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One Bad Letter and Your Eviction Falls Apart

"The single biggest problem in communication is the illusion that it has taken place." (George Bernard Shaw)

Many landlords assume that once a tenant stops paying rent, an eviction order will inevitably follow. A recent Western Cape High Court judgment shows how wrong that assumption can be. Despite rental arrears of more than R46,000 and an apparently legitimate grievance, a landlord's eviction application failed because of a problem many people overlook: the cancellation letter.

The dispute arose after tenants allegedly fell behind on their rental payments. The landlord sought to terminate the lease and evict the occupants. Although the alleged arrears were not seriously disputed, the case ultimately turned on a different question: whether the lease had been validly terminated in the first place.

The court didn't even consider whether the eviction itself would have been justified. Instead, the application failed because of defects in the cancellation process.



Why the cancellation failed

The letter sent to the tenants purported to cancel the lease immediately because of the rental arrears. At the same time, it gave the tenants a future date by which they had to vacate the property and demanded payment of the outstanding amounts.

The difficulty was that the letter appeared to communicate several different and potentially contradictory things at once. Had the lease already been cancelled? Were the tenants being given an opportunity to remedy the breach? Would payment of the arrears change anything? The notice did not provide clear answers.

The court confirmed an important principle of South African law: a notice terminating a lease must be clear, unconditional and unequivocal. If a notice leaves uncertainty about the parties' rights and obligations, it may be invalid.

In this case, the court found that the cancellation notice was ambiguous. Because the lease had not been validly terminated, the landlord could not establish that the occupants were unlawfully occupying the property. Without unlawful occupation, the eviction application could not succeed.

A costly lesson for landlords

For landlords, the lesson is straightforward. Even where a tenant owes substantial rental arrears, a defective cancellation process can derail an otherwise strong case. Before launching eviction proceedings, it is essential to ensure that all notices have been properly drafted and served, and that all requirements for a valid termination have been satisfied.

For tenants, the case demonstrates that the outcome of an eviction application is not determined solely by whether rent is owing. A landlord must also show that the lease was lawfully terminated before a court will consider whether an eviction order should be granted.

The judgment is a reminder that legal disputes are not won on the facts alone. Even where a landlord has a legitimate grievance, a defective notice can bring an eviction application to a halt before a court ever considers the merits of the case.

The lesson extends beyond landlord-tenant disputes. Small drafting errors in legal notices can have significant consequences, particularly where rights and obligations depend on clear communication.

A properly drafted notice can prevent costly litigation. If you are considering cancelling a lease or pursuing an eviction, obtaining legal advice before taking formal steps may help avoid costly delays and unnecessary disputes.

Dementia in the Family? Here Are Your Legal Options

"By failing to prepare, you are preparing to fail." (Benjamin Franklin)

A dementia diagnosis affects far more than memory. As the condition progresses, it can impair a person's ability to manage finances, make legal decisions, sign contracts, or deal with property and investments.

For many families, the legal implications only emerge when practical problems arise. A bank account needs accessing, a property needs selling, or financial decisions must be made for someone who can no longer act independently.

At that point, many assume a Power of Attorney will help. South African law says otherwise.



The Power of Attorney myth

A Power of Attorney allows one person to act on another's behalf. It is commonly used when someone is travelling, unavailable, or needs assistance with specific transactions.

What many people do not realise is that a Power of Attorney is only valid while the person who granted it still has legal capacity. In simple terms, they must be able to understand the nature and consequences of their decisions.

Once a person loses that capacity through dementia, Alzheimer's disease, a stroke, or another condition affecting cognitive function, the Power of Attorney falls away. South Africa does not currently recognise enduring powers of attorney that remain valid after a person becomes mentally incapacitated.

This can create practical difficulties. For example, if a property is sold after the owner has lost legal capacity, a Power of Attorney that was previously valid may no longer authorise the transaction. That can create legal uncertainty at a time when families are already under pressure.

Let's look at three other options.

1. Curatorship: The traditional route

Where a person can no longer manage their own affairs, the High Court may appoint a *curator bonis* to take control of their financial affairs.

A curator manages assets, pays expenses, and protects the person's financial interests. In some circumstances, a separate curator may also be appointed to deal with personal matters such as medical and care decisions.

Curatorship provides important protection, but it can be a lengthy and costly process. The application requires medical evidence, court involvement, and ongoing oversight by the Master of the High Court. For larger or more complex estates, however, it may be the most appropriate option.

2. Administration: A lesser-known alternative

In some cases, a simpler option may be available.

The Mental Health Care Act allows the Master of the High Court to appoint an administrator to manage the property and financial affairs of a person who is unable to manage their own affairs because of a mental illness or severe intellectual disability.

Unlike curatorship, this process does not require a High Court application, making it generally quicker and less expensive.

However, it is only available in specific circumstances and is generally intended for smaller estates. An administrator's powers are limited to financial and property matters and remain subject to the supervision of the Master.

Professional advice is essential to determine whether this option is available in a particular case.

3. Special trusts: Planning before capacity is lost

Where dementia is diagnosed at an early stage and the person still has legal capacity, a special trust may be worth considering.

Unlike curatorship and administration, which are generally implemented after capacity has been lost, a special trust allows arrangements to be put in place while the individual can still participate in decisions about their future affairs.

Special trusts may also offer tax advantages in certain circumstances and can provide a structured way of managing assets for the benefit of a person who later becomes unable to manage their own financial affairs. Professional advice is essential to determine whether a special trust is appropriate and how it should be structured.

Act sooner rather than later

Dementia presents families with both emotional and practical challenges. The earlier legal planning begins, the more options are available.

A common thread running through curatorship, administration, and trust planning is timing. Once legal capacity has been lost, choices become more limited, and the available solutions often become more complex and costly.

Dementia cannot always be anticipated, but its legal consequences can. Understanding the available options before a crisis develops can help families protect both the dignity and financial wellbeing of a loved one during an already difficult time.

"All's fair in love and war, but not in business." (Modern twist on the old proverb)

Your business is flying after years of hard work and personal sacrifice. Suddenly, your most trusted employees resign and set up in direct opposition to you. The speed with which they do so makes you realise there's something fishy going on.

Sure enough, they are brazenly using your confidential knowledge, resources and client relationships against you.

A recent High Court decision provides a perfect illustration of how our law can and will protect you from that sort of unfair competition.



A new business and software in 11 days? Something's fishy

This unhappy saga starts with a company in the niche business of measuring and analysing diesel engine emissions. Monitoring these emissions is important in several industries, most notably the underground mining industry. It's the first and only such business in South Africa thanks largely to two factors: firstly, its exclusive Africa-wide distribution agreement with a German supplier of specialised equipment, and secondly, its founder's development of custom software.

All went well until two of the company's senior managers resigned from their positions. Just 11 days later they had set up their own business in direct opposition to their erstwhile employer. One can only imagine his distress and anger when he realised that they were using the fruits of his technical expertise and hard work to try to poach his clients from him.

He lost no time in taking legal steps, and when the managers refused point blank to stop trading, he asked the High Court for an order forcing them to do so.

What is springboarding?

"Springboarding", as the Court put it, "entails not starting at the beginning at developing a technique, process, piece of equipment or product, but using as a starting point the fruits of someone else's labour."

Competition and entrepreneurship are of course healthy and to be encouraged, but only if they are lawful. Springboarding grounded in unlawful conduct is prohibited.

From springboarder to belly flopper

The evidence of unlawful conduct in this case was overwhelming. For example, one of the managers had months previously been suspended under suspicion of planning a competing business after a budget for a new venture, including a provision to buy the specialised German equipment, was found on his laptop. In due course their new company duly bought the equipment, despite them having full knowledge of the distribution agreement in favour of their employer (they couldn't deny knowledge, having actually signed the agreement on behalf of the employer).

The Court was also sceptical of the new company's claim to have developed its own independent software in a matter of weeks, especially in light of evidence that, shortly before resigning, one of the managers had emailed his employer's software to himself.

The final nail in the managers' coffin was that their marketing presentations to two of the employer's clients were sufficiently similar to the employer's presentations for the Court to conclude that they were using its business model, methodology, equipment and software against it.

As regards their terms of employment, only one of the employees had signed a contract (it included a confidentiality clause). But what mattered was not their contracts, but that as employees they had a general fiduciary duty to act in good faith and in their employer's best interests.

Referring to the abundant evidence of their misuse of confidential information gained during their employment, the Court slammed the managers and their new company with a series of orders that will presumably cripple their new venture, at least for now.

They and their new company are prohibited from unlawfully competing with the original business for eighteen months, they must return all confidential information and documentation (deleting electronic copies), and cannot disclose the information to anyone else. What's more, the Court ordered them to pay costs on the punitive attorney and client cost scale.

A checklist to protect your business from springboarding

The employer is victorious, but it's taken him almost a year to get here, and inevitably his business (and he personally) will have suffered.

With prevention always being a great deal better than cure, you can protect your business from going through all the delay, cost, trauma and business risk of a court fight with this checklist:

- **Watertight contracts.** Your employment contracts, particularly those relating to senior staff with access to vital confidential information, should contain strong confidentiality, non-disclosure, good faith, conflict of interest and restraint of trade clauses. This employer was able to rely on a breach of his employees' general fiduciary duties, but his position would have been that much stronger had both senior managers been bound contractually as well.
- **Widen the net.** Looking beyond employees, consider also other business partners like suppliers and contractors who might gain access to confidential information, and structure your agreements with them accordingly.
- **Quantify your worth.** Identify and list all your confidential information: intellectual property, technical know-how, client and other business relationships, pricing strategies, business strategies, trade secrets and any other sensitive information.
- **Be prepared.** Check that everything is held securely, that access is limited on a need-to-know basis to trusted personnel, and that access is recorded. This way, if you are stabbed in the back by an employee, you'll be able to prove misconduct and breach of fiduciary duty.
- **No stone unturned.** When staff leave, remind them (in writing) of their duties in regard to confidential information, and recover all company documentation, laptops etc before they leave.
- **Be vigilant.** Monitor for "information leaks" and for any other possible misuse of confidential information. Increase your monitoring when staff resign. Keep an eye on your competition for any signs of them using information leaked from within your ranks.

Perhaps most importantly, act decisively at the first hint of a springboarding attempt. A robust lawyer's letter will often be enough to nip the problem in the bud.

Your Dormant Trust Is Not Invisible to SARS

"Things do not go away. They go somewhere." (Annie Dillard)

Many trustees assume that a dormant trust can be safely forgotten. No income, no assets, no transactions ... No problem.

SARS has made it clear that this assumption may be an expensive one.

In recent months, SARS has intensified its focus on trust compliance, targeting trusts that have failed to submit annual income tax returns. What many trustees may not realise is that inactivity does not remove a trust's tax obligations.

A trust that has been sitting dormant for years is still required to submit annual income tax returns. Failure to do so can now result in administrative penalties, even where the trust has conducted little or no activity.



Dormant does not mean exempt

One of the most common misconceptions among trustees is that a trust only has compliance obligations if it earns income, owns assets, or actively conducts transactions.

That is not how SARS views the issue.

According to SARS, all registered trusts, whether economically active or passive, are required to submit annual income tax returns. The obligation exists even where the trust has little or no economic activity.

Why SARS is paying closer attention

Since May 2026, the revenue authority has been issuing administrative penalty assessments to trusts with outstanding returns following earlier final demands for compliance. Trustees who received those demands were given an opportunity to correct the non-compliance before penalties were imposed.

Depending on a trust's assessed taxable income, monthly administrative penalties can range from R250 to R16,000 and may continue accruing if the non-compliance is not remedied.

This reflects a broader shift in SARS' approach to trusts. What was once viewed by many as a relatively passive area of administration is increasingly becoming an area of active oversight and enforcement.

Thinking about winding up a trust?

Many trustees only discover outstanding compliance issues when they begin taking steps to terminate a trust's affairs. By that stage, years of outstanding returns, incomplete records, or unresolved SARS obligations may need to be addressed before the process can move forward.

Importantly, a trust that has effectively ceased operating is not automatically regarded by SARS as deregistered for tax. Trustees remain responsible for ensuring that trust information is maintained, updated, and, where appropriate, formally deregistered through the correct processes. Failure to do so may expose the trust, and potentially its trustees in their capacity as representative taxpayers, to penalties and other consequences under the Tax Administration Act.

Winding up a trust and deregistering it with SARS are not the same thing. A trust that trustees regard as dormant, inactive, or terminated is still regarded by SARS as a registered taxpayer with ongoing filing obligations until it has been properly deregistered.

The position can become particularly costly where penalties have been accumulating in the background.

As SARS continues to invest in data capabilities and automated enforcement mechanisms, historic compliance issues are becoming easier to identify and harder to overlook. In some cases, trusts that trustees believed were inactive for years are now being drawn back into the compliance net.

The lesson is straightforward: before assuming that a dormant trust requires no further attention, trustees should ensure that all filing obligations have been met and that the trust's SARS records are up to date. A trust may be dormant in practice, but that does not mean it has disappeared from SARS' radar.

Legal Speak Made Easy

"Dormant Trust"

You will see and hear the phrase "dormant trust" bandied about a lot, normally in relation to what ongoing duties the trustees of non-active trusts do and don't have.

Be warned that SARS says that there is no such legal concept as a "dormant trust" and that even economically inactive trusts (which SARS calls "passive trusts") must be registered for tax, and must render annual tax and other returns, all under pain of stringent penalties for both non-compliant trusts and for their trustees personally. There is a small concession to inactive trusts in that their tax returns are "shortened" and "simplified".

Bottom line? No trusts are "dormant", and none are exempted from ongoing tax and other compliance duties.

