

Case No. 070363/2023

In the matter between:

EDENVALE PANTHERS

RUGBY CLUB APPLICANT

And

BURNETT, DOROTHY t/a

OFFSIDE PUB RESPONDENT

(IDENTITY NO. 6[...])

JUDGMENT

MILLAR J

- [1] The applicant, the Edenvale Panthers Rugby Club, (“the Club”) is a voluntary association of members. The Club leases three rugby fields and a clubhouse in Edenvale from the Ekurhuleni Metropolitan Municipality (“Ekurhuleni Municipality”). The stated purpose of the Club is to inter alia “provide the club’s members with opportunities to get together.” [1]
- [2] Pursuant to this purpose, the Club entered into a lease with the respondent for its clubhouse situated at 17th Avenue in Edenvale Gauteng. While the lease does not explicitly state the purpose for which the clubhouse was leased, it is common cause that it was for the operation of a public house (“pub”) [2] which would be patronized by members of the Club.
- [3] A first lease was entered into during 2014 and subsequently, a further lease in 2016. Both the 2014 and 2016 leases were in writing. The former was signed on 17 July 2014 and the latter on 30 November 2016. The latter was for a period of 5 years and would come to an end on 30 November 2021. It is not in dispute between the parties that the written leases were signed by persons authorised to do so on behalf of the Club and the respondent herself.
- [4] The terms of both leases are identical. In respect of any subsequent renewal, they provide that:
- “3. The Lessee has the option to renew the lease for a further period of 5 years (Five) reckoned from the date of termination provided that notice to the LESSOR of the LESSEE’S intention to exercise this option is given in writing at least [left blank].....calendar month(s) before date of termination and subject to the LESSOR accepting the renewal of the lease in writing.”*
- [5] It was also provided for in both leases that each was the “entire agreement between the parties”[3] and that “(n)o variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by both parties.”[4]
- [6] It is not in issue that during the currency of the leases, the respective parties complied with their obligations. The 2016 lease expired by the effluxion of time on 30 November 2021 and from 1 December 2021, the respondent remained in occupation of the premises on the same terms and conditions as the 2016 lease, save that it was now a monthly tenancy.
- [7] Until July 2022, the respondent substantially complied with her obligation to pay rent. On occasion, she paid less than what was due in some months and then made up the shortfall. However, from the beginning of August 2022 and after having been given a month’s notice of the termination of the lease, the respondent ceased paying rent altogether.
- [8] The present proceedings are brought by the Club for the eviction of the respondent in consequence of her failure to honour the terms of the monthly lease and pay rent.

- [9] The respondent opposes the present proceedings on 3 main grounds. The respondent also took the point that a person by the name of Jolene Burnett (who was named on the 2016 lease but had never signed it) ought also to have been joined. I do not intend to say anything more on this point other than the fact that it is devoid of any merit. I intend to deal with 3 main grounds in turn.
- [10] The first ground of opposition is that the proceedings are invalid.
- [11] The invalidity it was argued, stems from the fact that the Resolution authorizing the institution of the proceedings, and which was passed by the Club's Executive Committee was invalid by virtue of the fact that the written Resolution authorizing the proceedings, which was attached to the Club's founding papers, was only signed by 3 persons.
- [12] It was argued that since the constitution of the Club provided for a minimum of 4 members to serve on its Executive Committee (it also provided for a possible additional 3 members), that any Resolution, in order to be valid needed to be signed by every member of the Executive Committee. In the present instance, the Resolution was signed by only 3 of the members of the Executive Committee and not the minimum number of 4. This it was argued by the respondent, was a fatal flaw.
- [13] The constitution of the Club specifically empowers the Executive Committee to decide on the procedure to be followed by it in the exercise of its powers, subject only to the limitation that no exercise of power or procedure may conflict with the constitution of the Club.
- [14] The respondent does not seek to impeach the Resolution authorizing the institution of the proceedings[5] but rather the manner in which it has been recorded. There is nothing before the Court to indicate that the manner in which the Resolution was crafted and signed was in any way not consonant with a decision taken by the Executive Committee. It is readily apparent from both the founding affidavit and the replying affidavit that the Resolution to institute the proceedings was validly taken.
- [15] Since there is neither express provision in the constitution of the Club requiring every member of the Executive Committee to sign every Resolution for it to be valid, nor any evidence to indicate that such a procedure had been adopted, I regard the present proceedings as having been properly authorised and the respondent's argument in this regard to be without merit.
- [16] The second ground of opposition is that the Club did not have the authority to apply for the eviction of the respondent.
- [17] This ground of opposition was predicated on the fact the Club's premises, including the clubhouse that was leased to the respondent, were owned by the Ekurhuleni Municipality and not by the Club. It was argued that in order for the Club to apply for the eviction of the respondent, it needed to demonstrate that it had entered into a valid lease with the Ekurhuleni Municipality and that it had the right to sub-let to the respondent.

[18] The Club had furnished in its papers, a letter from the Ekhuruleni Municipality which confirmed the existence of a lease between it and the Club. The respondent, not content to accept the veracity of this letter, argued that since neither the complete lease nor a confirmatory affidavit from the Municipality had been attached to the papers, the contents of the letter should be regarded as inadmissible hearsay evidence and disregarded.

[19] The respondent also argued that the Ekhuruleni Municipality, being the owner of the premises, ought to have been joined and that the failure to join it was fatal. The argument was that:

“the Municipality should have been joined to the application as it has a direct and substantiated interest in the premises, as the owner, and secondly to determine if the Applicant unlawfully enriched itself while in unlawful occupation of the premises.”

[20] The Club, for its part, and in my view correctly so, argued that there was no need for the joinder of the Ekhuruleni Municipality. This argument was predicated on two basis:

[20.1] Firstly, at common law, there was no relationship between the respondent as the sub-lessee of the Club who itself was a lessee of the Ekhuruleni Municipality.[6]

[20.2] Secondly, because it did not have any legal interest in the outcome of the proceedings between the Club and the respondent.[7] There mere fact that it may have had a passing interest in the outcome is insufficient to establish the necessity for a joinder.[8]

[21] In other words, the respondent argued that she ought to be permitted to continue occupation without paying any rent until such time as the Club demonstrated that it had a valid lease and had complied with its obligations in terms of the lease.

[22] Since the Ekhuruleni Municipality need not be joined and has no direct interest in the outcome of the proceedings, the status of the letter is moot. The high watermark of the letter is simply that it corroborates the Club’s assertion of the existence of a lease between it and the Ekhuruleni Municipality – something that is irrelevant for purposes of the present proceedings. The argument by the respondent in this regard is entirely self-serving and without any merit.[9]

[23] The third ground of opposition is that the Club is indebted to the respondent and on this basis, she is entitled to apply a set-off of what she says is owed to her against rental.

[24] It is the case for the respondent that at the time she concluded the 2014 lease with the Club, besides the terms of the written lease, there had also been a verbal agreement between her and the Club’s chairman at that time, that she would be entitled to recoup what she had expended on what were contended to be necessary improvements that she had made to the property in order to make it fit for purpose for the business she wished to conduct there. The respondent asserts an improvement lien.

- [25] The respondent contends that in addition to the verbal agreement that was said to have been entered into at the time of the 2014 lease, a similar verbal agreement was entered into at the time of the conclusion of the 2016 lease.
- [26] There is no explanation for why these alleged verbal agreements were never reduced to writing and why any claim for the alleged improvement of the premises was not presented until after the respondent had fallen in arrears with her rent and had been given notice to vacate the premises.
- [27] Having regard to the contents of both the 2014 and 2016 leases, neither contained any warranty as to the fitness of the premises for the purposes of the conduct of the business which the respondent wished to conduct and there is no written record of any agreement that the Club would be liable for any such costs. In fact, the lease provides that the Club is entitled, to require the respondent to “at any time during the currency of the lease to require the LESSEE to reinstate the property at the LESSEE’s expense to the same condition it was at the date hereof.”[10]
- [28] The temporal nexus between the respondent’s cessation of payment of the rent and the allegation of a verbal agreement that she would be entitled to be paid (and set-off against rent) any costs that she may have incurred in establishing the business makes the existence of any such agreement and any consequent improvement lien, highly improbable.
- [29] The matter is put to rest by the non-variation clauses in both leases. However, even if such an agreement and improvement lien could be established, any amount which the respondent would be entitled, would need to be established and liquidated in an action brought by her. Until such time as this has been done, there is no entitlement on her part to remain in occupation or to apply any set-off.[11]
- [30] For the reasons set out above, I also find that the third ground of opposition is without merit.
- [31] Having found that the respondent has no valid grounds to oppose the grant of the order sought by the Club and that the Club is entitled to an order for the eviction of the respondent, I intend to make the order that I do. In regard to costs, both parties were in agreement that the costs should follow the result and that these should be as between party and party with the costs of counsel to be taxed on scale B. This is the costs order that I will make.
- [32] It is ordered:
- [32.1] The respondent and all those occupying the property by, through or under her, are evicted from the Edenvale Panthers Rugby Club clubhouse situated at 17th Avenue Edenvale Gauteng (hereinafter referred to as “the property”).
- [32.2] The respondent and all those occupying the property by, through or under her, are directed to vacate the property on or before Friday 28 February 2025.

[32.3] In the event that the respondent, and all those occupying the property by, through or under her, do not vacate the property on or before 28 February 2025, the Sheriff of the Court or his lawfully appointed Deputy is hereby authorised to evict the respondent and any such occupiers from the property.

[32.4] The Sheriff of the Court or his lawfully appointed Deputy is hereby authorised and directed to approach the South African Police Services for any assistance that he/she may require in the circumstances.

[32.5] The respondent is ordered to pay the costs of this application, which costs are to be as between party and party scale on scale B.

A MILLAR

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

HEARD ON:

27 JANUARY 2025

JUDGMENT DELIVERED ON:

29 JANUARY 2025

COUNSEL FOR THE APPLICANT: ADV. S SWIEGERS

INSTRUCTED BY:

STRYDOM M & ASSOCIATES

REFERENCE:

MR. M STRYDOM

COUNSEL FOR THE RESPONDENT: ADV. N SMIT

INSTRUCTED BY:

ALBASINI ATTORNEYS

REFERENCE:

MR. C ALBASINI

[1] The aims of the club as provided for in its constitution are to: “(a) To play rugby according to the SARFU and Valke Union rules.

(b) To provide the club’s members with opportunities to get together.

- (c) To strive for the preservation of the town of Edenvale itself, by the practicing and playing of sport by all communities and therefore ensuring that The Club would be an integral part of the community.”
- [1] The aims of the club as provided for in its constitution are to:
- “(a) To play rugby according to the SARFU and Valke Union rules.
- (b) To provide the club’s members with opportunities to get together.
- (c) To strive for the preservation of the town of Edenvale itself, by the practicing and playing of sport by all communities and therefore ensuring that The Club would be an integral part of the community.”
- [2] A place where both liquor and food are served on the premises.
- [3] In clause 16.
- [4] In clause 16.2.
- [5] *Mall (Cape) (Pty) Ltd v Merino Ko-Operasie Bpk* 1957 (2) SA 347 (C) at 352G-H and *Moosa and Cassim NNO v Community Development Board* 1990 (3) SA 175 (A).
- [6] *Sweets from Heaven (Pty) Ltd and Another v Ster Kinekor Films (Pty) Ltd and Another* 1999 (1) SA 796 (W) at 800E-F.
- [7] *Council for the Advancement of the SA Constitution v Ingonyama Trust* 2022 (1) SA 251 (KZP) at para [64].
- [8] *Judicial Service Commission v Cape Bar Council* 2013 (1) SA 170 (SCA) at 176I-177A.
- [9] *Mighty Solutions CC t/a Orlando Service Station v Engen Petroleum and Another* 2016 (1) SA 621 (CC) at para [9].
- [10] Clause 10(d) of both the 2014 and the 2016 leases.
- [11] *United Apostolic Faith Church v Boksburg Christian Academy* 2011 (6) SA 156 (GSJ) at para [31].

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2025/54.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/edenvale-panthers-rugby-club-v-burnett-unknown-topic-agpjhc-2025>

Prepared on 12 October 2026 · Esheria