

Recovery of Possession of Premises Given on Lease Act No 01 of 2023

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Recovery of Possession of Premises Given on Lease Act, No. 1 of 2023

- ▶ An action under this Act can be instituted by the lessor to recover the possession of the premises given on lease where the lessee refuses or fails or neglects to leave the premises;
 - ▶ At the expiry of the period of the lease agreement
 - ▶ Prior to expiry; due to a breach of the agreement by the lessee, when the lessor has issued a notice of termination of the lease agreement
- ▶ Unless the possession of a premises has been given to the lessee by a **Lease Agreement**, Lessor should not file an action under this Act to recover any premises or to get any relief mentioned Sec 5(2) of the Act

Reliefs that can be obtained by this act as per Sec 5(2)

- The arrears of lease rentals
- Service charges (if any) until the plaintiff is restored to vacant possession of the premises
- liquidated damages, if any, from the expiry of the lease agreement or effective date of the termination of the lease agreement until the date of restoration of the plaintiff to the vacant possession of the premises
- Interest on arrears of lease rentals, service charges and liquidated damages at the rate of legal interest
- Such costs together with other reliefs prayed by the plaintiff as the court may seem fit

Purpose of the act

- Recovery of possession of premises given under a lease agreement
- Regulate the recovery of arrears of lease rentals, service charges and liquidated damages and matters connected or incidental thereto
- **Sec 33** - Remedies provided under this Act are in addition to the already available other remedies to a lessor of a premises given on lease under a lease agreement, for the recovery of possession of such premises
- **Sec 34(1)** - Rent Act no 7 of 1972 is not applicable lease agreements executed after the commencement of this Act
- To provide a speedier mechanism to recover possession of premises given under lease

Jurisdiction


- **Sec 2 (1)** - Where any premises has been given on lease by a lessor, such lessor may institute action for the recovery of possession of such premises in the **District Court** of the local limits within which-
 - (a) the premises given on lease is situated;
 - (b) the lessee resides;
 - (c) the cause of action arises; or
 - (d) the lease agreement sought to be enforced was made
- **Sec 2 (2)** - An action cannot be instituted under this act unless possession of such premises has been given to the lessee by a lease agreement

Grounds for an action

- ▶ **Sec 3** - An action under this Act may be instituted by the lessor to recover the possession of the premises given on lease where the lessee refuses or fails or neglects to leave the premises -
 - (a) at the expiry of the period of the lease agreement; or
 - (b) upon the termination of the lease agreement prior to the expiry of the period of the lease agreement due to a breach by the lessee of any of the terms, conditions, covenants, obligations or duties set out in the said agreement, where the lessor has issued a notice of termination of the lease agreement.

Necessary documents to be filed

- **Sec 4(1)** - The lessor shall institute an action by presenting a plaint in the form specified in the CPC and shall file with such plaint
 - (a) an affidavit that the possession of the premises given on lease which is the subject matter of the action is lawfully due to the plaintiff from the lessee.
 - (b) a draft decree *nisi* together with the applicable stamp duty.
 - (c) copies of the plaint, affidavit and lease agreement, together with any document relied on by the lessor, as is equal to the number of defendants in the action, if there are more than one defendant.



➤ **Sec 4(2) - (a)** The affidavit to be filed by the plaintiff under subsection (1) shall be made by the plaintiff himself or by a person duly authorized by law to make such affidavit on behalf of the plaintiff.

(b) If the action is instituted by the plaintiff on the ground referred section 3(b), the plaintiff shall plead such facts and prima facie establish the breach committed by the defendant and shall also adduce proof of the early termination.

➤ **Sec 4(3)** - In any action instituted under subsection (1), the court shall permit the plaintiff to support the same within seven days from the institution of the action for issuance of a decree *nisi*.

Decree *Nisi* – Pre requisites

➔ Sec 5(1) - When the action is supported for the issuance of a decree nisi in terms of section 4, if it appears to the Court that

(a) the lease agreement produced

(i) is properly executed and the stamped as required by law

(ii) is not open to suspicion by reason of any alteration, erasure or interpolation in the lease agreement unless such alteration, erasure or interpolation has been made before the signing by the executing parties as stated in the attestation by notary public, as the case may be

(b) the contents of the affidavit filed is satisfactory to prove, prima facie, the case on the part of the plaintiff

Decree *Nisi* – Service


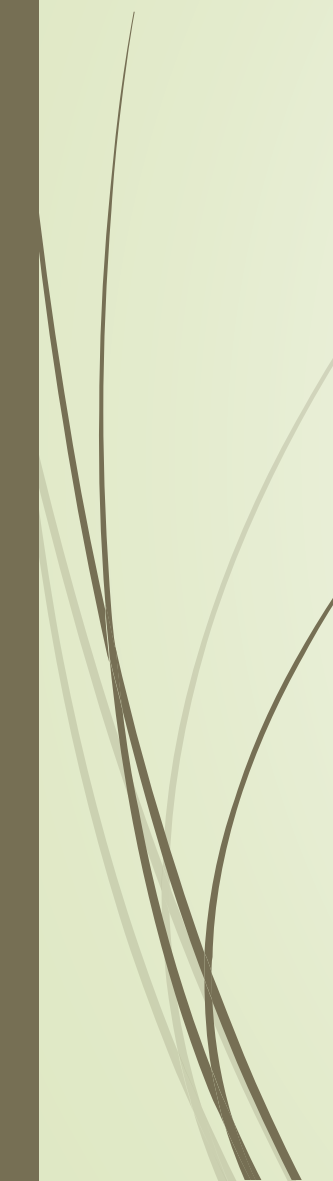
- **Sec 8(1)** - A decree *nisi* shall be served on the defendant to recover possession of the premises as asserted by the plaintiff while giving the defendant a reasonable opportunity to make an application to seek leave to appear and show cause, in respect of his position.
- **Sec 8(2)** - The decree nisi shall be ordinarily served on the defendant by registered post at the premises or at the address given by the defendant in the lease agreement for service of notices, if any.
- **Sec 8(3)** - The Registrar of the Court shall, within a period not later than three days from the date of entering of the decree nisi under section 5, initiate action to serve the decree nisi on the defendant.

Decree *Nisi* – Service

- **Sec 11(1)** - The date to be specified in the decree *nisi* as the date on which the defendant is to make an application seeking leave to appear and show cause, if any, against the decree *nisi* shall be as early a date as can conveniently be specified, regard being had to the distance from the defendant's residence to the Court. In any such instance, the said date to be specified shall **not later than 6 weeks from the date of the decree *nisi*.**

Leave to appear for the defendant

- **Sec 12(1)** - In an action instituted under this act, the defendant shall not appear and show cause against the decree *nisi* unless he first obtains leave to appear and show cause from the Court which issued the decree *nisi*.
- **Sec 12(2)** - The defendant shall, for the purpose of subsection (1), file an application by way of a petition for leave to appear and show cause against the decree nisi supported by an affidavit and such petition and affidavit shall deal specifically with the plaintiff's case and state clearly and concisely what the defence to the plaintiff's case is and what facts are relied upon to support it.

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- **Sec 12(3)** - Upon the filing of the petition and affidavit referred to in subsection (2), if the Court is satisfied that the contents of the petition and affidavit disclose a defence which is *prima facie* sustainable against the action of the plaintiff for recovery of possession of the premises, the Court may grant the defendant leave to appear and show cause against the decree *nisi*, subject to security.
 - **Sec 12(4)** - If the Court is not satisfied that the contents of the petition and affidavit disclose a defence which is *prima facie* sustainable, the Court shall refuse the application referred to in subsection (2) and make the decree *nisi*, absolute

Decree *Nisi* - Making the decree absolute

► Sec 15 - When the defendant

- a) Fails to make an application for leave to appear and show cause.
- b) Having made application failed to disclose a prima facie sustainable defence.
- c) Fails to furnish security.

The court shall make the decree *nisi* absolute

► Sec 16 - Order making decree *nisi* absolute on default is not appealable but may be set aside on the grounds;

- a) Defendant was prevented from appearing due to accident, misfortune or act of god or
- b) Decree nisi was not served on him.

Absolute Decree *Nisi* - Post procedure

- ➔ **Sec 22(1)** - When a decree nisi is made absolute, it shall be deemed a writ of execution duly issued to the fiscal as per CPC 225(3) and 323, and the same shall be executed 14 days after the date of making it absolute without further notice to the defendant.
- ➔ **Sec 22(3)** - The writ of execution shall be valid for one year from date decree *nisi* was made absolute

Sec 337(3) of the CPC - A writ of execution
- ➔ **Sec 22(4)** - Preferring an appeal or application for revision or *restitutio in integrum* shall not be grounds to stay the proceedings unless appeal court makes express order

Appeals

➤ Sec 25(1) - Any person aggrieved by;

(a) an order making a decree nisi absolute by refusing an application made by the defendant on the grounds specified in paragraphs (b) and (c) of section 15.

(b) an order under Section 16(4), making a decree nisi absolute on failure by the defendant to furnish security.

(c) an order under section 16 (5) dismissing an application made by the defendant to have the decree absolute set aside; or

(d) a final order made under section, 17(3) either discharging the decree nisi or making the decree nisi absolute

- Any party aggrieved as in above may prefer an appeal in terms of the provisions of section 754 (1) of the Civil Procedure Code.
- **Sec 25(2)** - Notwithstanding the preferring of any such appeal, the execution of writ of execution shall not be stayed
- **Sec 25(3)** - Where the court of appeal allows an appeal setting aside the decree absolute where the writ has already been executed the appeal court shall enter a decree in favor of the appellant awarding damages in such sum it considers appropriate for loss of premises for his occupation or business during the validity period of the lease And may at its discretion order restoration of the appellant to the vacant possession

Provided the Court of appeal shall not order restoration if the lease period has already been expired.



Act is absent on..

- Interim Reliefs
 - Prescription
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Q & A

Thank You!

