



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO. 584/2019

In the matter between:

DAVISAF TRUST

APPLICANT

and

**NIZAM INVESTMENTS (PTY) LTD t/a
RANA SUPERMARKET**

RESPONDENT

Neutral Citation : **Davisaf Trust and Nizam Investments Pty Ltd t/a Rana Supermarket (584/19) [2019] SZHC 103 (18 JUNE 2019)**

Coram : **MABUZA – PJ**

Heard : **15 APRIL 2019**

Delivered : **18 JUNE 2019**

SUMMARY

Landlord and Tenant – Applicant seeks an order inter alia, for the Respondent to vacate premises belonging to the Applicant – The basis thereof is that the lease between the parties has run its course – Respondent opposes application and pleads that it renewed the lease by exercising its option to do so. Application dismissed with costs.

JUDGMENT

MABUZA -PJ

- [1] The Applicant is a Trust represented herein by Isabella Mtetwa a Trustee and the signatory to the lease agreement between the parties.
- [2] The Respondent is **Nizam Investments (Pty) Ltd t/a Rana Supermarket**, a company duly incorporated in terms of the company laws of the Kingdom of Swaziland represented herein by MOH1 UDDN1, the signatory of lease agreement between the parties.
- [3] In this application which was brought as a matter of urgency the Applicant seeks an order in the following terms:

- (a) Dispensing with the normal and usual requirements of the Rules of the above Honourable Court relating to service of the process, time limits and notices and that this matter be heard as one of urgency.
- (b) Condoning the Applicant's non-compliance with the Rules of the above Honourable Court.
- (c) Directing the Respondent to vacate the leased premises at Plot No. 195 LC Malkerns, Shop No. 1 Mthozimela, in the Manzini Region.
- (d) Costs of the application.
- (e) Further and/or alternative relief.

[4] The application is opposed by the Respondent.

[5] The Respondent raised a point of law in respect of the urgency pleaded by the Applicant. In my respectful view, that point has fallen away as the matter was enrolled and heard.

[6] The parties hereto entered into an agreement of lease wherein the Applicant leased to the Respondent certain premises described in Article 1 of the lease agreement as "Plot No. 195 LC Malkerns, Shop No. 1 Mthozimele in the Manzini Region, Swaziland."

[7] It is from the above premises that the Applicant is seeking an order directing the Respondent to vacate on the basis that the lease agreement has run its course having ended on the 19th February 2019.

[8] The respondent on the other hand denies that the lease agreement came to an end on the 19th February 2019 but on the 31st December 2018 with an option for renewal by it for a further one year at a rental of 10% incremental per year.

[9] The pertinent features of the lease agreement are as follows:

Article 2 “Commencement and term of the lease

The lease shall be granted and accepted in a period of one (one year) with effect from the 1st January, 2018.

The Lessee shall have the option to renew the lease for a further one (1) year at a rental rate of 10% incremental per year.”

Article 3 “Termination (Diplomatic Cause)

Notwithstanding the above, the Lessee shall be entitled to give two (2) months’ notice by registered letter or hand-delivery to Lessor to terminate the lease at any time.”

Article 4 “Rent

The monthly rent shall be E3025.00 (three thousand and twenty-five Emalangeneni only). As first payment, the Lessee shall pay in advance; two (2) months’ rent (January and February 2018) upon occupancy of

the premises at. Thereafter, the Lessee shall pay the rent monthly in advance on or before the 5th of every month.

Payment of rent shall be made by electronic transfer to the bank account specified by the Lessor in writing; it is hereby stated that all monies shall be payable to the directed account being; Standard Bank, Matsapha Branch, Account Holder: Davisaf Trust, account number: 0140022604301.”

Article 13 “Return of keys

On the date on which the lease expires the Lessee shall return to the Lessor the key to the premises. In the event that through the fault of the Lessee, the Lessor is unable to regain possession of the premises on the date of expiry of the lease, the latter shall be entitled; save in the case of *force majeure*, to an indemnity equal to at least one month’s rent.”

Article 14 “Applicable legislation and regulation

The Constitution of the Kingdom of Swaziland, Act 2005 (per the Swaziland Government Gazette Extraordinary – VOL, XLIII MBABANE, Tuesday July 26th 2005 (No. 73), the factories, Machinery and Construction Works Act: Act 17/1972, and the applicable Regulations as published and/or issued by the Ministries of Health, Water and Sanitation, Environment and Public Works of the Kingdom of Swaziland shall apply.”

[10] The lease agreement seems to have been signed on the 8th January 2018 if one assumes that the reference to “Two copies and in good faith” refers to two copies of the lease agreement. Perhaps the Applicant’s calculation of

the one year is based on that date even though the parties do not state that that is the date of signature.

[11] The date of commencement is very clear, it is for a period of one (1 year) with effect from the 1st January 2018 irrespective of when it was signed. One year is normally calculated from the 1st January to the 31st December. To that end I agree with the Respondent's computation.

[12] Article 4 seems to support this computation as it states:

“At first payment, the Lessee shall pay in advance; two (2) months’ rent January and February 2018) upon occupancy of the premises.

[13] The renewal clause states:

“The lessee shall have the option to renew the lease for a further one (1) year at a rental of 10% incremental per year.”

There are no provisions setting how the renewal is to be achieved anywhere in the rest of the lease agreement. The applicable legislation and regulation set out in article 14 is not helpful and I am not sure what the import of article 14 signifies. There is no reference to the common law for instance as an interpretation tool.

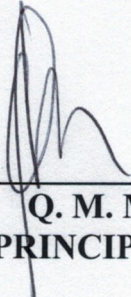
[14] Article 13 is not helpful either in terms of termination of the lease. It states:

“On the date on which the lease expires, the Lessee shall return to the Lessor the keys to the premises.”

The date on which the lease expires is not explicitly stated and even if it were to be deemed to be the 31/12/2018 the Lessee in terms of article 2 has an option to renew for a further year at 10% incremental per year. The Lessee chose not to return the keys on the 31/12/2018 and by implication opted to exercise the option to renew.

[15] The Respondent says that he exercised this option and paid the increment of 10% on the previous rent. The Respondent says that it paid to the account given to it at article 4 and the Applicant accepted it. In *casu* the acceptance of the rent fortifies the Respondent’s assertion that it renewed the lease in terms of article 2. There is no provision in the lease agreement that supports the notice by the Applicant dated 28th January 2019 advising the Respondent that the lease agreement will not be renewed. Furthermore the notice comes well after the 31st December 2018. I agree with the Respondent that Annexure “N14” (page 69 of Book of Pleadings) is irrelevant to the issue at hand.

- [16] The lease agreement in *casu* is distinguishable from other lease agreements because it is not skillfully drawn with the usual legal input. It was bound to give certain difficulties of implementation and interpretation.
- [17] I agree with the Respondent that there is nowhere in the lease agreement wherein it states that the Respondent had to inform the Applicant of its intended renewal of lease and that the Applicant had a right or discretion to accept or not to accept renewal. The lease agreement is conclusive as to the terms of the transaction it was intended to record. Consequently, I find for the Applicant.
- [18] The application is dismissed with costs.



BANE
Crim. C

Q. M. MABUZA
PRINCIPAL JUDGE

For the Applicant : Mr. B. Gamedze
For the Respondent : Mr. M.V. Nxumalo