

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

CASE NO.: 2023-102518

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
Date	11 August 2025 

In the matter between:

ROWNETIC MINERAL & MINING RESOURCES (PTY) LTD Plaintiff

and

ATLEGANG ASSET MANAGEMENT (PTY) LTD First Defendant

CAROL SIZAKELE MONNAKGOTLA Second Defendant

JUDGMENT

ELS AJ

[1] The plaintiff instituted action against the defendants for the payment of an amount of R6,823,243.95.

[2] The plaintiff formulated its claim against the first defendant as a contractual claim in terms of which the plaintiff rendered transport services to the first defendant. The agreement relied upon by the plaintiff is annexed to the particulars of claim as "RM3".

[3] The plaintiff's claim against the second defendant is based on a suretyship

agreement. This document, at least on the pleaded case, is a document separate from the aforesaid written agreement. The suretyship is annexed to the particulars of claim as "RM5".

[4] The claim against the second defendant is pleaded as follows in paragraph 4.5 of the particulars of claim:

"On or about 22 March 2023 and at Pretoria, the Second Defendant, in writing bound herself as surety and co-principal debtor with the First Defendant for the due and punctual performance by the First Defendant of the obligations under the agreement. The surety agreement, is attached hereto marked as annexure "RM5", of which the terms and conditions should be read herein as if specifically pleaded."

[5] The document annexed as "RM5" has the following heading: "**CUSTOMER CREDIT APPLICATION**".

[6] The only part of "RM5" that refers to a suretyship is the following that appears close to the bottom of the document:

*"SURETY (Compulsory for a CC, Trust, partnership or natural person)
The undersigned hereby binds myself/our-selves as surety for and on behalf of the applicant for the full payment on demand to Rownetic Mineral & Mining Resources."*

[7] Rule 23(3) requires an excipient to state "*clearly and concisely*" the ground or grounds of exception. The only real ground of exception raised by the plaintiff is contained in paragraph 12 of the notice of exception:

"12. Given that the nature and amount of the principal debt which the second defendant purportedly stood surety for, an essential term in a deed of suretyship, is neither stated nor capable of ascertainment by reference to the provisions of the document, the purported deed of suretyship does not comply with the

statutory formalities embodied in section 6 of the General Law Amendment Act 50 of 1956. The provision requires that 'the terms thereof are embodied in a written document signed by or on behalf of the surety'. Non-compliance with statutory formalities renders the deed of suretyship invalid."

[8] On my reading of paragraph 12 the excipient stated that the suretyship relied upon in the particulars of claim is invalid because it does not comply with the provisions of section 6 of the General Law Amendment Act, 50 of 1956 ("the Act"), in particular on the basis that the "*nature and amount of the principal debt*" is not reflected in the deed of suretyship.

[9] Section 6 of the Act provides as follows:

"No contract of suretyship entered into after the commencement of this Act, shall be valid, unless the terms thereof are embodied in a written document signed by or on behalf of the surety: Provided that nothing in this section contained shall affect the liability of the signer of an aval under the laws relating to negotiable instruments."

[10] What is meant by the words "*the terms*" in section 6 of the Act was explained as follows in **Sapirstein and others v Anglo African Shipping Co. (SA) Ltd** 1978 (4) SA 1 (A) at p 12B–D:

"What s 6 requires is that the 'terms' of the contract of suretyship must be embodied in the written document. It was contended by counsel for plaintiff that this meant that the identity of the creditor, of the surety and of the principal debtor, and the nature and amount of the principal debt, must be capable of ascertainment by reference to the provisions of the written document, supplemented, if necessary, by extrinsic evidence of identification other than evidence by the parties (i.e. the creditor and the surety) as to their negotiations and consensus. I agree with this contention."

(the emphasis is my own)

[11] In **Lategan and another NNO v Boyes and another** 1980 (4) SA 191 (T)

the nature of the debt in the suretyship was described as the liabilities of the principal debtor in terms of a mortgage bond that still had to be registered. At 203H–204A Le Roux J said the following:

"In regard to the principal debt, I conceive it to be essential that it should be properly identified in the contract of suretyship so that no doubt or uncertainty exists as to what the surety was to perform should he become liable under his agreement. But this is a far cry from requiring a meticulous description of all the rights and obligations existing between the creditor and principal debtor upon pain of invalidity. In my view, as in the case of a sale of land, evidence to identify the subject-matter of the principal debt would be receivable de hors the contract, should this become necessary, provided one knows which main obligation is referred to (e.g., as in Van Wyk v Rottcher's Saw Mills (supra)).

*It follows from what has been said above that I am of the view that the precise terms of the main obligation do not form part of the contract of suretyship for the purposes of s 6 of Act 50 of 1956."*¹

[12] In **De Villiers v Nedfin Bank, a Division of Nedcor Bank Ltd** 1997 (2) SA 76 (E) Zietsman JP said the following with reference to section 6 of the Act at p 81d–e:

"The provision requires that a contract of suretyship must be embodied in a written document from which the identity of the creditor, the surety and the principal debtor, and the nature and amount of the principal debt, must be capable of ascertainment. A deed of suretyship stipulating an unlimited continuing guarantee for payment of all sums of money which the principal debtor may in future owe to its creditors is, however, a valid deed of suretyship. In such a case extrinsic evidence will be admissible to prove that the principal obligation has come into existence and to establish the amount of that obligation."

[13] In the sentence in annexure "RM5" that deals with the suretyship, the following phrase is used to describe the causa (the underlying principal debt):

¹ See also **General Accident Insurance Company SA Ltd v Dancor Holdings (Pty) Ltd and others** 1981 (4) SA 968 (A).

"... for the full payment on demand ..."

[14] The aforesaid phrase in itself does not comply with the requirement that the essential term in the suretyship dealing with the nature and amount of the principal debt, be adequately described. Therefore, if the one sentence dealing with the suretyship is considered in isolation, it would not, in my view comply with the requirements of section 6 of the Act.

[15] However, the sentence cannot be read in isolation. It should be read together with the other provisions in the document. Numbered clause 2 reads as follows:

"2. To make full payment of the goods and services within 7 days from date of Services Delivered."

[16] If the sentence dealing with the suretyship is read together with clause 2, then it means that the surety bound herself to the principal debtor (Rownetic Mineral and Mining Resources (Pty) Ltd) for the payment of the goods and services delivered to the debtor (Atlegang Asset Management (Pty) Ltd). The exact amount will be capable of ascertainment by proving the exact amount due to the creditor by the debtor.

[17] Although other issues were also argued before me regarding compliance with section 6 of the Act, the only issue before me is the ground of exception contained in paragraph 12 of the notice of exception.

[18] I am consequently of the view that the exception should be dismissed.

[19] In the premises I grant the following order:

1. The exception is dismissed;

2. The excipient (the second defendant) is ordered to pay the plaintiff's costs, including the cost of counsel on scale B.



APJ ELS
ACTING JUDGE OF THE HIGH COURT

DELIVERED: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicants: S Cohen

Instructed by: SP Attorneys Incorporated

For the respondent: JH Malan

Instructed by: Human and Human Incorporated

Date of hearing: 4 August 2025

Date of judgment: 11 August 2025