

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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
<u>18/3/2025</u>	
DATE	 SIGNATURE

CASE NO: 2023-088082

In the matter between:

RICHARD PINKNEY

Plaintiff

And

ALAE EIRLYS NORTIER

Excipient / First Defendant

ASHLEY GITTINS

Excipient / Second Defendant

JUDGMENT

DREYER AJ:

- [1] On or about 1 September 2023 the Plaintiff instituted action against the Excipients / Defendants. For ease of reference the parties will be referred to as Plaintiff and Excipients respectively.
- [2] On 22 March 2024 the Excipients served a Notice of Exception on the attorney of record of the Plaintiff on the ground that the Particulars of Claim lack the necessary averments to sustain a cause of action.
- [3] The Plaintiff's claim against the Excipients is for defamation.
- [4] The first ground of exception raised by the Excipients is that:
- 4.1 The Plaintiff fails to plead how or on what basis the alleged defamatory statements are materially incorrect or untrue.
 - 4.2 The Plaintiff has failed to plead what harm the Plaintiff has suffered from the alleged statements.
 - 4.3 The Plaintiff has failed to plead or make the necessary averments that the alleged statements were made with the intention of prejudicing the Plaintiff.

- [5] The second ground of exception raised by the Excipients is that the Plaintiff seeks damages of a globular amount of R200 000.00 and R400 000.00 respectively, but fails to plead how or on what basis the Plaintiff has calculated the claimed amounts.
- [6] In the circumstances the Excipients set out the Plaintiff's pleadings fail to set out the necessary averments to sustain a cause of action.
- [7] In *Vermeulen v Goose Valley Investments (Pty Ltd 2001 (3) SA 986 (SCA)* at paragraph 7 it was held that "*It is trite law that an exception that a cause of action is not disclosed by a pleading cannot succeed unless it can be shown that ex facie the allegations made by a plaintiff and any document upon which his or her cause of action may be based, the claim is (not may) bad in law.*"
- [8] In *Living Hands (Pty) Ltd and Another v Ditz and Others 2013 (2) SA 368 (GSJ)* at paragraph 15 the applicable principles when considering exceptions were set out as follows:
- 8.1 In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by plaintiff to assess whether they disclose a cause of action.
- 8.2 The object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw, but to dispose of the case or a portion of thereof in an expeditious manner, or to protect oneself against embarrassment which is so serious as to merit the costs even of an exception.
- 8.3 The purpose an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a very clear case before it would be allowed to succeed.

- 8.4 An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclose.
- 8.5 An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.
- 8.6 Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained.
- 8.7 Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars.
- [9] In *Khumalo and Others v Holomisa* 2002 (5) SA 402 (CC) the Constitutional Court in paragraph 18 held "*At common law the elements of the delict of defamation are:*
- (a) *the wrongful and*
 - (b) *intentional*
 - (c) *publication of*
 - (d) *a defamatory statement*
 - (e) *concerning the plaintiff.*

It is not an element of the delict in common law that the statement be false. Once a plaintiff establishes that a defendant has published a defamatory statement concerning the plaintiff, it is presumed that the publication was both unlawful and intentional."

- [10] Falsity is not a matter to be alleged or proved by the plaintiff because the defamatory nature of a statement does not depend on its falsity (See *Sutter v Brown* 1926 AD at p. 172 and *Adams v Makhoye* (2974/2029 [2023] ZANWHC 142 (17 August 2023) at paragraph 9).
- [11] It is not necessary for a plaintiff to allege what harm the plaintiff has suffered from the defamatory statement/s. Nor is it necessary for a plaintiff to allege that the defamatory statement/s were made with the intention of prejudicing the plaintiff.
- [12] Having regard to the Particulars of Claim, the Plaintiff has set out terms of the statements (paragraphs 8.1 and 14.1), alleged publication of the defamatory statements (paragraphs 6, 8 and 13) and that the defamatory statements were published of and concerning the Plaintiff (paragraphs 8.1 and 14.1). The Plaintiff has established the publication of defamatory matter concerning himself. It is therefore presumed that the statements were both wrongful and intentional. In my view the Particulars does contain the averments which are necessary sustain a cause of action.
- [13] The first ground of the exception is therefore without merit and stands to be dismissed.
- [14] It is not incumbent on a plaintiff to furnish particulars of general damages. All that a plaintiff was required to do was to furnish the defendant with the 'ground upon which the claim is based' (See *Simmonds v White* 1980 (1) SA 755 (C) at p. 758) and *Adams v Makhoye* above at paragraph 14).
- [15] The second ground of the exception is therefore also without merit and stands to be dismissed.

[16] I therefore make the following order:

1. The exception is dismissed.
2. The Excipients are to pay the costs, jointly and severally the one paying the other to be absolved, of the application on scale C.



E DREYER

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date for hand down is deemed to be 18 March 2025.

Appearances:

Appearance for Plaintiff:	R Kok Plaintiff's Attorney
Appearance for Excipients / Defendants:	Adv. T Mirtle
Instructed by:	Gittins Attorneys Incorporated
Date of hearing:	5 March 2025
Date of Judgment:	18 March 2025