



REGULATORY

Renting out your home? The Consumer Protection Act does not apply to you says Supreme Court of Appeal

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by Armand Swart, Director

In the judgment of *Els v Venter and Another* (449/2024) [2025] ZASCA 163 (27 October 2025), the Supreme Court of Appeal ("**SCA**") clarified the application of the Consumer Protection Act No 68 of 2008 ("**CPA**") to residential leases. In this article we discuss the judgment and our key takeaways.

Background

After emigrating to Australia, the respondents, Mr and Mrs Venter (the "**Venters**"), leased their Stellenbosch property at De Zalze Winelands Golf Estate, to the appellant, Mr Els, for a period of three years ending on 31 December 2023 (the "**first lease**"). After the first lease expired, the parties concluded a second lease agreement (the "**second lease**") on 4 August 2023 for a further three-year period, commencing on 1 January 2024. The second lease permitted the Venters to terminate the agreement by providing three months' written notice.

The property was subsequently sold on 19 December 2023, and the Venters issued a termination notice on 21 December 2023 requiring Mr Els to vacate the property by 31 March 2024. Mr Els challenged the termination on the basis that the second lease constituted a fixed-term agreement under the CPA, which could only be terminated by the Venters in the event of his material failure to comply with the lease agreement.

The parties failed to resolve the dispute, and the Venters launched an urgent application in the Cape Town High Court, seeking an order that the second lease was validly terminated and that Mr Els must vacate the property. The High Court agreed with the Venters that the CPA did not apply and ordered Mr Els to vacate by 31 March 2024. Mr Els subsequently took the matter on appeal to the SCA.

Key CPA Terms and Concepts

Before addressing its substantive reasoning, the court considered several key terms and concepts under the CPA. The CPA applies to every "*transaction*" occurring in South Africa, unless specifically excluded. A "*transaction*" is defined as a "*person acting in the ordinary course of business*", as including, amongst others, (i) an agreement for the supply or potential supply of any goods or services in exchange for consideration, or (ii) the performance of services for or at the direction of a consumer for consideration.

"*Service*" is in turn defined as including, amongst others, access to or use of any premises or property in terms of a "*rental*"; whereas a "*rental*" means an agreement for consideration in the ordinary course of business in terms of which temporary possession of any premises or property is delivered to the consumer; or the right to use any premises or property is granted to the consumer.

The CPA does not define "*ordinary course of business*". It does however define "*business*" as "*the continual marketing of any goods or services*" and "*market*" as to "*promote or supply any goods or services*".

The Test for the CPA to Apply to a Residential Lease

The SCA held that for the CPA to apply to a residential lease, two requirements must be satisfied. First, the lessor must be in the business of letting or hiring. Second, the lease must be within the lessor's ordinary course of business, being their normal, routine, or day-to-day business activities, rather than a once-off transaction. Only if both requirements are met will a residential lease constitute a "rental" for CPA purposes, and only then will the lessee be a "*consumer*", namely a person to whom "*services are marketed in the ordinary course of the supplier's business*".

Whether a lease is in the lessor's ordinary course of business is an objective test that depends on the circumstances of each case.

Application to the Facts

The court held that the letting of the property was not in the course of the Venters' business or trade, let alone in the ordinary course of business. The Venters were not in the business of letting property for consideration: each of them was engaged in their own occupation, and they rented out their family home in South Africa after emigrating. The second lease was therefore an agreement between private individuals and not a commercial letting arrangement.

It followed that, for the purposes of the CPA, the Venters were not "*suppliers*" as they did not promote or supply any goods or services to consumers. Nor was Mr Els a "*consumer*" to whom services were marketed in the ordinary course of business.

The court further observed that the second lease was not a fixed-term agreement in terms of the CPA as it exceeded the maximum period of 24 months prescribed in Regulation 5(1) of the Consumer Protection Regulations (the second lease was for 36 months). This meant that Mr Els's reliance on section 14(2)(b)(ii) of the CPA was misplaced. The section provides that a supplier may only cancel a fixed-term agreement after giving 20 business days' written notice to the consumer of a material failure to comply with the agreement, and only if the consumer has not rectified the failure within that time. It should be noted, however, that this aspect of the SCA's reasoning is questionable: if an agreement qualified as a fixed-term agreement but was for a period exceeding 24 months, the more logical conclusion would be that the supplier had contravened the CPA with regard to the length of the agreement, rather than that the agreement ceased to be a fixed-term agreement altogether.

The SCA also bolstered its interpretation by reference to the CPA's underlying purpose, which it held was to protect the rights of historically disadvantaged persons who are vulnerable to exploitation. The court noted that Mr Els – the Chief Group Economist of Old Mutual – was not a vulnerable, low-income consumer. He had freely concluded the second lease on an equal bargaining footing with the Venters and was fully apprised of the circumstances, including that the second lease would be terminated once the property was sold.

The PIE Issue

Although the SCA dismissed Mr Els's appeal in the main, it found that the High Court erred in ordering Mr Els to vacate the property by 31 March 2024. This order effectively amounted to an eviction order, which was incompetent because Mr Els was not yet an unlawful occupier under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19 of 1998 (the "**PIE Act**").

More fundamentally, the order cut across the powers conferred upon a court under section 4(7) of the PIE Act, which requires a court to consider whether it is just and equitable to grant an eviction, having regard to all relevant circumstances. The SCA accordingly set aside the High Court's order in this regard.

Conclusion and Key Takeaways

Save for the setting aside of the High Court's vacation order, Mr Els's appeal was dismissed, with costs on the scale as between attorney and own client.

This judgment provides important clarity regarding the application of the CPA to residential leases. The CPA applies only to residential leases that are entered into in the ordinary course of the lessor's business. Private individuals who let their own property on an occasional basis are unlikely to fall within the Act's ambit.

Following an objective test, a court will consider not whether the transaction itself is ordinary, but whether it is carried out in the ordinary course of the supplier's business. The SCA's interpretation is both practical and sensible: a person in the business of letting property will be required to comply with the CPA (and ensure a lessee is provided with the protections contained in the Act); whereas someone renting out their home is unlikely to be subject to the CPA's stringent obligations.

The SCA also relied on the CPA's purpose to protect vulnerable and historically disadvantaged consumers and took into account Mr Els's bargaining power when reaching its decision. We hope that the courts continue to take such a purposive and pragmatic approach to the interpretation of the CPA.



Armand Swart

Director

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