

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



IN THE HIGH COURT OF SOUTH AFRICA NORTHERN CAPE DIVISION, KIMBERLEY

Case No: 2074/2021

In the matter between:

VUYISWA MENEMENE

Plaintiff/Applicant

and

**THE NATIONAL OFFICE, SPAR GROUP LIMITED
SPRINGBOK SPAR GROUP LIMITED
SPRINGBOK SPAR SECURITY OFFICERS
THE SPRINGBOK SPAR LIMITED MANAGER:
CELINE BURGER**

First Defendant/Respondent
Second Defendant/Respondent
Third Defendant/Respondent
Fourth Defendant/Respondent

Heard on: 25/10/2024

Delivered on: 14/03/2025

Summary: Pleadings. Particulars of Claim not complying with Rule 18. Excepted to. Rule 23(1) Uniform Rules of Court – Plaintiff filed Notice to Amend Particulars. Second exception filed. Whether filing two exception notices comprise irregular proceedings warranting setting aside as contemplated in Rule 30. Whether plaintiff's Particulars of Claim are vague and embarrassing defendants unable to plead thereto.

ORDER

In the result the following order is made:

1. The exception is upheld.

2. The plaintiff is granted leave to amend her particulars of claim within a period of 21 days from the date of this order.
 3. The plaintiff is ordered to pay the costs, which includes costs of the Rule 30 application.
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JUDGMENT: EXCEPTION

MAMOSEBO ADJP

- [1] The Plaintiff, Ms Vuyiswa Menemene, is claiming damages against the defendants for her alleged unlawful arrest and detention on 7 May 2020. The defendants took an exception to the plaintiff's particulars on the basis that they are vague and embarrassing. The plaintiff filed amended particulars of claim to which the defendants excepted once more.

Rule 30 application

- [2] The plaintiff brought an application in terms of Rule 30 claiming that the defendant's second notice of exception was an irregular process. After the plaintiff ascertained that the notices were not identical but were to the same effect, she filed a Notice of Withdrawal on 29 August 2024. The respondents, however, claim costs in respect of this application since they had filed opposing papers. Based on the withdrawal, it is not necessary to deal with this aspect any further.

The condonation application

- [3] The plaintiff's attorney sought condonation for his failure to file the Rule 30 application within the period prescribed in the rules. His explanation for the failure is that he displayed symptoms of Covid and, although he self-medicated by using Vicks and brewed Gumtree bark portion, he did not seek any medical intervention. Mr Olivier, for the excipients, submitted that this explanation only covers the period 18 May 2023 to 09 June 2023 and fails to address two public holidays within that period. The attorney's explanation failed to cover the period between 02 and 18 May 2023. It was contended further that no reasons were disclosed to the court why another attorney of

the same firm could not have assisted with the preparation of this application.

- [4] The Constitutional Court made this pronouncement pertaining to condonation in *Grootboom v National Prosecuting Authority*¹:

'It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default.'

It follows therefore that the explanation by the plaintiff's attorney pertaining to the late filing of the Rule 30 application is inadequate to justify the granting of the condonation. The plaintiff would have been entitled to the order of condonation, but I deal with this aspect at para 17 below.

The exception

- [5] Williams J postponed the exception to the opposed roll. Following some argument, I ruled that the matter is properly before me and directed that the parties proceed with argument, which they did. The defendants excepted to the plaintiff's particulars on the basis that they are vague and embarrassing. Rule 23(1) of the Uniform Rules of Court stipulates that:

'(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

¹ *Grootboom v National Prosecuting Authority* 2014 (2) SA 68 (CC) para 23

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.

(2)

- (3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.'

[6] These are the grounds upon which the exception is founded:

- '1. The plaintiff's ostensible claim is based on unlawful arrest and detention (deprivation of liberty) which allegedly occurred on 07 May 2020.
- 2. In paragraph 11 the plaintiff alleges [she] was detained for 2 hours on 07 May 2020.
- 3. The remainder of the particulars of claim ostensibly set out the requirements for a claim of malicious prosecution just to claim that [she] was wrongfully and maliciously detained.
- 4. It is therefore unclear whether plaintiff bases [her] purported claim on unlawful arrest, malicious detention and/or malicious prosecution.
- 5. The plaintiff thereafter in paragraph 15 of the particulars of claim pleads that various constitutional and personality rights have been infringed and further pleads that the plaintiff has suffered injuries, which inter alia, include and the impairment of such rights.
- 6. In paragraph 15 the plaintiff pleads that [she] has suffered damages in various overstated components totalling 1 000 000.00 [R1 million].
- 7. Such amounts are unsubstantiated, cannot be seen to be an estimate and have no logical basis.

8. Further to this, the alleged defamation component is a separate cause of action, the requirements of which are not properly substantiated and are not pleaded.

9. Wherefore, paragraphs 7 – 15 of the plaintiff's particulars of claim are so vague and embarrassing that the defendants are unable to plead thereto.'

[7] Where an exception is taken, the court must look at the pleadings excepted to as it intersects with the facts agreed to by the parties, if at all. No facts outside those stated in the pleading may be brought into issue – except in the case of inconsistency.²

[8] From the foregoing it is unclear whether the plaintiff is basing her claim on unlawful arrest and detention or malicious prosecution. In the amended particulars it further seems as if she is also pleading an infringement of her constitutional and personal rights which led to her sustaining injuries and impairment of dignity. She has also, without quantifying her claim, pleaded damages to the tune of R1 million. In addition to the aforementioned, the plaintiff also alleges defamation. There are different requirements and elements for the different causes of action. In as far as the requirements for malicious prosecution are concerned see *Magwabeni v Liomba*³. From what is contained in the amended particulars of claim, it is apparent that the plaintiff has not made all the necessary averments to satisfy the requirements.⁴

[9] Pertaining to the unlawful arrest and detention aspect Constitutional Court in its majority judgment in *De Klerk v Minister of Police*⁵ emphasised the requirements for unlawful arrest and detention under the *actio iniuriarum*. The same applies to the allegation of defamation buttressed in SA

² Erasmus, Superior Court Practice, Second Edition, Volume 2 Juta, [Service 21, 2023] D1-295

³ *Magwabeni v Liomba* (198/13) [2015] ZASCA 117 (11 September 2015)

⁴ See also The Law of South Africa, Volume 15, 3rd Edition, Para 108; Amler's Precedents of Pleadings, 2018, 9th Edition, Malicious and Wrongful Legal Proceedings; Minister of Justice and Constitutional Development and Others v Moleko 2009 (2) SACR 585 (SCA)

⁵ *De Klerk v Minister of Police* 2020 (1) SACR 1 (CC) paras 13 and 14

*Associated Newspaper Ltd v Estate Pelser*⁶ that the words concerning to the plaintiff must be alleged.

- [10] I agree with the remarks by McCreath J in *Trope v South African Reserve Bank and Another and two other cases*⁷ where the following was said:

'An exception to a pleading on the ground that it is vague and embarrassing involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced (*Quinlan v MacGregor* 1960 (4) SA 383 (D) at 393E – H). As to whether there is prejudice, the ability of the excipient to produce an exception-proof plea is not the only, nor indeed the most important, test - see the remarks of Conradie J in *Leviton v Newhaven Holiday Enterprises CC* 1991 (2) SA 297 (C) at 298G – H. If that were the only test, the object of pleadings to enable parties to come to trial prepared to meet each other's case and not be taken by surprise may well be defeated.'

- [11] Regard being had to Rule 18(4) of the Uniform Rules of Court which requires every pleading to contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading with sufficient particularity to enable the opposing party to reply thereto, it is necessary to plead with a greater degree of particularity.

- [12] This is what appears in the plaintiff's amended particulars of claim:

7.1 On or about 07 May 2020 and at Springbok Spar, Northern Cape Province, within the area of jurisdiction of this honourable court, Springbok Spar Security Officers (whose further particulars are unknown to the plaintiff), wrongfully and maliciously set the law in motion against the plaintiff by arresting the plaintiff on a false charge of theft in the presence of members of the public.

7.2 Thereafter, the plaintiff was detained at Springbok Spar control room at the instance of the security officers of the Spar for 2 hours and

⁶ SA Associated Newspaper Ltd v Estate Pelser 1975 (4) SA 797 (A) at 810

⁷ *Trope v South African Reserve Bank and Another and two other cases* 1992 (3) SA 208 (TPD) at 211A – C

various other employees of the Spar whose names are unknown to the plaintiff.

7.3 In pursuit of the theft charge, the security of the Springbok Spar insisted to open the theft charge but the manager refused as the CCTV showed that the plaintiff did not commit any crime and the plaintiff was released from detention by the manager.

8. When the Spar security officers arresting the plaintiff causing her to be detained and pursuing the theft charge against the plaintiff in concert with the Spar Security Officers –

8.1 Had no reasonable and or probable cause for doing so;

8.2 Did not have any reasonable belief in the truth of the information given to them relevant thereto;

8.3 Acted with malice;

8.4 Acted with the intention to injure the reputation and good name of the plaintiff.

9. Both Spar Security Officers and the Manager owed the plaintiff a duty of care in that:

9.1 To assess the strength of the Spar Security Officers' case against the plaintiff and to determine whether there existed a prima facie case against the plaintiff.

9.2 To ensure that the plaintiff was not detained in Spar questioning/control [room] or that her detention in questioning/control room was not extended for 2 hours, where no prima facie case existed against the plaintiff.

10. The Springbok Spar Security Officers and Springbok Spar Manager intentionally, alternatively negligently, breached the duty of care that they owed to the plaintiff in that they failed –

- 10.1 To assess the strength of the case of theft against the plaintiff and determine whether there existed a prima facie case against the plaintiff.
- 10.2 To ensure that the plaintiff was not detained in questioning/control room for 2 hours, or that her detention in the questioning room not be extended, where no prima facie case existed against the plaintiff.
11. As a result of the breach of the legal duty, as mentioned above, the plaintiff was wrongfully, unlawfully and maliciously detained from 07 May 2020 until she was released after 2 hours of detention and arrest.
12. As a result of the foregoing, the plaintiff –
 - 12.1 was humiliated and degraded;
 - 12.2 was caused to be detained in a questioning room-
 - 12.2.1 The plaintiff was insulted and injured in her personality;
 - 12.2.2 The plaintiff's integrity, dignity and self-esteem was impaired;
 - 12.2.3 The plaintiff lost amenities of life during her wrongful arrest and detention in that –
 - (a) She was unable to socialize with friends and family;
 - (b) She was unable to partake in a loving relationship with her partner;
 - (c) She was unable to eat food of her choice;
 - (d) She was unable to eat food; and
 - (e) She was deprived her freedom of movement.
13. The plaintiff was embarrassed, humiliated and degraded;
14. At all material times hereto –
15. As a result of the foregoing, the plaintiff suffered loss in the sum of –
 - 15.1 Estimated R350 000.00 for wrongful, unlawful and malicious arrest;

15.2 Estimated R350 000.00 for unlawful and malicious detention for 2 hours;

15.3 Estimated R100 000.00 for *contumelia*, for which she holds the defendants liable;

15.4 Estimated R100 000.00 for defamation of character; for which she holds the defendants liable;

15.5 Estimated R100 000.00 for emotional shock; for which she holds the defendants liable.

16. The Springbok Spar Security Officers and Manager were acting within the course and scope of their employment as the employees of the Spar Limited Group at the time of the wrongful arrest.'

[13] A plea must be intelligible, and the opponent must not be embarrassed in meeting it. Curlewis JA said in *Builders, Ltd v Union Government*⁸:

'A plea should be clear and unequivocal, it should not leave one guessing as to what it means.'

Or as Gardiner JP said in *E.K. Green & Co v Adkins*⁹:

'When a plea is vague as to what the defence is, or as to whether there are one or two defences, I think such plea ought not to be allowed to stand even though some good defence may be wrapped up in it.'

[14] The plaintiff has relied on several causes of action in the amended particulars which in the end makes the pleading lack specificity. As enunciated by Hoexter JA in *Dharumpal Transport (Pty) Ltd v Dharumpal*¹⁰ the main purpose of the exception that a declaration discloses no cause of action is to avoid the leading of unnecessary evidence. I am persuaded by the submission made on behalf of the defendants that none of the causes of

⁸ *Builders, Ltd v Union Government* 1928 AD 46 at 52

⁹ *E.K. Green & Co v Adkins* 1930 CPD 253 at 257

¹⁰ *Dharumpal Transport (Pty) Ltd v Dharumpal* 1956 (1) SA 700 (A) at 706D – E

action are pleaded with sufficient specificity to make out all the essential elements. The defendants cannot therefore properly plead to the particulars as they stand.

- [15] It is notable that the manner in which the plaintiff has set out the damages does not comply with Rule 18(10) since it does not enable the defendant to reasonably assess the quantum. It would be prejudiced if the defendant were required to plead to the particulars as pleaded. In *National Director of Public Prosecutions v Phillips and Others*¹¹ Heher J stated:

‘Pleadings must be lucid, logical and intelligible. A litigant must plead his cause of action or defence with at least such clarity and precision as is reasonably necessary to alert his opponent to the case he has to meet. A litigant who fails to do so may not thereafter advance a contention of law or fact if its determination may depend on evidence which his opponent has failed to place before the court because he was not sufficiently alerted to its relevance.’

- [16] Regard being had to the estimates as appearing in the amended particulars in respect of the damages claimed I am of the view that it is far from sufficient to enable the defendants to plead.

- [17] The plaintiff’s particulars are vague and embarrassing. It follows that the exception should accordingly succeed. There is no reason why costs should not follow the result. The respondents had filed their Notice of Exception 19 days out of time without seeking condonation. Regard being had to the fact that both parties acted outside the rules of the court pertaining to seeking condonation from court, each party will have to carry its own costs pertaining to the aspect of condonation.

- [18] In the result the following order is made:

1. The exception is upheld.
2. The plaintiff is granted leave to amend her particulars of claim within a period of 21 days from the date of this order.

¹¹ *National Director of Public Prosecutions v Phillips and Others* 2002 (4) SA 60 (W) at 106E – H

3. The plaintiff is ordered to pay costs, which includes costs of the Rule 30 application.



MC MAMOSEBO
ACTING DEPUTY JUDGE PRESIDENT
NORTHERN CAPE DIVISION

For the plaintiff/ respondent
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