

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



IN THE NORTH WEST HIGH COURT, MAFIKENG

CASE NO: M 716/2023

In the matter between:

ARROWGEM LIMITED

Applicant

AND

ROSA MARIA GOMES GARCES

Respondent

DATE OF HEARING : 15 NOVEMBER 2024

DATE OF JUDGMENT : 20 NOVEMBER 2024

FOR THE APPLICANT : ADV. SHEPSTONE

FOR THE RESPONDENT : ADV. SULLIVAN

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via email. The date and time for hand-down is deemed to be 15h00 on 20 November 2024.

ORDER

Resultantly, the following order is made:

- 1. The application for postponement of the eviction application *sine die* alternatively, pending the finalization of the action under case number 2236/2023, is refused.**
- 2. The application for an order that the eviction application may only be enrolled for hearing subsequent to the hearing and determination of the application to strike out the eviction application, is refused.**
- 3. The applicant in the application for postponement (Rosa Maria Gomes Garces) is ordered to pay the costs of the application for postponement on a party-and-party basis on Scale B.**

JUDGMENT

HENDRICKS JP

Introduction

- [1] Rosa Maria Gomes Garces ('Garces') and Arrowgem Limited (Arrowgem) concluded lease agreements in terms of which Garces leased two commercial properties (Shops 29 and 30) [the premises] from Arrowgem. The written lease agreements have, due to effluxion of time, come to an end. There is a dispute whether oral agreements were concluded justifying the continued occupation of these premises by Garces. Garces instituted an action under case number 2236/2023. *Litis contestatio* has been reached and this action is still pending. Whilst this action is pending, Arrowgem launched an eviction application under case number M716/2023. This eviction application is opposed by Garces. The eviction application was enrolled for 15 November 2024.
- [2] Garces launched an application that the eviction application be struck out, alternative stayed pending the finalization of the action. Thereafter, Garces launched a formal application for postponement *sine die* of the eviction application. Furthermore, that the eviction application may only be enrolled for hearing subsequent to the hearing and determination of the application to strike out the eviction application. This application for postponement is opposed by Arrowgem and was argued on 15 November 2024, whereupon judgment was reserved because of the complexity and intricate nature thereof.

- [3] The legal principles in respect of an application for postponement is trite and there is a plethora of case law in this regard.¹ Needless to say, this Court is vested with a discretion, to be exercised judiciously, whether or not to grant a postponement. The postponement is also not for the mere asking. A proper case based on good grounds and cogent reasons must be made out for a postponement to be granted. An applicant for a postponement seeks an indulgence from the court and must advance a plausible explanation why a postponement should be granted.
- [4] A careful reading of the affidavits filed clearly indicate that there are material disputes of facts with regard to whether or not oral agreements were concluded between Garces and one Shaik, for Garces' continued occupation of the premises; the amount of rental outstanding; the debatement of the electricity consumption; *etcetera*. These disputes must be fully ventilated.
- [5] What is up for adjudication now is whether the eviction application should be postponed or stayed (even struck) pending finalization of the action. Arrowgem submitted that upon a cursory reading of Garces' founding affidavit in the postponement application, it reveals a significant omission regarding the prospects of success. It is contended that it is notably deficient in addressing the prospects of success in defence of the eviction

¹ • Myburg Transport v Botha t/a SA Truck Bodies 1991 (3) SA 310 (NMS).
• Magistrate Pangarker v Botha 2015 (1) SA 503 (SCA).
• National Police Service Union v Minister of Safety and Security 2000 (4) SA.
• Venter Joubert Inc. v Du Plooy 2017 (5) SA 493 (NCK).

application and/or the action proceeding under case number 2236/2023. This is apart from the bare assertion that she is '*confident that I have considerable good prospects of success in both my action and my application.*' I am in agreement with counsel for Arrowgem's contention that this bold statement is unsupported by any substantive analysis or factual foundation. On the face of it, no substantive evidence is presented to prove the existence of the oral lease agreements, seeing that it is common cause that the written lease agreement have come to an end due to a effluxion of time. So too, with regard to the arrear rental; and the amount owing with regard to electricity consumption. This must be ventilated during the eviction application.

[6] Although it is not desirable that a case be adjudicate in a piece-meal fashion, there is nothing in law that prohibits a landlord to apply to court for the eviction of a tenant, despite the fact that the tenant instituted an action against the landlord. That Garces as tenant may have recourse against Arrowgem after debatement of the accounts, behoves no argument. There is however the allegations made that Garces is in arrears with the rental in a substancial amount. This too, will be determined and adjudicated upon by the court hearing the eviction application.

[7] All facts, circumstances and evidence on affidavits considered, I am of the view that it will not be in the interest of justice to postpone *sine die* or to stay the eviction application under case number M716/2023, pending the finalization of the action under case number 2236/2023. So too, will

it not be in the interest of justice to order that the eviction application may only be enrolled for hearing subsequent to the hearing and determination of the application to strike out the eviction application. Both the applications for eviction and the striking out thereof must be heard simultaneously. I am of the view that it will be in the interest of justice that it be done this way.

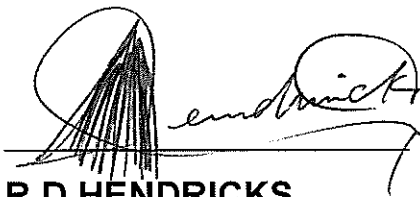
- [8] Consequently, the application for the postponement *sine die* of the eviction application, alternatively that it be stayed pending the finalization of the action under case number 2236/2023, should be refused. Insofar as costs are concerned, it should follow the result. I can find no plausible reason why a punitive costs order should be awarded. Costs on a party-and-party basis on Scale B should be ordered, as it is just and appropriate under the circumstances.

Order

- [9] Resultantly, the following order is made:

1. The application for postponement of the eviction application *sine die* alternatively, pending the finalization of the action under case number 2236/2023, is refused.
2. The application for an order that the eviction application may only be enrolled for hearing subsequent to the hearing and determination of the application to strike out the eviction application, is refused.

3. The applicant in the application for postponement (Rosa Maria Gomes Garces) is ordered to pay the costs of the application for postponement on a party-and-party basis on Scale B.

A handwritten signature in black ink, appearing to read 'R D Hendricks', is written over a horizontal line. The signature is stylized with a large, circular flourish on the left and a smaller, circular flourish on the right.

R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG