



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY
JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 23 October 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal.

Nordien and Another v Kidrogen RF (Pty) Ltd and Another (149/2023) [2025] ZASCA 159 (23 October 2025)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal by the appellant, Mr Shaan Nordien, against an order of the Full Court of the Western Cape Division of the High Court (the Full Court). That court had overturned an order of a single Judge who had dismissed an application by the first respondent, Kidrogen RF (Pty) Ltd (Kidrogen), for the eviction of Mr Nordien from a residential property owned by Kidrogen.

On 30 October 2019, Mr Nordien concluded a written lease agreement in respect of Kidrogen's property with two directors of Kidrogen (the directors), who were reflected as 'the lessor' in the lease agreement. On the same date, an addendum was concluded, which reduced the annual percentage rental escalation from 15 per cent to 10 per cent per annum effective from an earlier date, 31 July 2019. The addendum was on Kidrogen's letterhead, and stated that it was part of the lease agreement between one of the directors '*on behalf of Kidrogen . . . as Landlord and Mr Nordien as tenant*'.

As a result of the COVID-19 lockdown, Mr Nordien experienced financial difficulties. In consideration thereof, Kidrogen provided Mr Nordien with a three-month rental suspension. To record this, Mr Nordien signed an acknowledgement of debt in favour of Kidrogen relating to arrear rental. When Mr Nordien defaulted on his rental payments, Kidrogen demanded payment from him. In response, Mr Nordien undertook to pay, but did not keep his promises.

Kidrogen gave written notice to Mr Nordien cancelling the lease agreement. Mr Nordien did not respond to the notice. Subsequently, Kidrogen applied to the high court for Mr Nordien's eviction. The founding affidavit was deposed to by one of the directors. Mr Nordien's primary defence was that Kidrogen was not a party to the lease agreement, and that the directors had signed the lease agreement in their personal capacities. Therefore, he contended, it was not competent for Kidrogen to cancel the lease agreement. Consequently, contended Mr Nordien, Kidrogen did not have the necessary standing in law to apply for his eviction. In its replying affidavit, Kidrogen clarified that the directors did not sign the lease agreement in their personal capacities but on its behalf. Both directors confirmed this on oath.

Shortly before the hearing of the eviction application, Kidrogen brought an application to amend its papers to reflect that the directors signed the lease agreement on Kidrogen's behalf, and for the rectification of the lease agreement to reflect that fact. Mr Nordien opposed that application, on among other grounds, that: the rectification was sought at short notice; the directors had not been joined, which would prejudice Mr Nordien; and no case was made for rectification in Kidrogen's papers.

The high court agreed with Mr Nordien's arguments. It dismissed Kidrogen's application to amend its notice of motion, and for rectification of the lease agreement. Concomitantly, it dismissed Kidrogen's eviction application because, so it reasoned, without rectification of the lease agreement, its purported cancellation was not valid.

Kidrogen appealed to the Full Court, which found no merit in any of Mr Nordien's defences. The Full Court pointed to the undisputed facts which point to Mr Nordien's acceptance of Kidrogen as the lessor. It granted the application for rectification of the lease agreement. Accordingly, it upheld Kidrogen's appeal with costs. It set aside the high court's order and replaced it with an order for the eviction of Mr Nordien from the property, with ancillary relief.

On appeal to it by Mr Nordien, the SCA agreed with the Full Court. The first judgment, by Hendricks AJA, concluded that the facts demonstrated that Mr Kidrogen had accepted that Kidrogen was the lessor. It further pointed out that while rectification should ordinarily be sought in an action, or pleaded in the founding affidavit, this is not immutable. In the present case, it was not possible to do so because the defence denying Kidrogen's standing was only raised in the answering affidavit. The first judgment concluded that the Full Court properly granted rectification and dismissed Mr Nordien's appeal with costs.

The second judgment, written by Makgoka JA (concurring in by Weiner, Kgole JJA and Naidoo AJA), agreed. Regarding rectification, it added that the high court erred in ignoring Kidrogen's uncontroverted evidence that the directors signed the lease agreement on its behalf,

and thus, it was the lessor. This was especially so since this evidence was given by the directors themselves, thus directly rebutting Mr Nordien's assertion that they were the lessors.

The second judgment also held that Kidrogen should succeed based on the principle of *rei vindicatio*. It reasoned as follows. Kidrogen was the owner of the property. Having denied the existence of a lease agreement between himself and Kidrogen, Mr Nordien attracted to himself the onus to establish that the directors, not being the owners of the property, accorded him some other lawful right to continue occupying the property in the face of Kidrogen's application. This was because the directors could not transfer greater rights than they had to him. Mr Nordien had failed to establish this right, and therefore failed to discharge his onus. Kidrogen's application had to succeed. For these reasons, the second judgment agreed with the order made in the first judgment to dismiss the appeal.

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