

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023/038900

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
8 August 2025 DATE	 SIGNATURE

In the matter between:

NEDBANK LIMITED

Plaintiff/Applicant

and

ROLL-UP SERRANDA (PTY) LTD

First Defendant/Respondent

DAVID ALEXANDER KEARNEY

Second Defendant/Respondent

JUDGMENT

CRUTCHFIELD J

- [1] The applicant, Nedbank Limited, seeks an order compelling the respondents to provide sufficient, adequate or full particulars in terms of Rule 21(4) of the Uniform Rules of Court. The applicant is the plaintiff in the trial action, Nedbank Limited.

- [2] The first respondent is Roll-Up Serranda (Pty) Ltd and the second respondent is Mr David Alexander Kearney. At all times material hereto, the second respondent was a director of the first respondent. The respondents oppose the application.
- [3] I intend to refer to the parties henceforth as they are referred to in the trial action, being as the plaintiff and the first and second defendants respectively.
- [4] There is an issue before me in respect of the plaintiff's amendment to the notice of motion in this interlocutory application. The amendment is not material notwithstanding the first and second defendants' cries of prejudice and objection to the amendment. The defendants are correct that there is no formal application for an amendment before me to the notice of motion.
- [5] The plaintiff initially sought an order compelling the defendants to deliver a reply to the plaintiff's request for particulars in terms of Rule 21(4) in circumstances where the defendants delivered a reply thereto already, on 18 March 2024. The plaintiff contends that that reply was insufficient and seeks an order in terms of the application that the defendants reply "fully" to the request. The defendants object to the plaintiff's amendment to the notice of motion in this application. It is evident from the defendants' papers that they are aware that the plaintiff seeks a full reply to the request in terms of Rule 21(4) and the defendants dealt with the application on that basis. In the circumstances, the defendants well knew what the plaintiff sought and dealt with the application accordingly. I intend to grant the amendment.
- [6] The plaintiff is a finance house. It concluded an agreement for the provision of finance in respect of the first and second defendants' hire of certain telecommunication equipment ("the equipment"). The plaintiff did not participate in respect of the underlying agreement between the defendants and the supplier of the equipment, one CRS Corporate Rental Solutions (Pty) Ltd ("CRS").
- [7] The plaintiff pleads that CRS ceded its rights and obligations under the master rental agreement concluded between CRS and the defendants ("the agreement"), to the plaintiff during or about June 2018, alternatively August

2018. A copy of the agreement between CRS and the first defendant duly represented by the second defendant is attached to the particulars of claim and marked as POC1. The defendants deny that they concluded the agreement, POC1. The first defendant during or about December 2018, allegedly breached the agreement with the plaintiff as a result of which the full amount due and owing under the agreement became due and payable to the plaintiff. Accordingly, the plaintiff claims payment from the defendants jointly and severally of the amount of R163 212.49 together with interest and costs.

- [8] The plaintiff contends that certain specified equipment was installed at the first defendant's premises consequent on the conclusion of the agreement. The defendant denies as much.
- [9] The plaintiff argues that its request for full particularity is necessary in order for the plaintiff to be sufficiently apprised of the defendants' defence that they intend raising at trial.
- [10] Further particularity or further and better particularity or full particularity or sufficient or adequate particularity, all of which mean substantially the same in terms of Rule 21(4), may only be requested if the particularity is strictly necessary to prepare for trial. The test is whether or not the particularity sought is "strictly necessary" in order for the plaintiff to prepare for trial. Obviously, the plaintiff's claim as it appears from the particulars of claim and the defendants' defences thereto as they appear from the plea, are relevant.
- [11] At the heart of this application, however, are the parties' respective rights to a fair trial which encompasses each party's entitlement to know adequately the case that it has to meet at trial. That includes the facts reasonably necessary to know the case that a litigant has to meet but it does not include, generally, the evidence in respect of those facts that an opposing party intends to prove.
- [12] I do not intend to deal with each of the plaintiff's requests for particularity *seriatim*. The plaintiff bundled the respective paragraphs together for purposes of the application and I shall deal with the application accordingly.

- [13] In respect of the plaintiff's first request, the plaintiff complains that it is unable to discern the nature and extent of the defendants' defence arising from various proposals made to the first defendant by a third party, Samsung Plexis, which proposals are attached to the defendants' plea marked as annexures A1 to A45. Each page is given a separate annexure number running consecutively from A1 to A45.
- [14] Furthermore, the plaintiff alleges that it requires details of the equipment installed by Samsung Plexis at the first defendant's premises, that the defendants allege is not the equipment reflected in the proposals aforementioned or the agreement concluded between the first defendant and CRS.
- [15] The plaintiff alleges that it cannot discern the nature and extent of the defendants' defence premised on the proposals, copies of which are annexed to the defendants' plea. The defendants may not attach documentation to their plea or other pleadings and expect the plaintiff to trawl through the documents in order to guess what it is that the defendants rely on and what the defendants seek to bring to the attention of the court at trial. The parties are referred to *Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa*,¹ which specifies that where documentation is attached, the parties must refer to the specific paragraph or paragraphs or content of that documentation upon which they place reliance. Accordingly, the plaintiff is entitled to be told what it is that the defendants rely on with reference to the proposals attached as annexures A1 to A45.
- [16] Accordingly, the defendants must provide sufficient particularity to enable the plaintiff to know what it is that the defendants intend to prove in respect of the proposals made by the third party, Samsung Plexis. The defendants must also furnish such particularity as is required to provide clarity to the plaintiff in respect of the annexures to the defendants' plea. Accordingly, the defendants must provide the particularity required by the plaintiff in paragraphs 2 and 7 of the plaintiff's request for further particulars for trial.

¹ *Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa* 1999 (2) SA 279 (T).

- [17] The plaintiff is entitled to know what case the defendants seek to advance at trial with reference to the annexures to the plea, being the alleged proposals from the third party, Samsung Plexis. This will include whether or not the defendants contend that they accepted a proposal for Samsung Plexis to install IP equipment on the first defendant's premises, being paragraph 8 of the plaintiff's request. Accordingly, the defendants must provide the particularity required by the plaintiff in paragraph 8 of the plaintiff's request for further particulars for trial.
- [18] As to the identification of the equipment that was installed on the first defendant's premises, the defendants deny that it was the equipment alleged and relied upon by the plaintiff. Yes, the plaintiff must prove that the equipment relied upon by it was delivered and installed on the first defendant's premises as alleged by the plaintiff. The defendants attach an expert notice to their further particulars in respect of the equipment that was installed on the first defendant's premises. The defendants allege that they have informed the plaintiff of the identification of the equipment so installed. The defendants are required to identify that equipment that was installed on the first defendant's premises, which the defendants allege that they have done.
- [19] In respect of the plaintiff's second request (being paragraph 12 of the request for further particulars), the particularity required is not strictly necessary to enable the plaintiff to prepare for trial.
- [20] In respect of the plaintiff's third request (paragraphs 14 and 15 of the request for further particulars for trial), the defendants allege a proposed agreement that was to be concluded by the first defendant. Insofar as the defendants rely on an alleged agreement, the defendants must identify the terms of that agreement as alleged and must identify the equipment that constitutes the "telephone and communication system," referred to by the defendants, particularity of which is requested by the plaintiff in paragraphs 14 and 15 of the request. The plaintiff cannot be expected to guess what equipment the defendants received. I have already found that the defendants must inform the plaintiff on what proposal it intends relying. This includes the terms of the intended agreement and details of the equipment that was installed on the first

defendant's premises. The defendants must supply sufficient particularity to inform the plaintiff of the terms of the proposed agreement.

- [21] In respect of the plaintiff's fourth request (paragraphs 16.2 and 16.3 of the request for further particulars for trial), the plaintiff is entitled to be informed of the description or identification of the goods or equipment in respect of the "defendant's telephone and communication system" that was delivered and installed at the first defendant's premises.
- [22] The defendants must furnish the plaintiff with sufficient particularity necessary to inform the plaintiff of the identification of the goods that the defendants contend were installed. Accordingly, the defendants must supply to the plaintiff the particularity requested in paragraph 16.2.2 of the plaintiff's request for further particulars of trial. Furthermore, the defendants must state on what date the delivery of the goods or equipment to the first defendant occurred, if it is the defendants' case that delivery of the goods or equipment to the first defendant did so occur.
- [23] In respect of the plaintiff's fifth request, paragraph 18 of the request for further particulars for trial, the identification of the equipment that was delivered to the first defendant's premises is dealt with in terms of paragraph 16.2.2 of the request for further particulars, and must be identified by the defendants. Accordingly, insofar as the particularity sought in paragraph 18 of the plaintiff's request for particulars for trial differs from the request in paragraph 16.2.2 of the request, the particularity sought in terms of paragraph 18 of the request must be provided by the defendants.
- [24] In respect of the plaintiff's sixth and seventh requests, paragraphs 21, 27 and 30 of the plaintiff's request for further particulars for trial, the plaintiff is entitled to know what agreement the defendants intend to prove for the purposes of the defendants' defence. The plaintiff is entitled to such particularity as to the terms of the agreement between the first defendant and CRS as referred to and relied upon by the defendants and to know whether the terms were express, implied or tacit. In respect of tacit terms relied on by the defendants, the defendants must set out the circumstances giving rise to the tacit terms. In

respect of the circumstances, the plaintiff is entitled to the full particulars set out above and I intend to grant an order accordingly.

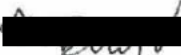
[25] As to the amendment to the plaintiff's notice of motion, the defendants were well aware that the plaintiff intended an application for sufficient particularity. There is no prejudice to the defendants arising from the amendment.

[26] In respect of the costs of the application for sufficient particularity, both parties have enjoyed some success in the matter. The plaintiff's quantum in the pending trial action is R163 212.49, which quantum falls within the jurisdiction of the District Court. Accordingly, costs on the Magistrates' Court scale are appropriate in this matter. In the circumstances, where both parties have achieved some success in the application, I am minded to order that costs on the Magistrates' Court scale be costs in the cause of the trial action.

[27] By reason of the aforementioned, I grant the following order:

1. The defendants are ordered to provide, within ten (10) days of the date hereof, the further particularity requested by the plaintiff in paragraphs 2, 7, 8, 14, 15, 16.2.2, 18, 21, 27 and 30 of the plaintiff's request for further particulars for trial.
2. The costs of this interlocutory application for further particulars for trial, on the Magistrates' Court scale, are costs in the cause of the trial action.

I hand down the judgment.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant/Plaintiff:

Adv M Nieuwoudt instructed by Moodie &
Robertson Attorneys

For the First and Second Defendants:

Adv A P Bruwer instructed by LVH
Attorneys

Date of the hearing:

23 April 2025

Date of the judgment:

8 August 2025