THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 449/2024

In the matter between:

JOHANN ELS **APPELLANT**

and

DANIEL WOUTER VENTER **FIRST RESPONDENT**

MELANIE CHRISTINA VENTER **SECOND RESPONDENT**

Neutral citation: *Els v Venter and Another* (449/2024) [2025] ZASCA 163 (27 October 2025)

Coram: SCHIPPERS, GOOSEN, KGOELE and KATHREE-SETILOANE JJA and MODIBA AJA

Heard: 1 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 27 October 2025.

Summary: Statutory interpretation – Consumer Protection Act 68 of 2008 – meaning and effect of 'transaction', 'service' and 'rental' – whether residential lease

agreement concluded ‘in the ordinary course of business’ of lessor – whether order to vacate property constitutes an eviction.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Slingers J, sitting as court of first instance):

1 The appeal succeeds in part.
2 Paragraph 49(iv) of the High Court's order is set aside.
3 Save as aforesaid, the appeal is dismissed with costs on the scale as between attorney and own client.

JUDGMENT

Schippers JA (Goosen, Kgoele and Kathree-Setiloane JJA and Modiba AJA concurring)

[1] The central issue in this appeal is whether a residential lease agreement concluded between the appellant and the respondents, constitutes an agreement for consideration in the ordinary course of business, as contemplated in the Consumer Protection Act 68 of 2008 (the Act). The High Court of South Africa, Western Cape Division (the High Court) held that the Act does not apply to the lease agreement. The appeal is with its leave.

[2] The facts can be briefly stated. The respondents are married, and are the registered owners of Erf 5[....] D[...] Z[...], located at 1[...] G[...] Street, D[...] Z[...],

Winelands Golf Estate, Stellenbosch (the property). Prior to relocating to Australia in 2018, the property was their primary residence. Not knowing whether their move to Australia would be permanent, they decided to let the property. On 1 December 2020 they concluded a lease agreement with the appellant for three years, ending on 31 December 2023 (the first lease). The appellant complied fully with his obligations under the first lease.

[3] In February 2023 the appellant asked the respondents to extend the first lease. At that point, the respondents had decided that they were going to settle in Australia and would sell the property. They informed the appellant accordingly and told him that any further lease would be subject to a notice period of three-months for termination by the landlord. Upon expiry of that period, the appellant would have to vacate the property. They did not want a lease to stand in the way of its sale. The appellant agreed to this.

[4] On 4 August 2023 the parties entered into a new written lease agreement for a further period of three years, which commenced on 1 January 2024 and would have terminated on 31 December 2026 (the second lease). Clause 29.2 of the second lease provided:

'The Landlord shall be entitled to terminate this agreement on 3 (three) months' written notice to the Tenant before termination date.'

[5] The second lease also provided that the appellant would pay costs on an attorney and own client scale, in the event of the respondents taking any action against him to enforce the obligations under the lease. The respondents appointed their friend, Mr Deon Roos, who lives in Stellenbosch, to manage the second lease.

[6] Following the conclusion of the second lease, the property was marketed. It was sold on 19 December 2023. In terms of the deed of sale, the purchasers were granted vacant possession of the property on 1 April 2024.

[7] On 21 December 2023, in terms of clause 29.2 of the second lease, the respondents served a notice of termination on the appellant (the termination notice). In terms of that notice, the appellant was required to vacate the property by 31 March 2024.

[8] The appellant responded to the termination notice on the same day ie, 21 December 2023. He conceded that the respondents were entitled to issue the termination notice, but referred to the principle 'huur gaat voor koop' (an existing lease agreement takes precedence over a subsequent sale of property) which, he said, meant that the second lease was transferred to the new owner, who knew of its existence. The respondents' agent, Mr Roos, replied that there was no contract between the new owner and the appellant, and that he knew that the property had been sold, which was the reason for the termination notice. Subsequently, the appellant raised the same issues with the first respondent. He again conceded that the respondents were entitled to issue the termination notice, but said that he had hoped the new owner would have done so when the property was transferred. The first respondent replied that the appellant should negotiate with the new owners, who were going to occupy the property by 1 April 2024. These facts are common ground.

[9] There was no further communication between the parties until the respondents received a letter from the appellant's attorneys on 28 January 2024. In this letter it was contended that the second lease fell within the ambit of s 14 of the Act; that it could only be terminated on the ground of a material breach by the appellant; that

its termination was unlawful and invalid; and that the appellant would hold the respondents to the terms of the second lease.

[10] After multiple failed attempts to resolve the dispute, the respondents filed an urgent application in the High Court. They sought a declaration that the second lease was valid; that the Act did not apply; that the termination notice had properly been given; and that the appellant should vacate the property by 1 April 2024.

[11] Before the High Court, the appellant stated that he understood that the sale of the property would be subject to the second lease. Further, he contended that the lease constitutes a fixed-term agreement concluded in the ordinary course of business, as contemplated in the Act; and that it could not be terminated in circumstances where he had not materially breached its terms.

[12] The High Court granted the relief sought by the respondents. It made an order that the termination notice was valid; that the appellant and those holding title under him, should vacate the property by 31 March 2024; and that the appellant should pay the costs of the application on the scale as between attorney and own client.

The relevant provisions of the Act

[13] The starting point is s 5(1) of the Act. It states, inter alia:

'5(1) This Act applies to–

(a) every transaction occurring within the Republic, unless it is exempted by subsection (2), or in terms of subsections (3) and (4).'

[14] Section 1 defines a 'transaction', inter alia, as follows:

'*(a)* in respect of a person acting in the ordinary course of business-

(i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or

(ii) . . .

(iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration.'

[15] The Act defines 'service' as including but not limited to:

'. . .

(e) the provision of-

(v) access to or use of any premises or other property in terms of a rental.'

[16] The Act defines 'rental' as follows:

'**"rental"** means *an agreement for consideration in the ordinary course of business* in terms of which temporary possession of any premises or other property is delivered, at the direction of, or to the consumer, or *the right to use any premises or other property is granted*, at the direction of, or to the consumer, but does not include a lease within the meaning of the National Credit Act.'[1]

[17] The term 'ordinary course of business' is not defined in the Act. However, it defines 'business' as 'the continual marketing of any goods or services'; and 'market', when used as a verb, as meaning to 'promote or supply any goods or services'.

[18] The Act states that a 'supplier' means 'a person who markets any goods or services'; and that

'**"supply"**, when used as a verb–

(a) in relation to goods, includes sell, rent, exchange and hire in the ordinary course of business for consideration; or

[1] Emphasis added.

(b) in relation to services, means to sell the services, or to perform or cause them to be performed or provided, or to grant access to any premises, event, activity or facility in the ordinary course of business for consideration.'

[19] The Act defines 'consumer', inter alia, as follows:

'**"consumer"** in respect of any particular goods or services means–

(a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business.'

[20] Section 14(2)*(b)*(ii) of the Act, on which the appellant relies, provides:

'If a consumer agreement is for a fixed term–

(a) . . .

(b) despite any provision of the consumer agreement to the contrary–

(i) . . .

(ii) the supplier may cancel the agreement 20 business days after giving written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time.'

[21] A 'consumer agreement' is defined in the Act. It means 'an agreement between a supplier and a consumer other than a franchise agreement'.

Is the lease one in the ordinary course of business?

[22] The approach to statutory interpretation is settled. The inevitable starting point is the language of the provision, understood in the context in which it is used and having regard to the purpose of the provision.[2] Recently this Court affirmed this approach and said:

'Interpretation begins with the text and its structure. They have a gravitational pull that is important. The proposition that context is everything is not a licence to contend for meanings

[2] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 ALL SA 262 (SCA); 2012 (4) SA 593 (SCA) (*Endumeni*) para 18.

unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text.'[3]

[23] The Act provides that 'rental', ie an arrangement to rent premises or the act of renting premises, is 'an agreement for consideration in the ordinary course of business', in terms of which temporary possession of premises is delivered to the consumer. On its plain wording, the Act requires that the letting of premises must fall within the 'ordinary course of business' of the lessor, and the lessee must be a 'consumer', ie a person to whom 'services are marketed in the ordinary course of the supplier's business'.

[24] In other words, the lessor firstly, must be in the business of letting or hiring premises. That much is clear from the Act's definition of business, which means 'the continual marketing of any goods or services'. In turn, 'service' includes, but is not limited to 'access to or use of any premises or other property in terms of a rental'.

[25] Secondly, the rental or lease agreement must fall within the lessor's 'ordinary course of business'. Black's Law Dictionary defines 'course of business' as 'the normal routine in managing a trade or business'.[4] The word, 'ordinary' means 'as a matter of regular practice,[5] of common occurrence,[6] or usual.[7] The concept 'ordinary course of business', is defined as the 'normal and routine day-to-day operations consistent with the past practices and customs of the business'.[8] These day-to-day operations are obviously not once-off transactions.

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[3] *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investment 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 ALL SA 647 (SCA); 2022 (1) SA 100 (SCA) para 51. See also *Mbambisa and Others v Nelson Mandela Bay Metropolitan Municipality* [2024] ZASCA 151; (2025) 46 ILJ 277 (SCA); 2025 (3) SA 112 (SCA).
[4] Bryan A Garner *Black's Law Dictionary* 11 ed (2019).
[5] Oxford English Dictionary <https://www.oed.com>.
[6] Collins English Dictionary <https://www.collinsdictionary.com>.
[7] Cambridge English Dictionary <https://dictionary.cambridge.org>.
[8] <https://ca.practicallaw.thomsonreuters.com>.

[26] Whether a lease is within the lessor's ordinary course of business is an objective test that requires an examination of the relevant transaction in its factual setting. This depends on what business is conducted by the supplier in question and how it is carried on. The issue is not whether the transaction is ordinary, but whether it is carried out in the ordinary course of the supplier's business.

[27] Applied to the present case, the respondents are not in the business of letting property for consideration. They were not engaged in any trade, or business – the continual marketing of services – when they concluded the second lease with the appellant. This is not a case where property was let from rental housing stock. Rather, the first respondent, a software engineer and the second respondent, a civil engineer, in 2018 rented out their family home in South Africa after moving with their children to Australia. They did not want to sell the property immediately in case their move was unsuccessful. Put simply, the second lease constitutes an agreement between private individuals, concluded to protect an asset pending its sale, after the respondents decided to settle in Australia. That is also how the appellant understood the transaction.

[28] Thus, the appellant is not a 'consumer' as contemplated in the Act. The respondents are not suppliers, and the second lease is not an agreement concluded in the course of any trade or business conducted by them for consideration, let alone in the ordinary course of business. Solely for these reasons, the appeal falls to be dismissed.

[29] It follows that the appellant's reliance on s 14(2)*(b)*(ii) of the Act is misplaced. In any event, the second lease is not a fixed-term agreement as envisaged in the Act. Section 14(2)*(a)* provides that 'if a consumer agreement is for a fixed term . . . that

term must not exceed the maximum period, if any, prescribed in terms of subsection (4) with respect to that category of consumer agreement'. Regulation 5(1) prescribes the maximum period of a fixed-term consumer agreement – in this case, 24 months from the date of signature by the consumer, unless a longer period is expressly agreed with the consumer, and the supplier can show a demonstrable financial benefit to the consumer.[9] The tenure of the second lease is 36 months, which is destructive of the appellant's reliance on s 14(2)*(b)* of the Act. Aside from this, the second lease is not a 'consumer agreement' as defined in the Act.

[30] The plain wording of the concept 'rental agreement' is buttressed by the immediate context. Neither respondent is a 'supplier' – a person who markets goods or services – as defined in the Act. They are not engaged in marketing goods or services: they do not 'promote or supply any goods or services' to consumers. What all of this shows, is that the Act applies only to residential leases which form the subject of services that are continually marketed for consideration to consumers, in the ordinary course of the business of the lessor or a person acting on its behalf or at its direction.

[31] The above interpretation is further reinforced by the purposes of the Act. These include the promotion and advancement of the social economic welfare of consumers by, inter alia, establishing a legal framework for a fair, accessible, efficient and sustainable consumer market. The Act is also aimed at reducing and ameliorating disadvantages experienced in accessing the supply of goods or services

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[9] Regulation 5(1)(a) of the Consumer Protection Regulations published under GN R293 in *Government Gazette* 34180 of 18 April 2011, provides:
'For purposes of section 14(4)*(a)* of the Act, the maximum period of a fixed-term consumer agreement is 24 months from the date of signature by the consumer –
(a) unless such longer period is expressly agreed with the consumer and the supplier can show a demonstrable financial benefit to the consumer.'

by vulnerable, low-income consumers who live in remote areas or communities, and whose ability to read and understand advertisements, agreements and notices is limited because of low literacy, vision impairment or limited fluency. Its purposes also include promoting fair business practices; and protecting consumers from unconscionable, unfair, unreasonable and unjust trade practices, and deceptive, misleading, unfair or fraudulent conduct. In short, the Act is directed at protecting the rights of historically disadvantaged persons who are easily exploited, and promoting their full participation as consumers.[10] Section 2(1) provides that it 'must be interpreted in a manner that gives effect to the purposes set out in section 3'.

[32] So construed, the Act excludes agreements such as the second lease, which was not concluded with a supplier in the ordinary course of business, by a lessee such as the appellant – the Chief Group Economist of Old Mutual – who is not a vulnerable, low-income consumer. The appellant freely concluded the second lease and was in an equal bargaining position as the respondents. He was well aware of its terms, in particular clause 29.2, and the circumstances under which it was concluded. More specifically, he knew that the termination notice would be given upon the sale of the property, and in that event, undertook to vacate it.

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[10] The preamble to the Act states, inter alia:
'The people of South Africa recognise-
That apartheid and discriminatory laws of the past have burdened the nation with unacceptably high levels of poverty, illiteracy and other forms of social and economic inequality;
That it is necessary to develop and employ innovative means to-
(a) fulfil the rights of historically disadvantaged persons and to promote their full participation as consumers;
(b) protect the interests of all consumers, ensure accessible, transparent and efficient redress for consumers who are subjected to abuse or exploitation in the marketplace; and
(c) to give effect to internationally recognised customer rights;
That recent and emerging technological changes, trading methods, patterns and agreements have brought, and will continue to bring, new benefits, opportunities and challenges to the market for consumer goods and services within South Africa; and
That it is desirable to promote an economic environment that supports and strengthens a culture of consumer rights and responsibilities, business innovation and enhanced performance.'

[33] It follows that the second lease is not an agreement for consideration in the ordinary course of business, as contemplated in the Act. The inescapable inference to be drawn from the facts is that the appellant's reliance on the Act is opportunistic and contrived.

[34] What remains is the appellant's submission that 'it is reasonable to infer that the property was let to other parties between November 2018 and September 2020'. It can be dealt with briefly. First, the inference has no foundation in the evidence – it was raised for the first time in the appellant's heads of argument. Second, the inference is pure speculation.

The order that the appellant vacate the property

[35] It is submitted that the High Court erred in making the order in paragraph 49(iv) of its judgment, directing the appellant and all those holding title under him to vacate the property by 31 March 2024. The appellant contends that this is an eviction order, which is incompetent because at the stage when the respondents sought an order that the termination notice was valid, he was not an unlawful occupier as envisaged in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act).

[36] The respondents submit that there is nothing wrong with the High Court declaring that the appellant should vacate the property on the date on which he becomes an unlawful occupier. That order, the respondents say, is simply a statement of the position in law, and the High Court stopped short of ordering the appellant's eviction.

[37] Given the High Court's finding in paragraph 48 of its judgment, that the appellant was not in illegal occupation of the property and there was no basis on which the court could evict him, the order in paragraph 49(iv) is inexplicable and cannot be sustained, essentially for two reasons. First, it is in effect an eviction order: the PIE Act defines 'eviction' as meaning 'to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his or her will'. Further, in the event that the appellant did not vacate the property by 31 March 2024, the respondents would have been entitled to apply to the High Court for an order holding him in contempt of the order in paragraph 49(iv). Second, the latter order cuts across the power of a court seized with an application under the PIE Act, to (a) make a just and equitable order under s 4(7), for the eviction of the appellant and other persons living on the property, after considering the relevant circumstances;[11] and (b) determine a just and equitable date on which they must vacate the property, and the date on which an eviction order may be carried out if they fail to do so, as contemplated in s 4(8).[12] If the court intended merely to declare the position in law, then the order in paragraph 49(iv) is superfluous, since paragraph 49(iii) of the High Court's order states that the termination notice cancelled the second lease with effect from 31 March 2024.

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[11] Section 4(7) of the PIE Act provides:
'If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.'
See *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) paras 37 and 39.

[12] Section 4(8) of the PIE Act states:
'If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-
(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and
(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph *(a)*.'

[38] Paragraph 49(iv) of the High Court's order must therefore be set aside. The appellant has not achieved substantial success in the appeal. There is no reason why costs (as contractually agreed) should not follow the result.

[39] In the result, the following order is made:

1 The appeal succeeds in part.

2 Paragraph 49(iv) of the High Court's order is set aside.

3 Save as aforesaid, the appeal is dismissed with costs on the scale as between attorney and own client.

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A SCHIPPERS

JUDGE OF APPEAL

Appearances

For the appellant:	R Randall
Instructed by:	Marlon Shevelew & Associates Inc, Cape Town
	Webbers Attorneys, Bloemfontein.
For the respondent:	P S van Zyl
Instructed by:	Vos Maree Incorporated, Stellenbosch
	Honey Attorneys Inc, Bloemfontein.