



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case No. D8423/24

In the matter between:

SCIP ENGINEERING (PTY) LTD

Plaintiff

and

UNIVERSITY OF ZULULAND

Defendant

ORDER

The following order shall issue:

1. The exception is dismissed with costs on scale B.

JUDGMENT

SINGH J

Background

[1] This is an exception in terms of Uniform rule 23(1)(a), wherein the plaintiff excepts to the defendant's plea on the basis that it is vague and embarrassing.

[2] The plaintiff had instituted an action against the defendant for the alleged breach of an agreement.

[3] The action was instituted during July 2024. On 19 September 2024, the defendant delivered its plea. The plaintiff had the option of delivering a replication or launching summary judgment proceedings, within 15 days of the delivery of the plea. The plaintiff elected to launch summary judgment proceedings on 11 October 2024. The summary judgment application was opposed by the defendant and the summary judgment was refused on 17 February 2025.

[4] On 3 March 2025, the plaintiff delivered a notice of exception.

Grounds for exception

[5] In its first ground of exception, the plaintiff contends the following:

- (a) In paragraph 10 of the particulars of claim, the plaintiff pleaded that its appointment to render professional services was subject to standard terms and conditions set out in annexure 'POC4'.
- (b) The defendant, in paragraph 4 of its plea, admits that the appointment was subject to the standard terms and conditions but denies that the terms and conditions contained in annexure 'POC4' were agreed to, as the document was not signed by the parties.
- (c) The plaintiff contends that the defendant has approbated and reprobated by, first, admitting that the plaintiff's appointment was subject to the standard terms and conditions and then denying that those terms were agreed to.
- (d) The plaintiff pleaded that it is prejudiced in the conduct of its case, as it is unclear whether the defendant admits or denies that the terms and conditions in annexure 'POC4' formed part of the agreement between the parties.

[6] In its second ground of exception, the plaintiff alleges that the defendant denied that it was liable to the plaintiff for an amount of R628 851.03 and purportedly attached annexure 'P1' to its plea in support thereof. Annexure 'P1' was, however, not attached to the plea and the plaintiff had served a notice in terms of Uniform rule 35(12) for the defendant to produce annexure 'P1'. At the time of the hearing of this matter, the defendant had furnished annexure 'P1'. The second ground of exception was therefore not pursued by the plaintiff.

The parties submissions

[7] Ms *Olsen*, who appears on behalf of the defendant, submitted that in applying for summary judgment, the plaintiff would have done so on the basis that the defendant had no *bona fide* defence to the plaintiff's claim. She thus submitted that the plaintiff was precluded from excepting to the plea on the grounds that it is vague and embarrassing because in order to apply for summary judgment, the plaintiff had to have understood the plea. She submitted that the plaintiff could therefore not have been prejudiced by the plea as it stood.

[8] She further submitted that it was impermissible to take exception to two paragraphs of the plea and that the plaintiff had failed to view these paragraphs holistically in the context of the plea.

[9] In his oral submissions, Mr *Bond*, who appears on behalf of the plaintiff, relied on *Compensation Solutions (Pty) Ltd v Compensation Commission and Others*¹ and submitted that the process of exchange of pleadings commenced afresh after summary judgment proceedings had come to an end. He submitted that the plaintiff was therefore entitled to deliver an exception after summary judgment was refused.

[10] In relation to the exception on the merits, Mr *Bond* submitted that the plea contained contradictory allegations and was therefore vague and embarrassing.

Analysis of the argument

[11] I first turn to consider whether it was competent for the plaintiff to resort to exception proceedings, after summary judgment was refused.

[12] *Erasmus: Superior Court Practice*² states the following regarding whether it was competent to bring an exception after summary judgement was refused:

'The position regarding the delivery by the plaintiff of an exception to the defendant's plea, whether before or simultaneously with its application for summary judgment, appears to be more complicated than the one regarding the delivery of a replication to the plea. In principle there appears to be nothing in rule 32 in its amended form to preclude the plaintiff from

¹ *Compensation Solutions (Pty) Ltd v Compensation Commission and Others* [2024] ZAGPPHC 55, (Compensation Solution) para 5.

² D E van Loggerenberg *Erasmus: Superior Court Practice* (RS 26, 2025) (*Erasmus*) at D1, Rule 32 – 23.

delivering an exception and contending, for example, with reference to the exception in its affidavit supporting summary judgment that the plea does not disclose a defence and that no triable issue arises. Each case must be determined on its own facts.'

[13] In *casu*, it is common cause that the notice of exception was delivered after summary judgment was refused. I respectfully disagree with *Compensation Solutions*. *Compensation Solutions* relied on *Khayzif Amusement Machines CC v Southern Life Association Ltd*³ and held that the principles applicable therein, are also applicable to the new dispensation for summary judgment applications. It is not clear on what basis the principles are applicable as the case dealt with the filing of a plea, and it endorsed *Van Heerden v Samarkind Motion Picture Productions*⁴, which held that the period in Uniform rule 22 is suspended when a summary judgment application is brought. After the amendment of the rules, the filing of a plea is a prerequisite before summary judgment proceedings can be brought. Hence it is not clear on what basis it was held in *Compensation Solutions* that *Khayzif Amusement Machines CC* is now still be applicable.

[14] Furthermore, the only reason that the court in *Compensation Solutions* stated why the time periods start to run afresh is based on the interest of justice and that it will be a practically and procedurally fair process. The provisions of Uniform rule 23 were never fully dealt with. Uniform rule 23, itself, contains no provision that the time periods are suspended pending the determination of a summary judgment application. It explicitly stipulates that the time periods are. Uniform rule 23(4), for example, states that once an exception is taken no plea, replication or other pleading may be filed.

[15] I therefore do not accept the submission by the plaintiff, that the process of exchange of pleadings starts afresh after summary judgment proceedings have come to an end. To allow the notice of exception to stand in the present circumstances, would in effect, be allowing the plaintiff a second opportunity to take issue with the defendant's plea, after summary judgment was refused. In line with what is stated with *Erasmus*, had the notice of exception been delivered before or simultaneously with the application for summary judgment, the plaintiff might have been able to justify the

³ *Khayzif Amusement Machines CC v Southern Life Association Ltd* 1998 (2) SA 958 (D).

⁴ *Van Heerden v Samarkind Motion Picture Productions* 1979 (3) SA 786 (T).

exception. The plaintiff would have also been able to rely on the exception to bolster its case that the defendant did not have a *bona fide* defence.

[16] I have, in passing, perused the application for summary judgment which was in the court file and it is clear from the plaintiff's affidavit in support of summary judgment, that the plaintiff was emphatic that the defendant had not raised any triable issues. Had the defendant's plea been vague and embarrassing, the plaintiff would not have been able to ascertain whether the defendant had raised any triable issue. I am satisfied that the plaintiff was not entitled to raise an exception to the defendant's plea after summary judgment was refused. The exception therefore fails on this ground alone.

[17] In the event, however, that I am wrong in this regard, I would, in any event, have found that the first ground for exception advanced by the plaintiff must fail for the following reasons:

(a) It is trite that:

'It is a first principle in dealing with exceptions that, if evidence can be led which can disclose a cause of action alleged in the pleading, that particular pleading is not excipiable. A pleading is only excipiable on the basis that no possible evidence on the pleadings can disclose a cause of action'⁵.

(b) The onus is on the excipient to show both vagueness amounting to embarrassment and that the embarrassment amounts to prejudice.⁶

(c) A reading of paragraph 4 of the defendant's plea, makes it clear that the defendant, whilst admitting that the appointment of the plaintiff would have been subject to the standard terms and conditions contained in annexure 'POC4', denies that those standard terms and conditions were agreed to because annexure 'POC4' 'does not have the requisite and duly authorised signatures'. (Underlining is my emphasis.)

(d) Paragraph 5 of the plea goes on to state that the defendant denies that annexure 'POC4' was signed and puts the plaintiff to the proof thereof.

(e) When reading the plea as a whole, I am of the view, that it is not vague and embarrassing and there is no prejudice to the plaintiff.

⁵ *McKelvey v Cowan* N O 1980 (4) SA 525 (Z) at 526 D.

⁶ *Calender-Easby v Grahamstown Municipality and Others* 1981 (2) SA 810 (E) at 813A.

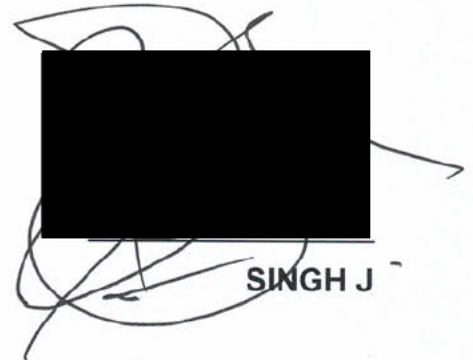
Costs

[18] Both counsel submitted that costs must follow the result. The plaintiff, being unsuccessful in respect of the exception, must therefore pay the costs of the exception. The matter, in my view, was not complex and the appropriate scale of costs, is therefore scale B.

Conclusion

[19] I accordingly make the following order:

The exception is dismissed with costs on scale B.



SINGH J

CASE INFORMATION

Date of hearing of leave to appeal : 26 August 2025

Date of Judgment : 05 September 2025

APPEARANCES

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