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

Case No: 2025-054245 (GJ)

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

In the matter between:

DIAL AFRICA DISTRIBUTORS (PTY) LTD	**1ST APPLICANT**
ISMIAL YUSUF ABDI	**2ND APPLICANT**
AMED ALI BASHIRI	**3RD APPLICANT**
ZAHRA ALI BARRE	**4TH APPLICANT**
YUSUF RUKIA ABDITADRR	**5TH APPLICANT**
OMAR ABDIHAKIM MOHAMMED	**6TH APPLICANT**

and

YUSUF CACHALIA NO	**1ST RESPONDENT**
AMINA MAMOOJEE NO	**2ND RESPONDENT**
EMILE JOHN HONIBALL NO	**3RD RESPONDENT**

SHERIFF JOHANNESBURG WEST **4TH RESPONDENT**

JUDGMENT

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[1] In this matter Dial Africa Distributors (Pty) Ltd ("Dial Africa") and five other applicants have brought an urgent application against Mr Ysuf Cachalia NO and three other respondents. The first, second and third respondents ("the respondents") are trustees of the Ysuf Amina Family Trust, the owner of the property at Upper Unit, 1[…] A[…] S[…] Street, Mayfair, Johannesburg ("the premises" or "the property").

[2] In substance, the applicants' aim is to obtain occupation and possession of the premises from which Dial Africa and the occupiers were evicted. The aim is to do so by the present application to stay the execution of the writ of ejectment dated 3 February 2025. The writ of ejection was executed on 12 March 2025 and the applicants were evicted from the premises. The first applicant seeks an order reinstating the co-applicants in the premises and that the current existing order be stayed, pending finalization of the rescission application, since there was no alternative accommodation provided for by the respondents.

[3] In support of the application, Mr Ismial Yusuf Abdi (the 2nd applicant) made an affidavit setting out the circumstances giving rise to the matter. The application was opposed and an answering affidavit was filed on behalf of the respondents. The relevant facts and issues, naturally, emanate from the affidavits before court and the arguments raised at the hearing. I shall now turn thereto.

[4] Mr Abdi, the 2nd applicant, contends that he leased a commercial premises from the respondent "under the auspices of the Yusuf Amina Family Trust" ("the Trust" or "lessor"). The contract of lease between the lessor and the lessee (Dial Africa, the first applicant in this application) was placed before court as an annexure

to the founding papers. The salient terms of the agreement are referred to hereunder:

[a] The leased premises is situate at Upper Unit, 1[…] A[…] S[…] Street, M[…], Johannesburg.

[b] The leased property will be for the use of a guest house (clause 1.4).

[c] The lease period would be from 1 September 2023 to 30 August 2028 (clause 1.5).

[d] The lessee shall use the leased premises for the permitted use and may not make any other use thereof without the prior written consent of the lessor (which consent shall not be unreasonably withheld) (clause 6.1).

[e] The lessee shall be liable for and shall immediately make good any damage to the leased premises or the building, as the case may be, which is caused by any unlawful act or omission of the lessee, its employees, agents or visitors. The onus shall be on the lessee to prove that any damage to the leased premises was not so caused (clause 12.5).

[f] In the event of any damage or destruction by the lessee and the lessor exercising his right to cancel the lease, the lessee shall be liable for 2 months rental from date of vacation of the premises. The lessor will make reasonable endeavour to find a new tenant within 2 months (clause 12.8).

[g] Upon the expiration, earlier termination or cancellation of this agreement, the lessee shall return the leased premises to the lessor in good order and condition, fair wear and tear excepted (clause 24).

[h] The lessee shall not cede or encumber any of its rights in terms of this agreement nor sublet the leased premises or any part thereof to any person nor surrender occupation of the leased premises or any portion thereof to any person without the lessor’s prior written consent; such consent may be

granted subject to such conditions as the lessor may deem fit, including the amendment of any provisions of this agreement, which consent shall not be unreasonably withheld (clause 28).

[5] Pursuant to the agreement of lease, the first applicant took occupation of the property for the use of a guest house “for these purposes and no other purposes whatsoever”, clause 1.4.

[6] First applicant breached the lease agreement by making other use thereof without the prior written consent of the lessor (clause 6.1).

[7] The court order under case no 2024/072662 provided that any rights to occupation and possession of the premises by the first applicant be duly terminated.

[8] Pursuant hereto the trustees of the lessor (the 1st, 2nd and 3rd respondent in the proceedings) brought an application for eviction of the lessee, Dial Africa, who was aware of these eviction proceedings since July 2024, having been duly served by the sheriff as is apparent from the returns of service that form part of the papers in the present application. Dial Africa, nonetheless, failed to oppose the proceedings, despite duly served and informed.

[9] The eviction order was granted on 24 October 2024. The order was served on the first and second applicants as far back as the 11th of November 2024 and the applicants were aware of the order. This much is apparent from the sheriff’s return of service, which have been attached to the papers in the present application. The eviction order provided as follows:

“Having heard counsel for the Applicants and having considered this matter, judgment is granted against the Respondents in the following terms:

1.1 The First Respondent and all those claiming occupation through or under the First Respondent are evicted from Upper Unit 1[…] A[…] S[…] Road, M[…], Johannesburg. The First Respondent and all those claiming occupation through and under the First Respondent are ordered to vacate Upper Unit 1[…] A[…] S[…] Road, M[…], Johannesburg by no later than one (1) month from the service of this order.

1.2 In the event of the First Respondent and all those claiming occupation through and under the First Respondent failing to comply with the order referred to in paragraph 1.1 above, then and in that event, the Sheriff of the above Honourable Court or his lawful deputy is authorised, required and empowered to carry out the eviction order on the 1st day after the expiry of the period referred to in paragraph 1.1 above."

[10] A writ of ejection was sought and granted on 3 February 2025.

[11] The applicants were evicted more than a month ago, on 12 March 2025.

[12] The second applicant in the applicants' founding affidavit alleges that he had no knowledge of the eviction proceedings and did not receive any papers. This cannot be correct, for he later admits that all processes were served on the first applicant's chosen *domicilium* address provided for in the terminated lease agreement, which constitutes proper services under the Uniform Rules of Court.

[13] The second applicant alleges that proper service was not affected upon the first applicant. The facts in this matter demonstrate that all papers in the eviction proceedings and up until the writ was executed, were served upon the first applicant's chosen *domicilium* address. The sheriff's returns of service were attached as annexures and form part of these proceedings.

[14] Against the background of these facts, the relief sought by the applicants should be considered. The relief sought by the applicants is twofold.

[15] The nature of the relief sought is an interim interdict.

[16] Applicants failed to oppose the application whereby the order was sought and obtained by the trustees of the Trust terminating the lease agreement with the first applicant. The first applicant thereafter failed to oppose the pursuant application for the applicants' eviction from the premises, which eviction order was granted on 24 October 2024. The writ of ejection was granted on 3 February 2025. The applicants were ejected on 12 March 2025. The first applicant (the lessee, Dial Africa) and the

other applicants, the occupiers, have now approached the court for urgent interim relief, seeking suspension of the ejection order pending a rescission application.

[17] Dial Africa and the occupiers must first establish a prima facie right to have any prospects of success in obtaining interim relief. In my view, the application falls flat at this first hurdle.

[18] The terminated commercial lease was in respect of a property for the use of a guest house. The nature of a guest house is that guests are housed and that occupation of such property is not intended for permanent residency. The fundamental and insurmountable problem for the applicants is that their application is based on the proposition that the **Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE")** applies to the present application. Applying the principles laid down in **Stay At South Point Properties (Pty) Ltd v Mqulwana and Others 2024 (2) SA 640 SCA**, I find that PIE does not apply in the present instance. In such event, para [18] of the judgment is instructive and applicable:

> *"[18] It follows that PIE did not apply to the respondents' occupation of the property. The appellant was thus entitled to evict the respondents in reliance upon the rei vindication. The High Court's refusal to order the respondents' eviction was therefore in error. Accordingly, the appeal must be upheld."*

That being so, the applicants have failed to establish a prima facie right. Or, for that matter, any right at all.

[19] The first applicant and the occupiers have also failed to protect their rights, if they have any rights at all, timeously. The chronology of the facts set out above, speaks loudly on this point.

[20] The inaction of the first applicant and the occupiers will, in my view, flounder in their required application for condonation for not bringing the application for rescission within a reasonable time.

[21] The writ of ejection of 3 February 2025 was obtained to give effect to the eviction order. The applicants have been ejected on 12 March 2025, a month before this urgent application was brought. The eviction order has been executed. Consequently, the relief sought by the applicants to stay execution, is moot. An execution which has already been completed, cannot be stayed.

[22] Applicants claim for re-instatement in the premises, is also bound to fail. Over and above all the other reasons already referred to, the premises are currently undergoing repairs and renovations caused by the damage done to the premises by the applicants. The premises are currently not habitable or fit for occupation. The repairs and renovations are scheduled to be completed by 20 October 2025. Given the history of this matter, the question arises whether the legal processes protecting and enforcing the contesting rights and obligations of occupiers and owners have now not run its course. The principle of finality expressed in the maxim *interest rei publicae ut sit finis litium* (it is in the public interest that litigation be brought to finality) is of long standing in our law. In **Zondi v MEC, Traditional and Local Government Affairs, and Others 2006 (3) SA 1 (CC)** at para [28] the Constitutional Court held that it is in the public interest that litigation should be brought to finality, because the "parties must be assured that once an order of Court has been made, it is final and they can arrange their affairs in accordance with that order." See also **Freedom Stationary (Pty) Ltd and Others v Hassom and Others 2019 (4) SA 459 (SCA)** at p 465 A to C and the authorities referred to therein. In *Van Wyk* the Constitutional Court held at para [31]:

> *"There is an important principle involved here. An inordinate delay induces a reasonable belief that the order had become unassailable. This is a belief that the hospital entertained and it was reasonable for it to do so. It waited for some time before it took steps to recover its costs. A litigant is entitled to have closure on litigation. The principle of finality in litigation is intended to allow parties to get on with their lives. After an inordinate delay a litigant is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter any further. To grant condonation after such an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality and cannot be in the interest of justice."*

[23] In my view the applicants have failed to make out a prima facie right to interim relief. In such event, the other considerations for interim relief do not even arise. But, in any event, the balance of convenience in my view favours the respondents. The premises are in the process of being renovated, whereas the first applicant can only rely on its rights to occupation on the basis of a valid lease with the lessor, which lease had been terminated by court order. The order was not appealed and that issue is *res judicata*. The occupiers' rights can only arise through that of the first applicant, which right was terminated by virtue of a court order.

[24] I find that the applicants have not made out a case for the relief they seek.

[25] There is no reason why costs should not follow the event.

[26] In consequence, the following order is made:
"The application is dismissed, with costs."

AP JOUBERT
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on:	25 April 2025
Delivered on:	9 May 2025

Appearances:

For the Appellant:	Adv. O Pheelwane
Instructed by:	Ngobeni Hlayisani Attorneys
For the 1st - 3rd Respondent:	Adv. M Coovadia
Instructed by:	Essy Attorneys Inc