



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No: 3778/2017

In the matter between:

MEC: DEPARTMENT OF PUBLIC WORKS
AND INFRASTRUCTURE,
FREE STATE PROVINCE

Plaintiff/Respondent

and

TUSCALOOSA 21 (PTY) LTD

Defendant/Excipient

JUDGMENT BY: LOUBSER, J

HEARD ON: 23 MARCH 2018

DELIVERED: 29 MARCH 2018

- [1] This matter came before me in the form of an exception noted by the Defendant against the Particulars of Claim of the Plaintiff on the basis that they are vague and embarrassing as envisaged by the provisions of Rule of Court 23(1). The exception was heard on an opposed basis.

- [2] In the Particulars of Claim, it is alleged that the Defendant had let a building to the Plaintiff in terms of a written agreement for a certain period of time. It is further alleged that, after the eventual expiration of the period of lease, it transpired that the Plaintiff had paid rentals for space in terms of square metres that were much less than the square metres stipulated in the lease agreement. Part of the rentals were therefore paid indebiti, so it is alleged, and the Plaintiff therefore claims the repayment of some R8 million.
- [3] Several grounds of exception are set out in the Notice of Exception, which grounds are essentially directed at the vagueness in the computation of periods, parking spaces and payments made by the Plaintiff. Suffice it to say that the Exception turns around contradictions in the quantum of the Plaintiff's claim.
- [4] Mr. Van Rhyn, appearing for the Defendant/Excipient, submitted that the contradictions go to the root of the Plaintiffs cause of action, and that the Exception should therefore be upheld and the action be dismissed with costs, including the costs occasioned by the Exception. Mr. Sibeko, appearing for the Plaintiff, quite correctly, in my view, conceded in argument that there may be contradictions contained in the Particulars of Claim. He denied, however, that the contradictions are such that they touch upon the cause of action itself, and he submitted that the Plaintiff should be granted an opportunity to remedy its pleading.

[5] In my view, the obvious contradictions in the pleading render the calculation of the quantum of the claim vague and embarrassing, but the cause of action itself is not affected thereby to such an extent that it can be said that it no longer discloses a cause of action. There may be instances where vagueness and embarrassment relating to quantum may go to the root of the cause of action, but that certainly is not the case here.

[6] I therefore find that the exception was properly taken, but that the Plaintiff should be allowed to amend his pleading.

[7] Consequently the following order is made:

1. The exception is upheld with costs.
2. The Plaintiff is granted leave to amend the Particulars of Claim within a period of 21 days from date hereof.

P J LOUBSER, J

For Defendant/Excipient:
Adv. A.J.R van Rhyn SC
Instructed by: Rosendorff Reitz Berry
Bloemfontein

For Plaintiff/ Respondent:
Adv. L.T Sibeko SC (with him adv. D.R Thompson)
Instructed by: State Attorney
Bloemfontein

