

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
LOCAL SEAT, JOHANNESBURG**

CASE NO: 009557 /2023

DATE: 27 October 2023

In the matter between:

OFFENTSE MOEKETSE

Applicant/Plaintiff

and

**DIKWENA CHROME (PTY) LTD T/A
SAMANCOR**

Respondent/Defendant

JUDGMENT

Johann Gautschi AJ

1. This is an application by the plaintiff in an action to strike out two paragraphs in the defendant's plea.
2. According to the founding affidavit the application to strike out follows upon an exception which the plaintiff took to the defendant's plea in terms of Uniform Rule 23 alleging that two paragraphs in the plea are vague and embarrassing.
3. The particulars of claim comprises not merely the *facta probanda*, but an extensive recital of events spanning the period 2015 to 2021, pleading evidence more like a witness statement and quite inappropriate to proper pleading.
4. The events so set out relate to the plaintiff's employment with the defendant. It is the defendant's pleaded response to one of those events which is the subject matter of the plaintiff's exception and thereafter its present application to strike out those two paragraphs of the defendant's plea.
5. After setting out a myriad of events, the particulars of claim concludes with an allegation that the defendant subjected the plaintiff to unfair labour practices in breach of the plaintiff's constitutional right to fair labour practice as a result of which the plaintiff claims damages totalling R5 million for loss of past and future income, constitutional damages and general damages for emotional shock and trauma.
6. The two paragraphs of the plea which are the subject of this exception were in response to the following paragraphs in the particulars of claim:
 - 6.1. paragraph 5.3: *"Soon thereafter, the Plaintiff was advised by the management, specifically by a certain Verona Maharaj, that he would be required to undertake six (6) months outcome program at Morula shaft after which a performance evaluation would be undertaken to assess the Plaintiff's competency. And if the Plaintiff passed the evaluation assessment, then he would be appointed to a permanent Rigger position thereof."*
 - 6.2. Paragraph 6.3: *"As a result of the aforementioned, the plaintiff became stressed and depressed thereof, and then on or about 19 September 2020, he attempted to kill himself by overdosing on medical bills."*

7. The responding paragraphs in the plea read as follows:

7.1.paragraph 3.5.1: *“The Plaintiff does not set out the date when the alleged discussion with Verona Maharaj took place nor Ms Maharaj’s designation and the basis on which she was authorised to make the undertakings allegedly given. Accordingly, the Defendant is unable to properly plead thereto.”*

7.2.Paragraph 3.8.11: *“The Defendant has no knowledge of the Plaintiff’s alleged suicide attempt, but records that it is not responsible, either factually or (illegible) for such events. It is also known that the Plaintiff was having marital problems at the time and such personal problems are likely to have contributed to the Plaintiff’s mental wellness.”*

8. Presently before me is not the exception, but the subsequent application to strike out the two paragraphs of the plea to which exception was taken. Both the exception and the application to strike out are without merit for reasons set out in the defendant’s heads of argument. The lack of particularity complained of in the paragraphs pleaded in response to the particulars of claim, does not provide the basis for a valid exception. The aforementioned paragraphs in the particulars of claim do not strike at the root of the cause of action and the paragraphs in the plea responding thereto also do not strike at the root of the defence pleaded. Consequently, the pleaded paragraphs cannot be the subject matter of a valid exception. Neither does the claimed lack of particularity in the pleaded paragraphs justify an exception or an application in terms of Rule 30. See Jowel v Bramwell-Jones 1998 (1) SA 836 (W).

9. In the result, I am of the view that the application is ill-conceived and should be dismissed.

10. Accordingly, I make the following order

ORDER:

1. The application is dismissed with costs.

Johann Gautschi AJ

27 October 2023