

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 4389/2019

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED:
Signature: 	
Date: 29/11/2021	

In the matter between:

CROCODILE RIVER WEST IRRIGATION BOARD

PLAINTIFF/APPLICANT

and

ALLIED FARMS SA (PTY) LTD

FIRST DEFENDANT/FIRST RESPONDENT

 REGISTRAR OF DEEDS:
POLOKWANE

SECOND DEFENDANT/SECOND RESPONDENT

 JUDGMENT

MAKGOBA JP

- [1] This is an opposed application under Rule 28 of the Uniform Rules of Court in which the Plaintiff seeks leave from the Court to delete the whole of its existing Particulars of Claim and replacing them in totality with a new proposed Amended Particulars of Claim. The application is brought after the First Defendant objected to the proposed amendment.
- [2] In essence this matter is about an Irrigation Board, being the Plaintiff herein, established and supposed to continue operating under the old order water legislation wherein provision is made for the imposition and recovery of **“rates and charges”**, endeavoring to make and recover **“water use charges”** under the new order water legislation.
- The relevant old order legislation is the repealed Water Act 54 of 1956 (“the repealed Water Act”) whilst the relevant new order water legislation is the current National Water Act 36 of 1998 (the NWA) which commenced with effect from 1 October 1998.
- [3] The application for the amendment of the Plaintiff’s particulars of claim is opposed by the First Defendant on the grounds that (1) the amended particulars of claim does not disclose a cause of action and that (2) the proposed particulars of claim will be vague and embarrassing.

Proposed Amendment

- [4] The Plaintiff seeks leave from this Court to delete the whole of its existing Particulars of Claim and replacing them with the proposed Amended Particulars of Claim which will then read as follows:

"PARTICULARS OF CLAIM

1. The Plaintiff is the **THE CROCODILE RIVER WEST IRRIGATION BOARD**, a separate legal persona:-

- 1.1. *which was formed in terms of the provisions of Section 73 of the repealed Water Act, 1956 (Act 54 of 1956) (hereinafter referred to as "The repealed 1956 Water Act") by way of Government Notice 1159 of 6 December 1991, that was published in Government Gazette 13656 of the same date;*
- 1.2. *which continues to exist in terms of the provisions of Section 98(2) read with the provisions of Section 98(3) of the National Water Act, 1998 (Act 36 of 1998) (hereinafter referred to as "the NWA");*
- 1.3. *that submitted its application to be converted into a water users association to the Department of Water Affairs and Forestry on or about 9 December 1999, which application*

has not been finalized by the Department of Water Affairs and Forestry alternatively the Department of Water and Sanitation;

- 1.4. *with address c/o The Secretary of the Crocodile River West Irrigation Board, with place of business situated at Portion 41 (a portion of portion 43 of the farm Doornfontein 498, Registration Division KQ, Limpopo Province.*

2.

- 2.1. *The First Defendant is **ALLIED FARMS SA CC** with Registration Number: **1989/027883/23** being a Closed Corporation with limited liability Incorporated as such in terms of the Closed Corporations Act of the RSA, with profit making as purpose and with registered address Farm Liverpool, Koedoeskop, Koedoeskop, Limpopo, 0361 whose full and further particulars are unknown to the Plaintiff.*

- 2.1.1. *Same has since been converted to a Private Company with limited liability and with profit making as purpose registered as such in terms of the Companies Act of the RSA being **ALLIED FARMS SA PTY LTD**, with registration number: **2019/330188/07**.*

2.2. *The Second Defendant is the registrar of deeds of 101 Dorp St, Polokwane Central, Polokwane, 0700.*

3. *The First Defendant is the registered owner of the agricultural land known as Portion 28 of the Farm Olifantskop 425, registration division KQ, Thabazimbi, Limpopo Province, measuring 45.2398 hectares held under Title Deed: T58626/2016PTA and a copy of the Windeed search is attached hereto as **Annexure "KBR 1"**.*

3.1. *Portion 28 is the consolidation of portions 10 and 26 of the said farm.*

4. *The Plaintiff is a water management institution in terms of the provisions of Section 1 of the NWA and:-*

4.1. *continues to exist until it is declared to be a water users association, or until it is disestablished in terms of the law by or under which it is was established, in terms of the provisions of Section 98(2) of the NWA; and*

4.2. *is entitled and directed to recover water use charges and changes in terms of the provisions of Section 57(1) and*

57(2), section 58(1) read with a series of billing agent agreements between the Department of Water and Sanitation and the Plaintiff, and further read with Section 98(3) of the NWA on immovable property which falls within its management area (hereinafter referred to as "irrigation district") and which is scheduled in terms of its schedule of rateable areas for its charges and in accordance with the prescribed pricing strategy.

5. *The Plaintiff, in terms of its authority to levy water use charges as aforementioned, levied water use charges against the First Defendant's property, situated within the Plaintiff's irrigation district and specifically levied water use charges on the property set out in paragraph 3 hereof, in terms of the NWA since the promulgation of the NWA, which amounts included amounts which the Plaintiff could levy in terms of the Schedule of Rateable Areas in order to defray expenses incurred by the Plaintiff in the execution of its duties in terms of the repealed Water Act, 1956.*
6. *As the First Defendant's property is scheduled in terms of the Plaintiff's Schedule of Rateable Areas, the First Defendant is liable to pay water use charges to the Plaintiff.*

7. *The property as set out in paragraph 3 above is situated in the irrigation district of the Plaintiff.*
8. *At all relevant times the property mentioned in paragraph 3 above is included in terms of the Schedule of Rateable Areas prepared by the Plaintiff for 21.00 hectares from the Crocodile River and is also scheduled for 0.00 hectares from a borehole alternatively boreholes in terms of the provisions of section 30(2) of the repealed 1956 Water Act.*
 - 8.1. *The aforesaid property is still included in terms of the Schedule of Rateable Areas.*
9. *A water use charge, including any interest on such a charge, is a charge on the land to which the water use relates and is recoverable from the current owner of the land in terms of the provisions of Section 60 of the NWA.*
10. *The Plaintiff levied water use charges according to its Schedule of Rateable Areas against the property mentioned in paragraph 3 hereof for the period from 31/03/2013 up to 30/04/2021 as is set*

out in Annexure "**KBR 2**" hereto, which amounts were not paid by the Defendant.

11. The amount of R 459 403,48 as is calculated in "KBR 2" includes the amount of water use charges as well as water use charges that were levied by the Plaintiff in accordance to the Plaintiff's Schedule of Rateable Areas since 31/03/2013 up to 30/04/2021 in regard to both the Department of Water Affairs as well as the Crocodile River West Irrigation board's account number 177.
12. In terms of the provisions of the NWA the Plaintiff may charge interest on the outstanding water use charges and amounts levied in terms of the Schedule of Rateable Areas at a higher rate than the normal mora interest rate that is published from time to time in the Government Gazette.
 - 12.1. In terms of Government Notice 1183, that was published in Government Gazette 30559 of 14 December 2007, the current interest rate on outstanding water use charges is 16% per annum since 14 December 2007.

13. *Notwithstanding demand, the First Defendant has failed and/or neglected to pay the amount specified in the demands to the First Defendant.*
14. *The Honourable Court has jurisdiction as the property described hereinbefore is situated within the jurisdiction of this Honourable Court and as the water use charges were levied in connection with the immovable property set out in paragraph 3 above, alternatively the aforesaid property is the main place of business of the First Defendant.*

Grounds of objection to the intended Amendment

[5] The First Defendant raised six grounds of objection to the proposed amendment.

The first two grounds of objection are that:

- 5.1. The proposed Particulars of Claim does not disclose the cause of action and is therefore excipiable; and
- 5.2. The proposed Particulars of Claim lacks averments which are necessary to sustain an action and is therefore excipiable.

[6] The third up to the sixth grounds of objection are based on the allegation that the proposed Particulars of Claim is vague and embarrassing.

[7] For the purposes of this matter I deal with the first two grounds of objection relating to the cause of action. In my view the outcome of this aspect will be dispositive of the case before me: The issue as to whether the proposed Particulars of Claim is vague and embarrassing will not take the case any further.

Basis of Objection to Amendment

[8] The First Defendant's basis of objection with which I proceed to deal are the following:

1. That the proposed Particulars of Claim does not disclose a cause of action, and is therefore excipiable, because:

- 1.1. The Plaintiff alleges in paragraph 4.2. that it is entitled and directed to recover "*water use charges*" in terms of section 57(2) read with section 98(3) of the National Water Act 36 of 1998 ("*the NWA*");

- 1.2. Section 57(2) of the NWA provides that, within a “specific water management area”, “[water use] charges” may be made by and are payable to the “relevant water management institution”;
- 1.3. a “water management area” is defined in section 1 of the NWA to mean an area established as a management unit in the National Water Resource Strategy within which a Catchment Management Agency will conduct the protection, use, development, conservation, management and control of water resources;
- 1.4. The Irrigation District of the Plaintiff was neither so established nor is the Plaintiff a Catchment Management Agency as contemplated in the NWA;
- 1.5. Section 98(3) of the NWA in substance provides for the continuous existence of the Plaintiff as an Irrigation Board under the repealed Water Act 54 of 1956 (“*the repealed Water Act*”) and does not empower or authorise the Plaintiff to impose or recover “*water use charges*” in terms of or under the NWA;
- 1.6. The Plaintiff is thus not the relevant water management institution as contemplated in section 57(2) of the NWA;

- 1.7. In the premise, the Plaintiff has no authority and is not empowered to impose or recover "*water use charges*" in terms of section 57(2) of the NWA; and
 - 1.8. The Plaintiff does not rely on any other legal authority to impose or recover "*water use charges*" in terms of or under the NWA.
2. That the proposed Particulars of Claim lacks averments which are necessary to sustain an action, and is therefore excipiable, because:
 - 2.1. Insofar as the Plaintiff purports to claim "*rates and charges*" under the repealed water Act, the Plaintiff does not make the necessary allegations of fact to bring the Plaintiff within the scope and ambit of section 90-91 of the repealed Water Act;
 - 2.2. Insofar as the Plaintiff purports to claim "*water use charges*" under the NWA, the Plaintiff does not make the necessary allegations of fact to bring the plaintiff within the scope and ambit of section 57(1)(b) read with section 59(2) of the NWA; and
 - 2.3. In the result, the Plaintiff does not make the necessary allegations which establish the liability of the First Defendant under or in terms of either the provisions of the repealed Water Act or the NWA.

The Principles regarding Adjudication of Applications for Amendment

[9] In deciding whether to grant or refuse an application for an amendment the Court exercises a discretion and, in so doing, leans in favour of granting it in order to ensure that justice is done between the parties by deciding the real issues between them.¹

If the grounds of objection are appropriate to an exception, like in the present case, the application for amendment should be dealt with as if it is an exception.²

[10] Accordingly, this application will be dealt with as one of exception as the basis of the objection to the amendment is that it will make the particulars of claim either vague and embarrassing or that it will not sustain a cause of action.

[11] It is a first principle in matters of exception that, if evidence can be led which can disclose a cause of action alleged in the pleading, that particular pleading is not excipiable. A pleading is only excipiable on the basis that no possible evidence led on the pleadings can disclose a cause of action.³

¹ *Caxton Ltd and Others v Reeve Forman (Pty) Ltd and Another* 1990 (3) SA 547 (AD) at 565 D – J.

² See *Harms Civil Procedure in the Superior Courts*, B – 189; *De Klerk and Another v Du Plessis and Others* 1995 (2) SA 40 (TPD) at 43 I – J.

³ *McKelvey v Cowen NO* 1980 (4) SA 525 (Z) at 526 D – E.

As appears from the proposed amended particulars of claim in the present matter, the Plaintiff relies on the provisions of the NWA, specifically in paragraphs 4.2. to 12 of the Particulars of Claim.

Therefore, if the Plaintiff is able to present evidence at the trial that it was “directed” by the Department in terms of the billing agency agreement to collect water use charges due by the First Defendant on behalf of the Department, the particulars of claim disclose a cause of action as pleaded in paragraph 4.2. of the particulars of claim.

- [12] In adjudicating an exception a distinction between background information and *facta probanda* and between *facta probanda* and *facta probantia* should be borne in mind.

In ***South African National Parks v Ras***⁴ at 386 it was stated:

*“It is true that, in order to disclose a cause of action, the plaintiff’s particulars of claim must set out ‘... every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the Court. It does not comprise every piece of evidence which is necessary to prove its fact but every fact which is necessary to be proved’. (See *McKenzy v Farmers’ Co-operative Meat Industries Limited* 1922 AD 16 at 23). However, this relates only to material facts*

⁴ [2001] 4 ALL SA 380 (C) at 386.

and, in considering an exception, a distinction must be drawn between the facts which must be proved in order to disclose a cause of action (the facta probanda) and the facts which prove them (the facta probantia)."

[13] As to the interpretation of the proposed amendment, the Court in **Lewis v Oneanate (Pty) Ltd & Another**⁵ said the following:

"Since these are proceedings on exception, it must be borne in mind that the appellant has the duty as excipient to persuade the Court that upon every interpretation which the Particulars of Claim can reasonably bear, no cause of action is disclosed."

[14] When it is averred that a pleading lacks averment which can sustain a cause of action, the excipient has to show that the pleading is excipiable on every interpretation which can reasonably be connected therewith, as stated in **Koth Property Consultants CC v Lepelle Nkumpi Local Municipality 2006 (2) SA 25 (T) at 30 E – 31 A.**

Therefore, the pleading is excipiable if no possible evidence led on the pleading can disclose a cause of action.

⁵ 1992 (4) SA 811 (AD) at 817 F – G.

[15] What a defendant needs to reply to, is the material averments regarding the cause of action, that is, the *facta probanda*, in other words the essential factual averments needed to establish such a cause of action.

A distinction must be drawn between the *facta probanda*, which are the facts which the Defendant must plead on and the *facta probantia* which are the secondary allegations that the Plaintiff will rely on in Court (and will prove by way of evidence) to prove the primary factual allegations which are essential to establish the cause of action.⁶

[16] I conclude this principle regarding the exception by stating that *facta probanda* do not belong in the particulars of claim. They do not form part of the essential averments which defendant is required to meet in his plea. He can therefore not insist on their being provided in the particulars of claim and can only obtain them, after having filed his plea, by way of a request for discovery or a request for further particulars for trial.

Whether the proposed amendment will make the Particulars of Claim not sustain a cause of action

[17] The first objection is that section 98(3) of the NWA provides for the continuous existence of the Plaintiff as an irrigation Board under the repealed Water Act

⁶ See *Jowell v Bramwell-Jones and Others* 1998 (1) SA 836 (W) at 903 A – B.

and does not empower or authorise the Plaintiff to impose or recover “water use charges” in terms of or under the NWA.

That the Plaintiff is thus not the relevant water management institution as contemplated in section 57(2) of the NWA, and therefore the Plaintiff has no authority and is not empowered to impose or recover “water use charges” in terms of section 57(2) of the NWA.

- [18] The Plaintiff’s counter-argument on the above objection is that the Plaintiff’s irrigation district continues to exist and that it is not necessary that the Plaintiff’s irrigation district be established as a water management in terms of the provisions of the NWA for it to levy water use charges. That the Plaintiff’s irrigation district is situated in one of the water management areas that was designated by the Minister in terms of GN 1056 of 16 September 2016.

The Plaintiff argues that an irrigation Board such as the Plaintiff is authorised by the provisions of section 57(2) read with item 23(b) of Schedule 4 of the NWA to levy water use charges.

- [19] For reasons that will appear later in this judgment, I am of the view that the First Defendant’s objection that the Plaintiff’s irrigation district was never established as a water management area and that section 98(3) of the NWA does not empower or authorise the Plaintiff to impose or recover water use charges has no merit.

[20] Before I deal with the provisions of sections 57, 58 and 98 of the NWA it is appropriate to note the definition of a “**water management institution**”.

In terms of section 1 of the NWA, a water management institution is defined thus:

“means a catchment management agency, a water user association, a body responsible for international water management or any person who fulfills the functions of a water management institution in terms of this Act.”

(my emphasis)

The Plaintiff submits that it is a person who fulfills the functions of a water management institution in terms of the NWA. I agree.

[21] Sections 57 and 58 of the NWA provide that:

“57. Application of pricing strategy. – (1) Water use charges –

(a) may be made –

(i) within a specific water management area; or

(ii) on a national or regional basis; and

(b) must be made in accordance with the pricing strategy for water use charges set by the Minister.

- (2) Charges made within a specific water management area may be made by and are payable to the relevant water management institution.
- (3) Charges made on a national or regional basis –
 - (a) may be made by the Minister and are payable to the State; and
 - (b) may be apportioned between different water management areas according to the extent of the specific benefits which each water management area derives or will derive from the water uses for which the charges are made.
- (4) Any person liable to pay water charges to a water services institution as defined in the Water Services Act, 1997 (Act No. 108 of 1997), for water supply services or sanitation services may not be charged for those services in terms of this Act.
- (5) No charge made under this Act may be of such a nature as to constitute the imposition of a tax, levy or duty.

58. Recovery of water use charges. – (1) The Minister may direct any water management institution to recover any charges for water use made by the Minister under section 57 (1)(a) from water users within its water management area or area of operation, as the case may be.

- (2) A water management institution which has been directed to recover any such charges may retain such portion of all charges recovered in order to recompense it for expenses and losses, as the Minister may allow.
- (3) A water management institution which has been directed to recover any such charges –
 - (a) is jointly and severally liable to the state with the water users concerned; and
 - (b) may recover any amounts paid by it in terms of paragraph (a) from the water users concerned.

[22] Section 57 (2) of the NWA authorises a water management institution to make charges within a specific water management area and which may be made by and are payable to the relevant water management institution.

Section 58(1) of the NWA provides that the Minister may direct any water management institution to recover any charges for water use made by the Minister under section 57 (1)(a) from water users within its water management area or area of operation as the case may be.

In terms of section 58(3) of the NWA the Plaintiff, as a water management institution, is jointly and severally liable to the State with the water users in its irrigation district for such water use charges and in terms of this section it may

recover any amounts paid by it to the Department in terms of section 58 (3)(a) of the NWA from the water users concerned.

[23] Section 98 of the NWA provides as follows (underlining for emphasis):

“98. Transitional provisions for certain existing organisations.

(1) This section applies to –

- (a) any irrigation board or subterranean water control board established by or deemed to be an irrigation board in terms of any law in force immediately before the commencement of this Act;*
- (b) the Kalahari West Water Board, established by Government Notice No. 143 of 13 August 1982;*
- (c) the Karos-Geelkoppan Water Board, established by Government Notice No. 145 of 7 October 1983; and*
- (d) the Kalahari East Water Board, established by Government Notice No. 2233 of 4 November 1988,*

each of which is a board for the purposes of this section.

- (2) A board continues to exist until it is declared to be a water user association in terms of subsection (6) or until it is disestablished in terms of the law by or under which it was established, which law must, for the purpose of such disestablishment, be regarded as not having been repealed by this Act.*

(3) Subject to subsection (4)-

- (a) the name, area of operation, management, property, rights, liabilities, obligations, powers and duties of a board remain the same as immediately before the commencement of this Act;
- (b) this section does not affect continuity, status, operation or effect of any act or omission of a board, or of any bylaw made by a board, before the commencement of this Act;
- (c) any person holding office with a board when this Act commences continues in office for the term of that person's appointment; and
- (d) if a position becomes vacant prior to the declaration of the board as a water user association, the board may fill the vacancy according to the procedures laid down by or under the law which applied to that board immediately before the commencement of this Act.

(4) Within six months of the commencement of this Act, a board must prepare and submit to the Minister a proposal, prepared according to section 91, to transform the board into a water user association.

(5) The Minister may accept the proposal contemplated in subsection (4), with or without amendments, or reject it.

(6) If the Minister accepts the proposal, the Minister must by notice in the Gazette –

- (a) declare the board to be a water user association;

- (b) *give it a name;*
- (c) *determine its area of operation; and*
- (d) *approve its constitution.*

(7) *Upon the publication of a notice under subsection (6), every property, right and liability of the board becomes a property, right and liability of the relevant water user association.”*

[24] The NWA draws a distinction between the old order (provided for in section 98 of the NWA, allowing for the old order legislation and the irrigation Board to continue in operation in a transitional period) and the new order (providing for a fundamentally-transformed law in respect of water resources and the new dispensation of water management institutions).

As already stated earlier in this judgment, the Plaintiff is for all intents and purposes a water management institution.

[25] In ***S v Mostert and Another 2010 (2) SA 586 (SCA)*** at paragraph [16] it was said that:

“[16] Thus, although an irrigation board might continue to exist and operate with the various duties and obligations it had under the 1956 Act despite the coming into operation of the 1998 Act, it does so by reason

of the provisions of the latter which clearly apply within the irrigation district of each such irrigation board and regulates the use of water.

Accordingly, anyone who commits an offence envisaged by s151 of the 1998 Act may be charged under that Act, even if the offence is committed within the irrigation district of an irrigation board established under the 1956 Act which continues to exist and operate by reason of s98 of the 1998 Act."

[26] The clear intention of the provisions of section 98 of the NWA is that the existing water irrigation boards should continue in operation until they are restructured as water user associations.

[27] By virtue of section 98(2) of the NWA, and subject to section 98(4) of the NWA, the plaintiff continues to exist as an irrigation board until it is declared to be a water user association in terms of section 98(6) of the NWA, or until it is disestablished in terms of the repealed Water Act, which, for the purposes of such disestablishment, is regarded as not having been repealed by the NWA.

- [28] The plaintiff on or about 9 December 1999 duly prepared and submitted its application in terms of section 98(4) of the NWA to be transformed into a water association with the Minister responsible for Water Affairs (the “Minister”) and the Department of Water and Sanitation (the “Department”), which was previously known as the Department of Water Affairs and Forestry.
- [29] The plaintiff has not been disestablished under the repealed Water Act, nor has it been transformed to a water user association under and in terms of section 98(3)(a) of the NWA.
- [30] The name, area of operation, management, property, rights, liabilities, obligations, powers and duties of the plaintiff remain the same as immediately before the commencement of the National Water Act. In terms of section 98 (3)(b) of the NWA the provisions of section 98 of the NWA do not affect the continuity, status, operation or effect of any act or omission of the plaintiff, or any bylaw made by the plaintiff, before the commencement of the NWA.
- [31] The plaintiff’s rights, liabilities, obligations, powers and duties under the repealed Water Act and the Regulations promulgated thereunder, remain in place until such time as the plaintiff is disestablished or transformed to a water user association.

[32] I am of the view that as a result of the provisions of section 98 of the NWA the Plaintiff still has all these powers and is entitled to exercise those powers, which form part of its cause of action as set out in the proposed amended particulars of claim.

[33] I agree with the submission made by Counsel for the Plaintiff that section 98 of the NWA was inserted to prevent a situation where water users in an irrigation district could escape liability for water use charges and other charges in sections 57 (1) and 57 (2) of the NWA until such time as the irrigation board within whose district they fall, has been either converted to, or replaced by a water user association.

It was also inserted to protect the existing infrastructure within such an irrigation district and to ensure a smooth transition in the new order.

Conclusion

[34] The Plaintiff fulfills part of its functions, namely those functions which survive in the interim period from the repealed Water Act, specifically in terms of section 98 (2) and (3) of the NWA. In levying those charges, which are the same charges which a water management institution makes in terms of section 57 (2) of the NWA, the Plaintiff is clearly in the position of a person "who fulfills the functions of a water management institution in terms of this Act".⁷

⁷ Refer to definition of "water management institution" in paragraph [20] above.

[35] The First Defendant's interpretation of the provisions of the NWA would create the absurd situation that water users within the irrigation board's area of jurisdiction would in the interim period be entitled to free water. This is the very situation that's section 98 of the NWA seeks to prevent.

It is trite law that a statute must be interpreted in such a way that it will not have absurd consequences.

A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results.⁸

[36] A substantial part of the First Defendant's opposition is based on its failure to adequately distinguish between background information and *facta probanda* and *facta probantia*.

The First Defendant's complaint that "no details of particularity are found" in the proposed amendment is not a proper ground for objection in terms of the proper test to be applied in adjudicating an exception to a pleading. The First Defendant's problem herein is to insist on facts which should be obtained by way of a request for further particulars for trial or a request for discovery.⁹

⁸ See *Natal Joint Municipal Pension Fund v Emdumeni Municipality* 2012 (4) SA 593 (SCA) paragraphs [18] to [19].

⁹ See for example, *Afgrig Bedryfs Beperk v Merwede Boerdery BK & Others* [2014] JOL 316987 (FB), Case No. 4121/2009 delivered on 23 December 2010.

[37] Applying the proper test, I am of the view that the proposed amendment is not excipiable and that there is no merit in the opposition to the application to amend the Plaintiff's particulars of claim.

Order

[38] In the result the following order is granted:

1. The Plaintiff is granted leave to amend its particulars of claim in accordance with the Plaintiff's notice of intention to amend dated 24 May 2021 and further amended in the Plaintiff's notice in terms of Rule 28 dated 21 October 2022.
2. The Plaintiff is directed to deliver its amended particulars of claim within 5 (five) days after the granting of this Order.
3. The First Defendant is ordered to pay the Plaintiff's costs of the application for amendment, such costs to include costs of two Counsel.



E M MAKGOBA
JUDGE PRESIDENT OF THE HIGH
COURT, LIMPOPO DIVISION

APPEARANCES

Heard on : 16 November 2022

Judgment delivered on : 29 November 2022

For the Plaintiff/Applicant : Adv. H S Havenga SC
: Adv. J H A Saunders

Instructed by : Lourens Attorneys
c/o Du Toit Swanepoel Steyn & Spruyt Attorneys

For the First Defendant/First Respondent : Adv. M M Oosthuizen SC

Instructed by : Ross & Jacobs Inc.
c/o De Bruin Oberholzer Inc.