

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2024 –044666

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: YES |

1 August 2025

DATE

SIGNATURE

In the matter between:

**UNIVERSAL TRANSPORT AND ALLIED
WORKERS UNION**

Excipient / Defendant

and

**TLHOMPHANANG BUSINESS ENTERPRISES
T/A TNG SECURITY SERVICES**
[Registration Number: 2018/341225/07]

Respondent / Plaintiff

JUDGMENT

J Vorster, AJ.

- [1] This is an opposed exception complaining that the plaintiff's particulars of claim are vague and embarrassing. The delivery of the exception was preceded by a

rule 23(1) notice that elicited no response. To simplify this judgment, I refer to the excipient as “the defendant” and to the respondent as “the plaintiff”.

[2] In its particulars of claim, the plaintiff alleges that:

[2.1] On or about 11 April 2022, the plaintiff and the defendant concluded a Close Shop/Agency Agreement (**the agreement**);

[2.2] The agreement is regulated by sections 25 and 26 of the Labour Relations Act, 66 of 1995 (**the LRA**);

[2.3] The agreement is “*invalid ab initio*” (paragraph 5 of the particulars of claim);

[2.4] Pursuant to the agreement, the plaintiff paid an amount of R546,465.00 to the defendant “*acting on the basis of the void agreement*”, which amount was never lawfully due to the defendant (paragraph 6 of the particulars of claim);

[2.5] As a result, the defendant was enriched to the detriment of the plaintiff.

[3] The defendant alleges that the pleaded case is vague and embarrassing because:

[3.1] Although pleading that the agreement was invalid *ab initio*, the plaintiff fails to clearly and concisely plead which statutory requirements in sections 25 and 26 were not complied with;

[3.2] The pleading refers to payments made by the plaintiff but does not specify exactly which amounts were not lawfully due and payable;

[3.3] The pleading does not state the date, time and/or period during which payments were made;

[3.4] The plaintiff fails to plead with sufficient particularity the grounds relied upon for the alleged undue enrichment;

[3.5] The plaintiff fails to state the reason why the payments should be reimbursed.

- [4] Before dealing with the defendant's complaint, it is appropriate to make some pointed remarks concerning the correct approach to an exception raised on the basis of pleadings being vague and embarrassing.
- [5] A pleading that is vague and embarrassing strikes at the cause of action as a whole. Vagueness amounting to embarrassment and embarrassment amounting to prejudice must therefore be shown.¹
- [6] Vague and embarrassing exceptions serve as a means of taking objection to pleadings which are not sufficiently detailed or otherwise lack lucidity and thus rendering them embarrassing and affecting the ability of the other party to plead thereto. A pleading is not vague and embarrassing simply because the other party cannot prepare for trial.² Whether a pleading is vague, is a question of degree. The ability to plead a general denial does not mean that the pleading is not embarrassingly vague.³
- [7] When comparing the grounds of complaint against the correct approach to exceptions referenced above, I am not convinced that the complaints concerning the date, time and/or period of payments render the particulars of claim vague and embarrassing. Further, a contextual reading of the particulars of claim reveals that the basis upon which repayment is claimed is as a result of an alleged void agreement. It is therefore clear that the pleading seeks to rely on an enrichment claim. Admittedly, the pleading does not specifically refer to either the *condictio sine causa* or the *condictio indebiti*.
- [8] The complaint concerning the basis for the alleged "invalidity" and/or "voidness" of the agreement is on a different footing.
- [9] The essence of the plaintiff's claim is that because the agreement is invalid or void, it had no duty to make payment in terms thereof. The pleaded basis for

¹ **Bowman Gilfillan Inc; In re: Minister of Transport** 2018 3 All SA 484 (GP).

² **Venter v Barritt; Venter v Wolfsberg Arch Investments 2 (Pty) Ltd** 2008 4 SA 639 (C).

³ **Absa Bank Ltd v Boksburg Transitional Local Council** 1997 (2) SA 415 (W) 421.

invalidity / voidness is alleged to be non-compliance with sections 25 and 26 of the LRA. The plaintiff has, however, failed to plead in what specific manner these sections of the LRA were not complied with. In addition, neither section 25 (which deals with agency shop agreement), nor section 26 (which deals with closed shop agreement), provide that non-compliance will result in invalidity or voidness. Section 25(3) states that an agency shop agreement will only be “binding” if it complies with the prescripts listed in section 25(3)(a) – (d). Similarly, section 26(3) provides that a closed shop agreement will only be “binding” if the requirements listed in section 26(3)(a) – (d) are satisfied. Neither section is couched in peremptory language and the LRA contains no criminal sanction for non-compliance.

[10] The fact that the agreement may be binding only if certain statutory provisions are complied with, does not mean that the agreement is automatically void. It simply means that it may not be enforceable as an independent cause of action. In my judgment, it also does not mean that performance (payments) in terms of the agreement must automatically be returned.

[11] At the hearing of the matter I asked the respondent’s representative, Mr Seabi, to explain the basis of the alleged voidness with reference to the pleadings. He directed my attention to paragraph 4.1 of the agreement, where the following is recorded:

“4.1.1 That at the time of signing this Agreement, the Union has members who are representative of the majority of the Company’s employees within the Bargaining Council as provided for in terms of section 26(2)(a) of the Labour Relations Act.

4.1.2 A ballot was held in terms of which the aforementioned majority voted in favour of a close shop agreement.

4.1.3 There is no provision of this Agreement or in any other agreement between the Parties requiring membership of employees before employment commences.

4.1.4 *All employees in the Bargaining Unit will be members of the Union.*

4.1.5 *The Company may not employ any person to render services in the Bargaining Unit unless such person becomes a member of the Union and the Bargaining Unit.*

4.1.6 *No amount of membership fee maybe paid to a political party as an affiliation fee or contribution in cash or kind to a political party or a person standing for election to any political office, or uses any expenditure that does not advance or protect the socio-economic interest of employees.”*

[12] These recordals appear to mirror the requirements of section 26(3) of the LRA. Mr Seabi, however, submitted that the recordals were factually false, and that at the time when the agreement was concluded, there was in fact no ballot, and the defendant (a trade union) in truth represented less than 10% of the workforce.

[13] In my judgment, the pleaded case is meaningless unless the exact basis on which the plaintiff claims non-compliance with sections 25 and/or 26 of the LRA is pleaded. The submissions by Mr Seabi referred to in paragraph [12] illustrate that unless the pleading is formulated with clarity, the defendant will be caught off guard at the trial when unexpected evidence is presented.

[14] Although an exception could, based on my aforesaid findings, have been taken on the basis that the particulars of claim do not disclose a cause of action, the exception before me was raised on the basis of the pleading being vague and embarrassing, and I am obliged to rule on the case formulated by the parties. I am, however, satisfied that the pleading is sufficiently vague to cause embarrassment.

[15] In light of the foregoing findings, the defendant's exception must succeed. What remains to be considered is the question of liability for costs. In my opinion, the

usual order in respect of costs, being that it follows the event, should be granted. In respect of the appropriate scale, in my opinion the matter was not very complex and an order for costs on scale A will suffice.

[16] The following order is made:

[16.1] The exception dated 8 July 2025, is upheld;

[16.2] The plaintiff's particulars of claim are struck out;

[16.3] The plaintiff is given leave to amend its particulars of claim by filing a notice of its intention to amend as contemplated in uniform rule 28 within a period of ten court days from the date of this order;

[16.4] The plaintiff is directed to pay the costs of the exception, such costs to be taxed on scale A.


J VORSTER, AJ.

Acting Judge of the High Court

Date heard: 30 July 2025.

Judgment date: 1 August 2025.

Appearances:

For the excipient (defendant):

Counsel: Mr Ntshangase

Instructed by: Mapongwana Attorneys (Sandton)

For the respondent (plaintiff):

Attorney: KP Seabi & Associates

Appearance: Mr Seabi (Attorney)