

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2024 - 123072

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

1 August 2025

DATE

SIGNATURE

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Excipient / Defendant

and

MATSOBANE MASENYA

Respondent / Plaintiff

JUDGMENT

J Vorster, AJ.

- [1] This is an opposed exception against the plaintiff's particulars of claim on the basis that it discloses no cause of action. As a result, when I refer to facts, I refer to the pleaded allegations appearing in the plaintiff's amended particulars of claim. To simplify this judgment, I refer to the excipient as "the defendant" and to the respondent as "the plaintiff".

- [2] The plaintiff issued summons against the defendant during October 2024. During April 2025, the plaintiff amended its particulars of claim. The defendant did not object to the amendment, but soon thereafter, on 17 April 2025, delivered an exception claiming that the amended particulars of claim does not disclose a cause of action. It is this exception that serves before me.
- [3] The plaintiff's pleaded case can be summarised as follows:
- [3.1] He commenced employment with the defendant in August 2009;
- [3.2] From mid-2022 to 2024, the defendant experienced cybercrime breaches on its SAP vendor management system, which resulted in the interception of payment files and replacement of legitimate vendor details with fraudulent bank accounts, resulting in "*fraudulent financial losses to PRASA*";
- [3.3] The defendant appointed an external company, Shield Technology, to investigate the causes of the breaches. The investigator produced a report declaring the plaintiff a "prime suspect";
- [3.4] The plaintiff was subsequently suspended and ultimately charged with committing various wrongs, including: (i.) failing to protect his employer's interest; (ii.) defeating PRASA's interest; (iii.) unauthorised or unlawful invasion of computers belonging to other employees; and (iv.) acting in contravention of section 86 of the Electronic Communications and Transactions Act, 25 of 2002;
- [3.5] The plaintiff was submitted to an internal disciplinary process. The outcome was that the independent chairperson, a certain Adv Baloyi, ruled that the defendant's evidence was based on conjecture and speculation, and found the plaintiff not guilty;
- [3.6] The plaintiff, who is a senior system administrator, claims that the publication of allegations suggesting involvement in untoward conduct in the form of cyber breaches are defamatory, and were published to at least the witnesses and chairperson of the disciplinary enquiry.

[4] The defendant alleges that the plaintiff has failed to disclose a cause of action. In its exception it contends that there are four reasons why the amended particulars of claim do not disclose a cause of action. They are: (i.) no publication; (ii.) no wrongfulness; (iii.) failure to comply with uniform rule 18; and (iv.) the findings in the report compiled by the internal investigator cannot be attributed to the defendant (during argument, defendant's counsel explained that this ground of exception should be understood to refer to a lack of intent to defame).

[5] I will deal with each of the proposed grounds of exceptions separately. Before doing so, it is appropriate to make some pointed remarks concerning the correct approach to an exception on the basis that no cause of action is disclosed.

[6] The purpose of an exception alleging that a pleading is bad in law is to dispose of the leading of evidence at trial. The exception must go to the root of the claim or defence.

[7] An exception sets out why the excipient says that the facts pleaded by a plaintiff or defendant are insufficient, and can succeed only if the facts pleaded by a plaintiff could not, on any basis, as a matter of law, result in a judgment against the defendant. Only those facts alleged in the pleading excepted to and any other facts agreed to by the parties may be considered in disposing of the exception.¹

[8] I now turn to the four grounds of complaint.

[9] **No publication**

[9.1] In paragraph 2.5 of the amended particulars of claim the following is pleaded:

¹ Pretorius and Another v Transport Pension Fund and Another 2019 (2) SA 37 (CC) at [15].

“2.5 *The Defendant published these defamatory statements not only through its Witnesses, Madlopha and Thenga Attorneys, Ningiza Horner Attorneys and their respective staff members as well as the Chairperson of the Internal Disciplinary Hearing, in actual fact the publication was not only limited to the parties involved in the Internal Disciplinary Hearing, however there are also other people within the Organisations whether seniors or subordinates who were made aware of these defamatory statements. There were several newspaper articles that were published regarding the defamatory statements made by the Defendant, it is only fortunate that the Plaintiff’s name was not mentioned, however those who already knew what the articles were referring to could easily link and identify the newspaper articles to the Plaintiff’s name. It is has also come to the Plaintiff’s attention that the Defendant has lodged a criminal case with South African Police Service (SAPS) against him. This therefore means that the publication by the Defendant continues.*”

[9.2] Publication must be to a person other than the plaintiff or the plaintiff’s spouse. It is not necessary to state the names of everyone in whose presence the defamatory statement was made, but only those whose identities have been pleaded may be called as witnesses to prove publication.²

[9.3] Quoted paragraph 2.5 clearly identifies at least three individuals to who publication was made. As such, the particulars of claim contain sufficient allegations in respect of publication.

² **International Tobacco Co (SA) Ltd v United Tobacco Co (South) Ltd (4) 1955 (2) SA 40 (W); and Crots v Pretorius 2010 (6) SA 512 (SCA) at [15].**

[10] **Wrongfulness**

[10.1] A statement is defamatory if it is likely to undermine the status, good name or reputation of the plaintiff. Publication of a defamatory statement is *prima facie* wrongful.³

[10.2] It is a question of law whether the words complained of are reasonably capable of conveying to the reasonable reader a meaning which defames the plaintiff.⁴

[10.3] If the words complained of can have a defamatory meaning in their ordinary sense, a cause of action is disclosed which does not cease to be disclosed when the pleader, in paraphrasing the words, adds something more than their ordinary meaning.⁵

[10.4] Although the defendant's counsel, Mr Zwane, urged me to find that the charges raised against the plaintiff, as they are pleaded in paragraph 2.4 of the amended particulars of claim, when read by an objective person, do not have a defamatory meaning in the ordinary sense, the difficulty with his approach lies in the fact that the pleading must be read as a whole. In my judgment, when reading paragraph 2.4 with paragraphs 2.2, 2.3 and 2.5, it reveals that the plaintiff was accused of defrauding his employer. Fraud is a serious matter and being incorrectly accused of fraud could, in my judgment, be wrongful.

[10.5] To the extent that my finding in respect of wrongfulness may be incorrect, I align myself with the finding in **Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority of SA**,⁶

³ **Le Roux and others v Dey** 2011 (3) SA 274 (CC) at [85] and [91].

⁴ **Le Roux** at [89] – [90].

⁵ **Le Roux** at [88].

⁶ 2006 (1) SA 461 (SCA) at [14] – [16].

where it was found that it is often inappropriate to decide issues of wrongfulness on exception because such issues are often fact-bound.

[10.6] I therefore conclude that on a contextual reading of the amended particulars of claim, it contains sufficient allegations to establish wrongfulness.

[11] **Failure to comply with uniform rule 18(6)**

[11.1] Uniform rule 18 requires a litigant who's claim is based on a contract to plead whether the contract is written or oral, where it was concluded, and who represented the parties when the contract was concluded. This rule is, however, only applicable if the contract is the cause of action on which the plaintiff relies. *In casu*, the cause of action is defamation, and it was not required of the plaintiff to comply with uniform rule 18 when referring to the contract of employment concluded between him and the defendant in 2009.

[11.2] I therefore find that this ground of exception must fail.

[12] **Intent not established**

[12.1] Although a plaintiff must allege *animus iniurandi* in the sense of intent to defame, it is presumed that the publication of a defamatory statement was *animo iniurandi*.⁷

[12.2] This approach was recently again confirmed in **Economic Freedom Fighters v Manual**,⁸ where the Supreme Court of Appeal remarked as follows:

⁷ **Le Roux and Others v Dey** 2011 (3) SA 274 (CC) at [85].
⁸ 2021 (3) SA 425 (SCA) at [36].

“Once the publication of defamatory matter has been proved, it is presumed that the publication was wrongful and intentional, that is, published with the intention to injure (the animus iniuriandi).”

[12.3] In light of the aforesaid, and the fact that I have already found that the plaintiff's pleading contains sufficient allegations to establish publication and wrongfulness, intent is presumed. Consequently, this ground of exception must also fail.

[13] As a result, the defendant's exception must fail. What remains to consider is the question of liability for costs. In my opinion, costs should be awarded to the successful party, being the plaintiff. The matter is relatively uncomplicated and I therefore conclude that it would be appropriate to direct that the costs be taxed on scale A.

[14] The following order is made:

[14.1] The exception dated 17 April 2025, is dismissed.

[14.2] The defendant/excipient 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: 29 July 2025.

Judgment date: 1 August 2025.

Appearances:

For the excipient (defendant):

Counsel: Mr Zwane.
Instructed by: Ningiza Horner Attorneys

For the respondent (plaintiff):

Counsel: Mr Khoza.
Instructed by: Snail Attorneys @ Law Inc.