

**THE REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG HIGH COURT DIVISION, PRETORIA**

Case Number: 026644/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: **16 NOVEMBER 2023**

SIGNATURE

In the matter between:

CASEDINE YOLINE JAMES

Plaintiff/Respondent

and

WOOLWORTHS FINANCIAL SERVICE PTY LIMITED First Defendant/Excipient

(Registration number:2000/009327/07)

and

ATTACQ LIMITED

Second Defendant/Excipient

(Registration number: 1997/000543/06)

J U D G M E N T

MAKHOBHA, J

- [1] The first defendant (excipient) in this application excerpts to the plaintiff's summons and particulars of claim on the basis that it is lacking in averments to sustain a valid cause of action and are both vague and embarrassing.

[2] The second defendant has raised four grounds of exception. In summary these are:

2.1. That the plaintiff cites the second defendant in the particulars of claim as: “ *Mall of Africa, cited herein in his official capacity being the person legally responsible for the conduct of its employees and security officials under its control situated at the Parkdev Building, 2nd floor, Brookly Bridge, 5[...] F[...] Street, Brooklyn, 0181 (being the primary office) office and at ATT House Second Floor, 3[...] M[...] Crescent, Maxwell Office Park, Waterfall City, Waterfall, 2090*”. The plaintiff failed to establish any legal basis upon which the second Respondent may be hold liable for the actions of “Mall of Africa”.

2.2 The plaintiff failed to plead any facts which establishes any liability on behalf of the second defendant.

2.3 The plaintiff failed to establish any factual or legal basis upon which the second defendant, alternatively Mall of Africa are liable in respect of the plaintiff's claim.

2.4 The plaintiff failed to plead any facts which establish liability on behalf of Mall of Africa alternatively Attacq Limited for the incarceration of the plaintiff at Woolworths.

[3] For convenience I will refer to the parties as in the main action, namely plaintiff, first and second defendants.

[4] The plaintiff instituted an action in terms of which she claims damages arising from allegedly being accused of theft and arrested and detained at the Woolworths premises situated in the Mall of Africa.

[5] Both counsel for the first and second defendants filed their heads of argument and addressed the court.

- [6] Counsel for the plaintiff refused to address the court and she submitted that both defendants (Excipients) did not file the application so that she could file an affidavit to reply to the application. Furthermore, she did not file heads of argument opposing the application.
- [7] In addressing the court both counsel for the first and second defendants submitted that it is not necessary to file an application but only a notice in terms of Rule 23(1) of the Uniform Rules of Court.
- [8] The court suggested to counsel for the plaintiff to reconsider her decision, but she insisted that she is not going to address the court because plaintiff did not receive the application.
- [9] The court was satisfied that the notices were properly sent to the plaintiff and allowed both counsel for the defendants to address the court. Counsel for the plaintiff asked to be excused and she was excused.
- [10] Rule 23(1) reads as follows: “ (1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that— (a) where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and (b) the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception.”
- [11] It follows therefore that there are two types of exceptions namely an objection that a pleading does not disclose a cause of action and that it is vague and embarrassing.

- [12] In *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority of SA*¹ the court said the following: “Exceptions should be dealt with sensible. They provide a useful mechanism to weed out cases without legal merit. An over-technical approach destroy their utility. To borrow the imaginary employed by Miller J, the response to an exception is compounded and exposes its vulnerability”.
- [13] The onus showing that a pleading is excipiable rests on an excipient². The general principle in interpreting pleadings were stated in *Jowell Bramwell-Jones and other*.³ The pleader must state its case in a clear and logical manner so that the cause of action can be made out of the allegations stated.
- [14] The main purpose of an exception that a declaration does not disclose a cause of action is to avoid the leading of unnecessary evidence at trial.⁴
- [15] On behalf of the first defendant it is submitted that the plaintiff failed to make the averment that the arresting officer were respectively in the employ of Mall of Africa and respectively in the employ of Woolworths (Pty) Ltd and thus the plaintiff has failed to establish vicarious liability.
- [16] The other ground raised by the first defendant is that the plaintiff alleges that she was detained at Woolworths (Pty) Ltd in Cape Town Whereas the incident happened is Midrand thus the said averments are vague and embarrassing.
- [17] The first ground of exception raised by the second defendant is that plaintiff in her summons commencing action the second defendant is cited as “Attacq Limited”. The particulars of claim reads as follows “Mall of Africa, cited herein in his official capacity being the person legally responsible for the conduct of its employees and security officials under its control.....”

¹ 2006 (1) SA 461 (SCA) at Para 3.

² *South African National Parks v Ras* 2002 (2) SA 537 (C) at 542.

³ 1998 (1) SA 836 (W) at 902 I-J and 903.

⁴ *Dharumpal Trasport (Pty) Ltd v Dharumpal* 1956 (1) SA 700 (A) at 706.

- [18] It is argued further that the plaintiff failed to establish any legal and or factual relationship between Attacq Limited and Mall of Africa.
- [19] The second ground raised by the second defendant is that the plaintiff failed to plead any facts which establish any liability on behalf of Attacq Limited for the alleged action of the Mall of Africa alternatively the employees and security officials who acted under the control of Mall of Africa.
- [20] The third ground is that the plaintiff failed to plead the manner in which the alleged arrest how it was effected by the juristic person being Mall of Africa and or Attacq Limited.
- [21] The fourth ground is that the plaintiff failed to plead any facts which establish liability on behalf of Mall of Africa, alternatively Attacq Limited for the incarceration of the plaintiff.
- [22] The plaintiff did not oppose that application by both defendants. I am persuaded that the first and second defendant's exception shows that the plaintiff's claim does not disclose a cause of action alternatively is vague and embarrassing and the defendants are not in a position to answer to the plaintiff's claim.
- [23] The excipients are therefore entitled to an order upholding the exceptions.
- [24] The upholding of an exception disposes of the pleading against which exception was taken but not of the plaintiff's action. Accordingly, the proper order is to uphold the exception and grant the plaintiff leave to amend the offending pleading within a specified period, and not dismiss the claim or grant judgment.⁵
- [25] I therefore make the following order:

⁵ Constantaras v BCE FoodService Equipment (Pty) Ltd 2007 (6) SA 338 (SCA).

1. The first and second defendants' exception is upheld with costs
2. The plaintiff (Respondent) is afforded a period of 30 (thirty) days from the date of this order within which to amend the particulars of claim.

MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 16 OCTOBER 2023

JUDGMENT HANDED DOWN ON: 16 NOVEMBER 2023

Appearances:

For the First Excipient / First Defendant: Adv E J Ferreira SC (instructed by) Mellows de Swardt Inc.

For the Second Excipient / Second Defendant: Adv T Pillay (instructed by) RIC Martin Incorporated.

For the Respondent/Plaintiff: Ms T Hadebe from TS Hadebe ATTORNEYS