

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

Case Number: 25302/2020

3419/2020

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

In the matter between: -

A MILLION UP INVESTMENTS 86 (PTY) LTD

PLAINTIFF

and

MAVAMBO COACHES (PTY) LTD

DEFENDANT

JUDGMENT

Van Aswegen AJ

INTRODUCTION:

[1] In this matter there was a consolidation of two actions under case numbers 25302/2020 and 34919/2020 in terms of rule 11 of the Uniform Rules of Court on 4 October 2023.¹ The Plaintiff and the Defendant agreed to the consolidation.

[1.1] The aforesaid actions pertain to the alleged unlawful occupation by the Defendant of the Plaintiff's commercial premises located at 1[...] V[...] Road, Johannesburg (the "Premises"), and the refusal by the Defendant to vacate the premises.

[1.2] The action under case number 25302/2020 claimed the commercial eviction of the Defendant company from the Plaintiff's premises.

[1.3] The Plaintiff claimed damages from the Defendant under case number 34919/2020, arising from the unlawful occupation of the premises.

[2] The matter was consolidated under case number: 25302/2020.

[3] The cause of action in this case arises from an alleged breach of an oral lease agreement ("the agreement") entered into approximately during August 2017 in Johannesburg.

[3.1] The agreement was concluded by the Plaintiff and the Defendant, each being duly represented by their authorised representatives.

[4] The material terms of the Agreement were as follows:

[4.1] The Plaintiff agreed to lease a portion of the premises located 1[...] V[...] Road, Johannesburg (the "Premises"), to the Defendant, with the lease term commencing on 1 September 2017 and concluding on 31 December 2019.

¹ Case Lines 27-1

[4.2] The Defendant was required to pay the Plaintiff a rental amount of *R21 200.00* (twenty-one thousand two hundred rand) per month in advance for the use of the premises throughout the term of the Agreement.

[4.3] The Defendant was liable for all consumption charges for water, electricity, sewage, rates or surcharges on the premises imposed by the City of Johannesburg, as well as any related interest charges.

[4.4] The Defendant was responsible for maintaining the property in the condition existing at the commencement of the lease, performing regular maintenance, and safeguarding the premises against vandalism.

[4.5] The Defendant was to occupy only the area of the property leased from the Plaintiff and was not allowed to enter upon or use any part of the premises not covered by the lease (such unleased portion hereinafter referred to as the "PXL portion").

[4.6] Upon termination of the lease, the Defendant was required to vacate the premises.

[5] The respondent breached the agreement by:

[5.1] not vacating the premises after lease termination; and

[5.2] occupying or encroaching on the PXL portion.

[6] The Defendant occupied the premises unlawfully from *1 January 2020* until abandoning it on *30 November 2024*. The eviction relief has therefor become academic.

[7] The Plaintiff continues to pursue three claims against the Defendant. The claims are as follows:

[7.1] Claim A - Rental claim.

The plaintiff was unable to lease out either the premises or the PXL portion.

[7.2] Claim B - Damages for restoration costs.

As is a result of the Defendant's failure to maintain the property, to conduct regular maintenance or to protect the premises from vandalism.

[7.3] Claim C - Sub-charges and rates in respect of the City of Johannesburg.

The consumption of services obtained from the City of Johannesburg and through surcharges, rates and interest for which the Defendant was liable to the Plaintiff as lessor of the premises.

PROCEDURAL STEPS:

[8] The summons under case number *25302/2020* was served on the *15 October 2020* at 1[...] V[...] Road City Deep the place of business upon Chris, the manager of Pioneer Busses a responsible person, apparently not less than sixteen years of age and in charge of the Defendant.²

[9] The Defendant filed a Notice of Intention to Defend dated *30 October 2020* on the Plaintiff.³

[10] A Plea was filed dated *7 December 2020*.⁴

[11] The trial was initially scheduled for *31 January 2022* but was postponed at the Defendant's request to amend its Plea, who also covered the associated costs.⁵

[12] The Defendant subsequently submitted an application under rule 28 to amend its Plea, which was met with opposition.⁶

[13] On *18 March 2022* the opposed interlocutory rule 28 application was dismissed with costs.⁷

² Case Lines 02-1

³ Case Lines 03-3

⁴ Case Lines 05-3

⁵ Case Lines 17-1

⁶ Case Lines 12-3

⁷ Case Lines 003-1

[14] The Particulars of Claim was amended on *8 July 2024*.⁸

[15] The Notice of Set down for *18 August 2025* was served via email on the Defendant's attorneys on *3 September 2024*.⁹

[16] Counsel for the Plaintiff has confirmed that the Defendant is informed of the court date due to:

[16.1] correspondence between the attorneys,

[16.2] discussions at the previous hearing of this matter and

[16.3] the trial date which was widely circulated via Case Lines.

[17] The matter was allocated on the civil trial roll for *18 August 2025*. The Defendant and its attorneys were not in attendance.

[17.1] The Plaintiff proceeded in terms of rule 39 (1) of the Uniform Rules of Court which states:

"If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him and judgment shall be given accordingly, in so far as he has discharged such burden."

[18] The Plaintiff's counsel indicated that the Plaintiff would be leading the evidence of three (3) witnesses to substantiate its three claims. It led the evidence of a property valuator, the property managing agent of the premises and an quantity surveyor.

EVIDENCE LEAD BY PLAINTIFF

⁸ Case Lines 31-3

⁹ Case Lines 29-3

[19] The first witness called was Mr. Geoffrey Geoff Balme, a Property Consultant, Valuer, Director, and Registered Professional Associated Valuer at Balme Van Wyk & Tugman.

[20] His professional background encompasses two decades of relevant experience in the following areas:

[20.1] preparation of portfolio valuations for housing and landholding companies to support audited financial statements;

[20.2] completion of retail tenant-to-landlord assessments;

[20.3] provision of pre-emptive valuations for future rates forecasts; and

[20.4] completion of retail tenant-to-landlord assessments.

[21] He was asked to assess the current market rental of the premises listed below, which he inspected on 7 May 2025:

- 1[...] V[...] Road, City Deep;
- Nature thereof: B Grade Industrial / warehouse / with offices
- Date of Rental: Wednesday, 01 January 2020
- Rental nature: Rent Assessment to market as at 1 January 2020

[22] A lease agreement between the Plaintiff and *Pindulo VDM (Pty) Ltd* ("*Pindulo*"), dated 9 July 2020, was provided to Mr Balme. The lease term commenced on 1 July 2020 and concluded on 30 June 2021, with an option for renewal for a further year. The rental amount was set at *R175 000.00*, or *R35* per square meter.

[23] The methodology employed by Mr. Balme, was as follows:

[23.1] The fair rental value of the property was established by examining a wide spectrum of comparable industrial facilities that include office spaces, considering both the nature of such properties and the demographics they

attract. This research encompassed facilities located within the surrounding area and specifically those within a 5 km radius of the subject property, with particular emphasis on industrial sector trade facilities featuring office components.

[24] Mr. Balme referred to the Rode report that shows that a 5 000 m² property in City Deep earns R210 000.00 monthly, equating to R42.00 per square meter.¹⁰

[25] According to Mr Balme, the *Pindulo* lease amount of R175 000.00, equating to R35 per square meter for a one-year period¹¹ is considered understated.¹²

[26] Comparative market analysis within the same area indicates an average rental rate of R53.52 per square meter as at 2025.¹³ When this figure is de-escalated by 7% in accordance with the Rode Report¹⁴ the corresponding rental rate for 2020 would be R38.16 per square meter.

[27] Mr Balme concluded that, based on his inspection and report, the fair market rental for a five-year lease with a 7% escalation as of 1 January 2020 is R200 000.00 or R40.00 per square meter per month. For a three-year lease, the escalated rental would be slightly higher at R53.00 per square meter.

APPLICATION OF EXPERT'S EVIDENCE IN RESPECT OF CLAIM A – RENTAL

[28] Mr. Balme's evidence indicates that the Plaintiff could have rented the premises, including the PXL portion, for R200 000.00 per month over at least 5 years, with an annual escalation of 7%.

[29] In the application of the provided evidence, it is noted that the rental commenced at R200 000.00 per month in 2020, subject to a 7% annual escalation.

¹⁰ Case Lines 37-317

¹¹ Case Lines 37-79

¹² Case Lines 37-77

¹³ Case Lines 37-318

¹⁴ Case Lines 37-317

[29.1] The rental amount is accordingly determined as follows:

•	1 January 2020 to 31 December 2020:	R 2 400 000.00
•	1 January 2021 to 31 December 2021:	R 2 568 000.00
•	1 January 2022 to 31 December 2022:	R 2 747 760.00
•	1 January 2023 to 31 December 2023:	R 2 940 103.20
•	1 January 2024 to 30 November 2024:	R 2 883 751.20
	Total:	R 13 539 614.40

Less Amounts Paid:	R 508 800.00
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Total:	<u>R 13 030 814.40</u>
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[30] The Plaintiff has accordingly suffered damages of *R13 030 814.40* due to loss of rental from *1 January 2020 to 30 November 2024*, resulting from the Defendant's breach and/or unlawful occupation.

EVIDENCE - MS ATLANTA RWODZI

PRE- AND POST CONDITION OF PROPERTY AND CITY OF JOHANNESBURG SUBCHARGES

[31] Ms. Atlanta Rwodzi indicated that she has held the position of property manager for the Plaintiff since 1 July 2013. Her responsibilities include overseeing tenants and collecting rental payments.

[32] Since *1 July 2013*, she has managed the property located at 1[...] V[...] Road, City Deep.

[33] A satellite photograph of the property was presented, showing the area initially leased by the Plaintiff.¹⁵ The Plaintiff subsequently occupied additional portions of the property beyond the original lease area.

[33.1] Regarding the premises, she indicated that upon entering through the property gate, drivers' restrooms, ablution facilities, and a canteen are immediately accessible. Furthermore, the property contains a warehouse as well as a two-storey office building.

[34] Ms Rwodzi testified that the Plaintiff's lease commenced at the beginning of 2020 and expired on 31 December 2019.

CONDITION OF PREMISES AT 2020

[35] She took photographs numbered 1 to 8 during her inspection of the property before the handing over to *Pindulo* on 1 July 2020.¹⁶

[36] No significant defects were found in the property, and *Pindulo* acknowledged and accepted its condition.

[37] The Defendant continued to occupy the property after receiving notice regarding the lease's expiration.

[38] *Pindulo* had paid a deposit equivalent to two months – R350 000.00, to the Plaintiff which had to be refunded to *Pindulo* because the Plaintiff continued to occupy the premises after its lease expired.

[39] She additionally stated that throughout 2020, all buildings and rooms depicted in photographs 1 through 8 were maintained in good condition. She identified each photograph as follows:

¹⁵ Case Lines 37-186

¹⁶ Case Lines 37-390

[39.1] Photograph 1 shows the entrance to a two-storey reception area.¹⁷

[39.2] Photograph 2 is a photo of the warehouse and offices.¹⁸

[39.3] Photograph 3 is one of the offices equipped with a fire extinguisher and air-conditioner.¹⁹

[39.4] Photograph 5 shows the drivers' restrooms and ablution facilities.²⁰

[39.5] Photograph 6 reflects the front of the warehouse.²¹

[39.6] Photograph 7 is of the external surrounding wall.²²

[39.7] Photograph 8 is the double storey office building.²³

CONDITION OF THE PREMISES AFTER ABANDONMENT

[40] After the Defendant left the premises in *November 2024*, the property was found to be in a deteriorated and dilapidated condition. The main entrance gate designed to slide open had to be lifted to operate.

[41] The photographs, beginning at *Case Lines 37-404*, show the condition of the property as it was in *May 2025*. Ms. Rwodzi provided commentary on these photographs as detailed below.

[41.1] Photograph 16 includes two photos; the second shows the driver's restrooms, where smashed sewage and water pipes have left no running water, and the wall paint is damaged.²⁴

¹⁷ Case Lines 37-390

¹⁸ Case Lines 37-391

¹⁹ Case Lines 37-392

²⁰ Case Lines 37-394

²¹ Case Lines 37-395

²² Case Lines 37-397

²³ Case Lines 37-398

[41.2] Photographs 17 to 19²⁵ show the driver's ablution, which is in poor condition. Taps are missing, water damage caused the ceiling to collapse, the windows are broken, and the facility is discoloured.

[41.3] Photograph 20²⁶ depicts the interior of the ablution facility. Several taps are damaged, and there is evidence of vandalism throughout the property.²⁷ Furthermore, the restrooms have been converted into permanent living spaces.²⁸

[41.4] Photograph 22 shows the ablution facility. The door is damaged and has not received adequate maintenance. Additionally, the kitchen appears to be in poor condition, with several taps missing.

[41.5] Photograph 23 shows significant water damage and ceiling deterioration.

[41.6] Photograph 24 depicts a dislodged gutter and damaged roller shutter doors. The lower image shows the warehouse frontage. Electrical supply is absent due to severed cables; wiring has been removed and fittings have been stripped.

[41.7] Photograph 27 depicts the office building. The doors had been forcibly opened, and all air conditioning units had been vandalised. The units are found lying on the floor throughout the offices.

[41.8] Photograph 28 shows the kitchen within the main office, where the doors are either missing or damaged.

²⁴ Case Lines 37-405

²⁵ Case Lines 37-406

²⁶ Case Lines 37-409

²⁷ Case Lines 37-410

²⁸ Case Lines 37-409

[41.9] Photograph 29 depicts the upstairs office. The ceilings exhibit damage, and the walls show evidence of peeling. The ceiling was intentionally compromised to remove the electrical wiring.

[41.10] Photograph 30 shows that the surrounding external wall is not intact, with visible holes that are covered by canvas.

[41.11] Photograph 31 is evidence of the Defendant's trucks abandoned in the main shed and also in the surrounding areas.

CLAIM 2: SERVICE CHARGES - CITY OF JOHANNESBURG

[42] Ms Rwodzi provided an accounting of the service charges related to the property. These charges were to be paid by the Defendant to the Plaintiff, who subsequently remitted payment to the City of Johannesburg. She conducted a calculation and recalculation of these expenses.

[43] Exhibit A, submitted to the court, details the recalculated figures. The balance according to the COJ statement is *R4 822 060.44*. Deductions include *R88 140.28* for payments made by the Plaintiff as landlord, *R1 658 058.33* for charges incurred by the previous tenant (PXL, who vacated on 30 June 2018), as well as rates charges from July 2018 to November 2024 that are not attributable to the Defendant. Consequently, the outstanding amount is *R2 670 609.08*.

[44] Ms Rwodzi verified that the sum of *R2 670 609.08* remains due for payment to the City of Johannesburg.

EVIDENCE- MR. TAPIWA MADHOMU

CLAIM B – REPAIR COSTS

[45] Mr. Madhomu was called as the second witness. He works as a quantity surveyor and provides cost estimates for new, restructuring, and ongoing construction projects. He has been working in his field of experience since 2022.²⁹

[46] He conducted an inspection of the property and noted that it had been neglected for an extended period. Additionally, the property had been subject to vandalism.

[47] He inspected the property, consulted electrical, structural, and air-conditioning experts, and drafted a bill of quantity based on their market rates. His final report is Annexure C.³⁰

[48] The initial calculation of the repair costs was *R14 753 059.13*.³¹ A subsequent recalculation was performed, excluding the electrical fence, which was not present in *January 2020*. Exhibit B submitted in court reflects this recalculation, with the revised amount totalling *R13 657 915.93*.

[49] He provided an overview of the primary defects present at the property, which predominantly involve water damage. The roofs exhibit rust due to insufficient maintenance, the tiles show signs of cracking, and there has been a general lack of upkeep. Additionally, the Plaintiff was denied access to the premises. The current condition of the building is attributed to ongoing neglect in maintenance.

[50] Vandalism occurred, as shown by stripped electric wires and missing light fittings. Most items were stolen, indicating significant theft.

[51] The preliminary and general costs on Exhibit B total *R1 749 374.60*, covering construction overhead, salaries, scaffolding, and protective clothing. These expenses account for 50% of the total cost and are considered fair and reasonable.

²⁹ Case Lines 37-342

³⁰ Case Lines 37-347

³¹ Case Lines 37-389

[52] Item 2 on Exhibit B concerns ablution facilities, with a cost of R768 573.23. The doors are bent and must be replaced. The ceiling is unstable and there is significant water present. The floors are cracked and also require attention.

[53] The urinals are outdated and stained. The shower flows and mixers require replacement, the taps have been removed and the mixers no longer work.

[54] The plumbing structures have been vandalized. The taps must be replaced, broken pipes require new installations, and wall access is necessary to insert the pipes.

[55] There is evidence of water damage in the ceiling. The paint is also peeling throughout. The walls require brushing to remove flakes, followed by plastering and repainting. The doors are also scheduled for replacement.

[56] The kitchen and canteen walls and tiles are damaged, with holes and smashed tiles. Hedges and cracked floors also require repair.

[57] The bedroom walls exhibit signs of rust and deterioration.

[58] The roof has significant water damage.

[59] With reference to the images included in Mr. Madhomu's report and the accompanying picture bundle³² he discussed and referenced the photographs that he had taken himself.

[59.1] Photograph 122 comprises two images; the lower image depicts a partition, with a portion that has sustained damage and has been dismantled.³³

[59.2] Photograph 124 – The ceiling board collapsed. Isolation must be removed and electricians need to rewire the ceiling.³⁴

³² Case Lines 37-421

³³ Case Lines 37-433

[59.3] Photograph 125 – The steel canopy covering and structural components exhibit deformation. Replacement sheeting is required for the canopy covering.³⁵

[59.4] Photograph 127 – the doors have been subjected to vandalism.³⁶

[59.5] Photographs 153³⁷ and 157³⁸ - show leaking warehouse and office roofs, cracked floors, broken glazing, and damaged roller doors requiring replacement. Poorly maintained gutters caused significant ceiling and floor damage.

[59.6] Photograph 178 shows an upstairs room with a collapsing ceiling.³⁹

[59.7] Photograph 193 - The kitchen is vandalized, with cabinets and handles removed.⁴⁰

[59.8] Photograph 246 – The external walls exhibit significant damage, indicating inadequate maintenance. The plaster has been exposed to water due to insufficient protection.⁴¹

[59.9] Photograph 248 shows the rusted roof of the main shed. Repainting will be ineffective; the entire sheeting must be replaced. The steel supports also require repair due to loss of strength.⁴²

[59.10] Photograph 254 show the boundary wall has been vandalized and is covered with plant roots, which proper gardening could have prevented.⁴³

³⁴ Case Lines 37-434

³⁵ Case Lines 37-435

³⁶ Case Lines 37-436

³⁷ Case Lines 37-437

³⁸ Case Lines 37-436

³⁹ Case Lines 37-439

⁴⁰ Case Lines 37-442

⁴¹ Case Lines 37-443

⁴² Case Lines 37-443

[59.11] Photograph 256 illustrates that the sliding gate to the property was not properly maintained, as it lacks both spikes and wheels.⁴⁴

[59.12] Photograph 264 and 266 - The electrical wires were stripped and vandalized.⁴⁵

[60] Mr. Madhomu removed item 291 from his calculation because it was not present in 2020.⁴⁶

[61] In Mr. Madhomu's expert opinion *R13 657 915.93* represents the fair and reasonable cost required to restore the premises to its condition at the commencement of the Defendant's lease.

CONCLUSION:

[62] Upon reviewing the aforementioned evidence, this court finds that the Plaintiff has established entitlement to claim liquidated damages (for rental) and for sub-charges and repair costs.

[63] Accordingly, I make the following order:

Order

[1] The Defendant is ordered to make payment of the following sums:

[1.1] in respect of claim A the sum of R13 030 814.00.

[1.2] In respect of claim B the sum of R13 657 915.93.

[1.3] in respect of claim C the sum of R2 670 609.08.

⁴³ Case Lines 37-445

⁴⁴ Case Lines 37-446

⁴⁵ Case Lines 37-447

⁴⁶ Case Lines 37-388

[2] Interest is calculated at the rate of 11% per annum from 29 October 2020, being the date of service of the summons, to date of final payment.

[3] Costs including costs of counsel on scale C.

**S VAN ASWEGEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Plaintiff:

Adv J Heher
Instructed by Fluxmans Inc

For the Defendant

No appearance