



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)
JUDGMENT**

Not Reportable

Case no: 21594/2022

In the matter between:

PARKER ATTORNEYS

Applicant/Defendant

and

LORETTE PILLAY

Respondent/Plaintiff

Neutral citation: *Parker Attorneys v Lorette Pillay* (Case no 21594/22) [2025]
ZAWCHC (26 AUGUST 2025)

Coram: NJOKWENI AJ

Heard: 28 May 2025

Delivered: 26 August 2025

Summary: Uniform rule 23 – Exception – vague and embarrassing – lack averments necessary to sustain cause of action – prejudice – agreement between attorney and client vis-à-vis attorney's legal duty to act on client's best interest and not to be negligent in discharge of his legal duty – prescription of client's claim due to attorney's negligence.

ORDER

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1. The exception is dismissed.
 2. The Defendant must deliver its plea to the Plaintiff's amended particulars of claim and counter claim (if any) within 10 (ten) days of granting of this order.
 3. The Defendant shall pay Plaintiff's costs as between party and party including costs of counsel on scale B such costs to include costs occasioned by the postponement on 29 April 2025.

JUDGMENT

Njokweni AJ

Introduction

- [1] This application concerns an exception taken by the Excipient against Plaintiff's amended particulars of claim ("amended POC"). The exception is premised on the complaint that the amended POC is either vague and embarrassing or lacks necessary averments to sustain a cause of action.
- [2] The Excipient is a firm of attorneys, Parker Attorneys and is the Defendant in the main action instituted against it by Ms Lorette Pillay ("Ms Pillay") for breach of contract and breach of legal duty owed to her (as a client) by Parker Attorneys. This is so because of alleged negligence on the part of Parker attorneys, in that they *inter alia* failed to: (a) brief counsel to render a legal opinion on prospects of success of her claim against her ex employer, Old Mutual; (2) to institute an action against Old Mutual timeously; and which failure resulted in prescription of Ms Pillay's claim against Old Mutual.

Relevant Facts

- [3] Ms Pillay was employed by Old Mutual from August 1994 until 2001 when she suffered serious bodily injuries whilst acting within the course and scope of her employment with Old Mutual. Due to the said injuries, from July 2001 to November 2016, Plaintiff received a monthly disability benefit from Old Mutual in the amount of R10 868. On 2 November 2016, the Plaintiff was informed by Old Mutual that her monthly disability benefit would cease on 30 November 2016 as she had reached her retirement age of 55 years.
- [4] This retirement age of 55 years came as shock to Plaintiff because all along, she was under the impression that she was a member of the Old Mutual Staff Pension Fund ("DB Fund") which would have entitled her to retire at the age of 60 years. However, and for the first time on 2 November 2016 she learnt that, without her consent or prior knowledge, Old Mutual changed her membership from the DB Fund to the Old Mutual Staff Retirement Fund ("DC Fund"). As a member of the DB Fund, her retirement age was reduced from 60 years to 55 years.
- [5] Aggrieved by this unilateral change of her membership by Old Mutual from 60 years to 55 years which basically shaved off 5 years of her future monthly income/disability benefit, Ms Pillay on 26 July 2017 concluded an oral agreement with Parker Attorneys in terms of which the latter agreed to render professional legal services to Ms Pillay *inter alia* to:
- (a) Obtain opinion from counsel on prospects of success of a claim against Old Mutual for future loss of income.
 - (b) Institute a legal action against Old Mutual for damages arising from the unilateral conduct of Old Mutual of changing her retirement age from 60 to 55 years.
- [6] At the time of the oral agreement between Ms. Pillay and Parker Attorneys, the firm, represented by R.A. Parker, agreed to provide legal services. These included obtaining a legal opinion on the viability of her claim against Old Mutual and initiating legal proceedings for damages. However, Parker Attorneys failed to act promptly in briefing counsel, instituting the legal action,

and advising Ms. Pillay about the risk of her claim prescribing under the Prescription Act.

- [7] Due to Parker Attorneys' failure to act as agreed, Ms. Pillay's claim against Old Mutual became prescribed. Consequently, in December 2022, she initiated legal proceedings against Parker Attorneys, seeking damages for the breach of their oral agreement and their legal duty of care owed to her as a client.
- [8] Summons having been served on Parker attorneys, the latter defended the action by filing a notice of intention to defend. In and around 28 March 2023, Parker attorneys delivered a notice of exception raising eight grounds on which it complained that Ms Pillay's particulars of claim were excipiable because they lacked averments necessary to sustain a cause of action ("notice of exception"). I shall later deal with the relevance of this notice of exception hence I do not list eight grounds in detail at this stage of my judgment.
- [9] It is the delivery of the said notice of exception that prompted an amendment of the initial particulars of claim. Parker Attorneys did not object to the proposed amendment and as such on 1 June 2023, the amended POC was delivered and was a much improved version of the initial particulars of claim in terms of how the Plaintiff's cause of action was formulated. On 23 June 2023, Parker Attorneys delivered an exception to the amended POC raising 4 (four) complaints and afforded Plaintiff an opportunity to remove cause of complaints so raised within 10 (ten) days. The exception is taken on the ground that the amended POC are vague and embarrassing, alternatively lacks averments necessary to sustain a cause of action. Notably, this exception to the amended POC does not contain any prayer(s).

Issues for determination

- [10] Gleaned from the relevant facts, I distilled the issue for determination as

being:

- (a) What is the appropriate procedure to follow when taking an exception on **both** grounds that a pleading: (a) lacks averments necessary to sustain a cause of action; and (2) is vague and embarrassing.
- (b) Whether the excipient followed the correct procedure in taking the exception in both grounds and if not, is that failure fatal to the exception.
- (c) Whether lack of prayer(s) in the exception is fatal.
- (d) Whether on merits, the exception is well taken.

Legal Framework

[11] An exception is a pleading in which a party objects to the summons or plea, as the case may be, on the basis of an inherent defect in the formulation of the particulars of claim in the summons, or of the plea. The object is to cut the proceedings short, because it is unfair to put the aggrieved party, who is prejudiced in the conduct of his case by a defect in the summons or plea, through the expense of the whole process. Exceptions provide a useful mechanism to weed out cases without legal merit.¹

[12] In the High Court, there are only two possible grounds of exception²:

- (a) the pleading lacks averments which are necessary to sustain an action or defence, as the case may be; and
- (b) the pleading is vague and embarrassing.

[13] Rule 23 provides:

“23 Exceptions and applications to strike out

- (1) *Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may*

¹ Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006 (1) SA 461 (SCA) par 3 at 465H (“Telematrix”).

² Rule 23(1) of the Uniform rules of Court. In this judgement, reference to a rule means uniform rules of Court.

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 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) Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the aforesaid matter, and may set such application down for hearing within five days of expiry of the time limit for the delivery of an answering affidavit or, if an answering affidavit is delivered, within five days after the delivery of a replying affidavit or expiry of the time limit for delivery of a replying affidavit, referred to in rule 6(5)(f): Provided that:-*
- (a) the party intending to make an application to strike out shall, by notice delivered within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity to remove the cause of complaint within 15 days of delivery of the notice of intention to strike out; and*
 - (b) the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in the conduct of any claim or defence if the application is not granted.*
- (3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.*

- (4) *Wherever any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary.”*

Procedure

- [14] In an article published in the *De Rebus* entitled “**taking exception in the High Court**”³, the procedure to be followed by a party wishing to take an exception is well articulated and serves as a useful guideline. The procedure set out below is taken from the said article.
- [15] The procedure to be followed by a party wishing to take an exception depends on whether the complaint is that the pleading lacks averments that are necessary to sustain a cause of action or a defence, or that it is vague and embarrassing, or both.
- [16] Where a party intends to take an exception that a pleading lacks averments that are necessary to sustain a cause of action or a defence, he must deliver an exception within the period allowed for filing a subsequent pleading. Where, however, the pleading is vague and embarrassing, he must, within the period allowed for filing any subsequent pleading, by notice, afford his opponent an opportunity to remove the cause of complaint within 15 days. If no reply is received or the reply fails to remove the cause of complaint, the excipient must deliver his exception within 10 days from the date on which the reply is received, or from the date on which the reply was due.
- [17] But where a party, as is the case in this application, intends excepting on both grounds, he must deliver an exception to the effect that the pleading lacks averments necessary to sustain a cause of action, as well as a notice requiring his opponent to remove the cause of complaint (i.e. that the pleading is vague and embarrassing). Thereafter, he must deliver a further exception on the latter ground. The first exception, together with a notice of

³ Authored by **Danie van Loggerenberg SC et Leon Dicker et Jacques Malan** published in the *De Rebus* copy of October 2006 pages 33-35.

complaint in the alternative, may be contained in a “combined” document, as near as possible to example (a) below.

[Example A]

“Notice of exception and notice of removal of cause of complaint”

“Take notice that the defendant excepts to the plaintiff's summons and particulars of claim on the basis that they lack averments that are necessary to sustain an action on the following grounds:

[1] ...

[2] ...

[3] ...

In the alternative, the defendant avers that the plaintiff's summons and particulars of claim are vague and embarrassing on the grounds set out in paras 1.1 to 1.3 above.

Wherefore the defendant prays that its exception be upheld with costs and that the plaintiff's particulars of claim be set aside.

In the alternative, the defendant hereby affords the plaintiff the opportunity to remove the causes of complaint set out in paras 1.1 to 1.3 above within 15 days from the date of delivery of this notice, failing which the defendant will deliver an exception to the plaintiff's summons and particulars of claim.”

- [18] In the event of failure by the Plaintiff to remove the causes of complaints as set out in the notice of exception, the Defendant to deliver the exception as near as possible with the form in example B below.

[Example B]

Notice of exception:

“Take notice that as the plaintiff has failed to remove the cause of the defendant's complaint as set out in the defendant's notice of complaint in terms of r 23(1), dated _____, within 15 days from delivery of the notice, the defendant hereby excepts to the plaintiff's summons and particulars of claim on the ground that they are vague and embarrassing on the following grounds:

[1] ...

[2] ...

[3] ...

Wherefore the defendant prays that the exception be upheld with costs and that the plaintiff's summons and particulars of claim be set aside."

- [19] An exception must be set down for hearing in accordance with r 6(5)(f). This means that an exception must be enrolled on the opposed motion court roll. If the excipient fails to do so, the respondent is entitled to set the matter down.⁴ The reasons why an exception must be set down on the opposed roll are as follows: (a) Rule 6(5)(f) generally pertains to matters in which a notice of intention to oppose an application has been delivered (r6(5)(f), read with r 6(5)(d)); (b) If no reaction is received in respect of an exception, the excipient is entitled to accept that his opponent does not agree with his view regarding the alleged excipiability of the pleading in question and that the exception will, accordingly, be opposed; (c) In order for a court to deal with an exception, a considered decision is needed that will require the filing of heads of argument by the parties⁵ (; (d) The practice directives, court notices and/or rules of the various divisions of the High Court generally appear to accept or require that exceptions be heard on the opposed roll.⁶

Application of Law to Facts

- [20] In paragraph [8] above, I indicated that I shall later in this judgment deal with the relevance of the notice of exception delivered by the Applicant in and around 28 March on the ground that Plaintiff's initial particulars of claim *lacked averments necessary to sustain a cause of action*. The relevance of this point emanates from my experience in the fourth division (opposed motions) at least in three applications dealing with exceptions where I notice confusion from some legal practitioners as to what is the correct procedure to follow when taking an exception in the High Court. Below, I seek to clarify the correct procedure and to provide some clear guidelines in this regard.

⁴ Viljoen v Federated Trust Ltd 1971 (1) SA 750 (O) at 754H-755A).

⁵ see, in general, Erasmus, Superior Court Practice, B 1-150 to B 1-158).

⁶ See, for example, paras 2 and 10 of the Consolidated Court Notices and Practice Notes of the Cape Provincial Division.

[21] It seems to me that the Applicant confuses the procedure to be followed when an exception is taken on the ground that a pleading lacks averments necessary to sustain a cause of action and the procedure to be followed when an exception is taken on the ground that a pleading is vague and embarrassing. This is so because the notice of exception delivered by the Applicant against the initial particulars of claim relates to the complaint that the initial particulars of claim lacked averments necessary to sustain a cause of action. This was not necessary because an exception taken on the ground that a POC lacks averments necessary to sustain a cause of action is a straight exception and need not be preceded by a notice of exception. In *Alexia Kobusch v Wendy Whitehead*⁷ the SCA held:

“[17] ... For the purposes of rule 23(1), the defendant was required to give notice to remove the cause of complaint in respect of her complaint that the particulars of claim are vague and embarrassing. Rule 23(1) requires no such notice in respect of an exception that the particulars of claim lack averments necessary to sustain an action ('a true exception'). The defendant nevertheless gave notice of a true exception and also afforded the plaintiffs an opportunity to remove this cause of complaint. However, the defendant was required by rule 23(1) to give notice of her complaint that the plaintiffs' particulars of claim are vague and embarrassing and did so.” [My emphasis]

[22] After the delivery of the said notice of motion, Plaintiff duly amended the initial particulars of claim without any objection. On delivery of the amended POC, Applicant delivered an exception (not a notice of exception) on 23 June 2023 which is the subject matter of this application that served before me in the fourth division on 28 May 2025. Notably, the exception is noted against the amended POC on the grounds that they are vague and embarrassing, alternatively, further lacks necessary averments to sustain a cause of action.

⁷ *Alexia Kobusch v Wendy Whitehead* 2025 (3) SA 403 (SCA) at para [17].

[23] It is clear that the exception is taken on both grounds that the amended POC are:

- (a) vague and embarrassing; and in the alternative;
- (b) further lack averments necessary to sustain a cause of action.

[24] In the circumstances, it was necessary for the Applicant to follow *mutatis mutandis* the procedure stated in paragraphs [15] to [19] above by simultaneously delivering a notice of exception in which it states that the Defendant excepts to the amended POC on the ground that they lack averments necessary to sustain a cause of action and which in the alternative, the Defendant avers that the plaintiff's particulars of claim are vague and embarrassing on the grounds set out therein and whereafter, the following prayer is included:

“Wherefore the defendant prays that its exception be upheld with costs and that the plaintiff's particulars of claim be set aside.

In the alternative, the defendant hereby affords the plaintiff the opportunity to remove the causes of complaint set out in various paragraphs therein within 15 days from the date of delivery of this notice, failing which the defendant will deliver an exception to the plaintiff's summons and particulars of claim.”

[25] In the event of the Plaintiff's failure to remove the cause of complaint as stated in the notice of exception and notice of removal of cause of complaint, the Defendant shall deliver the exception as near as possible with example B above.

[26] Just below the heading, the exception reads:

*“**KINDLY TAKE NOTICE** that the Defendant hereby notes an exception against the Plaintiff's Amended Particulars of Claim on the grounds that it is [sic] vague and embarrassing, alternatively, further lacks the averments*

necessary to sustain a cause of action for the reasons set out below." [my emphasis]

- [27] From the above excerpt, it can be discerned that the exception is taken on both grounds. However, on careful reading of the content of the exception and the Defendant's heads of argument, the opposite appears, in that, the grounds set out in the exception attacks the formulation of the claim as opposed to legal validity thereof.
- [28] The exception therefore is actually premised on the amended POC being allegedly vague and embarrassing so much so that the Defendant is embarrassed and prejudiced to plead thereto. As discussed above, in such a case, the Defendant ought to have delivered a notice of exception affording the Plaintiff an opportunity to remove the cause of complaint within the time period prescribed in rule 23. Instead of doing so, Defendant delivered a straight "exception". This is not legally permissible.
- [29] I have typed the exception in inverted commas. This is because, the exception has no prayers. As a result, after reading and considering the exception, I remain unclear about what relief is sought and which relief to grant.
- [30] In terms of Rule 23(3) "whenever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated". The sub-rule obliges the excipient to state in clear and concise terms the particulars upon which his exception is passed and it is not sufficient to just state that the pleading discloses no cause of action or is vague and embarrassing.⁸ The procedure followed by the Defendant is thus incorrect and for these reasons alone, the exception should fail.
- [31] However, given the possibility of another exception that complies with the above being delivered by the Defendant on dismissal of the current straight

⁸ Herbstein & Van Winsen Vol 2 page 24-30, Erasmus D1-310G.

“exception”, I deemed it to just and equitable to continue to deal with merits of the current exception. I do so below. The Defendant has raised eight grounds of exception, and I find all of them to be without merit and bad in law.

[32] First and foremost, in the amended POC, the Plaintiff has pleaded the conclusion of the agreement with the Defendant; express, alternatively implied terms of that agreement, breach of that agreement and causal link between breach and damages she allegedly sustained as a result thereof. It is trite that in deciding an exception, the court must take all the plaintiff’s allegations at face value. The allegations of fact in the particulars of claim must be accepted as true and correct.⁹ In the result, at this stage, I must accept Plaintiff’s version as pleaded.

[33] In *Tembani and Others v President of the Republic of South Africa and Another*¹⁰ the court held as follows:

“Whilst exceptions provide a useful mechanism ‘to weed out cases without legal merit’, it is nonetheless necessary that they be dealt with sensibly. It is where pleadings are so vague that it is impossible to determine the nature of the claim or where pleadings are bad in law in that their contents do not support a discernible and legally recognised cause of action, that an exception is competent. The burden rests on an excipient, who must establish that on every interpretation that can reasonably be attached to it, the pleading is excipiable. The test is whether on all possible readings of the facts no cause of action may be made out; it being for the excipient to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put upon the facts.” [My emphasis]

[34] In *casu*, it cannot be said that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put upon

⁹ *Stewart v Botha* 2008 (6) SA 310 (SCA) at para 4; *Natal Fresh Produce Growers’ Association v Agroservice (Pty) Ltd* 1990 (4) SA 749 (N) at 755

the facts. On reading of the totality of the amended POC, one can discern that Plaintiff's claim against the Defendant is breach of contract due to professional negligence which caused Plaintiff damages. This much so is evident from the Defendant's heads of argument which contains many answers to averments in the amended POC.

- [35] The Defendant purports to import new facts in the exception which are not contained in the pleading complained of the amended POC. This attempt is more evident in the Defendant's heads of argument. *In Pretorius and Another v Transport Pension Fund and Others*, the following was stated:

"In deciding an exception, a court ... may not have regard to any other extraneous facts or documents."

- [36] The Defendant complains that the amended POC are vague and embarrassing because: (a) An oral agreement and acceptance of instruction is pleaded without stating how the oral agreement may have come about and the terms of the purported acceptance, and the circumstances that led to the meeting with the Defendant. This complaint is without merit in that the Plaintiff has pleaded the conclusion of the agreement between the parties and need not plead what preceded the conclusion thereof such as what led to the acceptance of instructions and how they met.

Conclusion

- [37] Ms. Pillay sought legal assistance from Parker Attorneys to challenge Old Mutual's unilateral decision to reduce her retirement age from 60 to 55 years, which deprived her of five years of income. Instead of resolving her grievance, she now finds herself litigating against Parker Attorneys due to their alleged professional negligence.
- [38] Rather than addressing the allegations of professional negligence promptly, Parker Attorneys employed technical legal tactics that delayed the resolution of the matter. Such actions could harm the firm's reputation, as allegations

of professional misconduct should ideally be resolved swiftly.

[39] It is a well-established principle that directors or partners of law firms, such as the Defendant, are required by law to hold a valid fidelity fund certificate. This certificate provides indemnity coverage against claims of professional negligence. Instead of resorting to technical legal tactics to delay the matter, the Defendant could have reported the claim to the Legal Practitioners Indemnity Fidelity Fund. Upon receiving such a claim, the fund would have investigated its merits and either defended the action or settled the Plaintiff's claim.

[40] After reviewing all the relevant documents and considering the application, I find no merit in the exception raised by the Defendant, and it must be dismissed. While I could have rejected the application solely based on the procedural flaws in how the exception was raised, doing so might have allowed the Defendant to file another exception following the correct procedure but based on the same grounds. To prevent this, I decided to address the merits of the exception to resolve the matter conclusively. However, this does not prevent the Defendant from raising a new exception if there are valid and fresh grounds to do so.

[41] I conclude that any vagueness in the amended particulars of claim does not prevent the Defendant from understanding the case or responding to it, and therefore, the Defendant is neither embarrassed nor prejudiced to the extent that it cannot file a plea.

[42] In the circumstances, I am satisfied that the order I make below is just and equitable.

In the result, I make the following order.

1. The exception is dismissed.
2. The Defendant must deliver its plea to the Plaintiff's amended particulars of claim and counterclaim (if any) within 10 (ten) days of granting of this order.

3. The Defendant shall pay Plaintiff's costs as between party and party including costs of counsel on scale B, such costs to include costs occasioned by the postponement on 29 April 2025.

P NJOKWENI
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Applicant : P Smit
Instructed by : Parker Attorneys
For the Respondent : B Viljoen
Instructed by : Chennells Albertyn Attorneys