

Rent snafu to close top hotel

By [Dave Chambers](#)

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One of Cape Town's biggest hotels faces eviction - and only ubuntu can save it.



Photo: Tsogo Sun

The 292-room Garden Court in Nelson Mandela Boulevard has been ordered by the Supreme Court of Appeal to be vacated on March 31. A full bench of five judges said the hotel's failure to pay its monthly rental of R694,585 in 2014 triggered an eviction clause in its lease with the property's owner, Mohamed Rafik of Sandton, Johannesburg.

Tsogo Sun, which operates the hotel, argued that the principles of ubuntu and fairness should spare the hotel because failure to pay the rent was its bank's fault.

But Judge Rammaka Mathopo said the Johannesburg High Court got it wrong when it granted the company's application to avoid eviction. "It was impermissible for the High Court to develop the common law of contract by infusing the spirit of ubuntu and good faith so as to invalidate [the eviction clause]."

Now Tsogo plans an appeal to the Constitutional Court. Chief operating officer Ravi Nadasen declined to answer questions, saying the matter was sub judice.

Neither Rafik, the sole director of property owner Mohamed's Leisure Holdings, or his lawyer, Yusuf Dockrat, responded to

questions.

According to Mathopo's judgment, the 17,517m hotel in Woodstock opened in 1982 and was sold to Rafik in 1996. Tsogo subsidiary Southern Sun took over the lease in 2001 and paid rent on the seventh of each month until June 2014, when payment was 16 days late.

Nedbank wrote to Rafik accepting responsibility, but he warned Tsogo Sun that another late payment would trigger the eviction clause - and that is what happened four months later.

Said Mathopo: "Nedbank again omitted to transfer the rental amount. The explanation... was that the funds were credited into a wrong account."

Tsogo's legal team told the SCA the eviction clause in the lease should be interpreted flexibly and in the spirit of good faith, ubuntu, fairness and simple justice enshrined in the Bill of Rights. But Mathopo said this was a disingenuous claim because Rafik had warned Tsogo Sun after the first rental contravention that another one would trigger the eviction clause.

Source: *The Times*

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