



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2023-131659

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

26 September 2025
DATE

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SIGNATURE

In the matter between:

JOHANNES ZACHARIAS HUMAN MULLER N.O. First Plaintiff

NADASEN MOODLEY N.O. Second Plaintiff

MAMBA PHP (PTY) LTD Third Plaintiff

ZENON HOLDINGS (PTY) LTD Fourth Plaintiff

PHP ARMED RESPONSE (PTY) LTD Fifth Plaintiff

ANDRIES CHRISTIAAN PETZER Sixth Plaintiff

and

JONATHAN HENDRICKS First Defendant

MAMBA STRIKE FORCE CC Second Defendant

MAMBA CHARLIE (PTY) LTD Third Defendant

MAMBA TECHNICAL (PTY) LTD Fourth Defendant

MAMBA GUARDING (PTY) LTD Fifth Defendant

MAMBA SECURITIES (PTY) LTD Sixth Defendant

HENDRICKS HOLDINGS (PTY) LTD Seventh Defendant

WATT-PRINGLE AJ:

1. This is an application for certain amendments to the plaintiffs particulars of claim to which objection has been made on the basis that they would render the particulars of claim vague and embarrassing or result in a failure to disclose a cause of action.
2. The plaintiffs' claims relate to several causes of action arising from the liquidation of the third plaintiff (**the company**), of which the first and second plaintiffs are the liquidators. The causes of action are in part based on the impeachable transaction provisions of the Insolvency Act 24 of 1936.
3. It is also the plaintiffs' pleaded case that the first defendant caused the business of the company to be transferred to the second defendant, for no consideration after the effective date of the liquidation of the company.
4. Finally, the plaintiffs claim that the issuance of 50% of the shares in the company to the first defendant is void for non-compliance with section 40(5) of the Companies Act, 71 of 2008.

Application to amend

5. The summons was issued on 12 December 2023. A notice in terms of rule 23 (1) to remove causes of complaint was delivered on 16 January 2024. In response, plaintiffs on 7 February 2024 delivered a rule 28 (1) notice of intention to amend, in order to remove the causes of complaint. Not satisfied with the proposed amendments, the defendants on 19 February 2024 delivered a notice of objection on the basis that not all the causes of complaint had been addressed.
6. A further notice of amendment was delivered on 15 March 2024, to which objection was noted on 27 March 2024. The upshot was that none of the

amendments were effected and on 14 May 2024, the defendants delivered an exception to the plaintiffs' particulars of claim, on the basis that some of the claims were vague and embarrassing and failed to disclose a cause of action.

7. It must be born in mind that the exception is directed at the particulars of claim in original form, since neither the first nor the second notice of amendment resulted in any amendment to the particulars of claim.
8. On 30 May 2024, the plaintiffs delivered a substantive application for condonation and leave to amend their particulars of claim. They also sought an order that the defendants be directed to plead within ten days of the plaintiffs filing their amended pages, and costs on scale C.
9. The plaintiffs seek the leave of the court to amend the particulars of claim in accordance with their second notice of amendment. They consequently addressed the defendants' grounds of objection in their notice objecting to that notice, in their founding affidavit.
10. This notwithstanding, the defendants in their answering affidavit opposing the amendments quoted their notice of exception in full, and in the ensuing paragraphs repeatedly asserted that the deponent to the plaintiffs' founding affidavit (their attorney) had no personal knowledge of the facts of the matter and that her affidavit should largely be disregarded.
11. That approach was misguided and unhelpful. The deponent did not require personal knowledge of the facts on which the plaintiffs' claims are based because the objections to the proposed second amendment were based on technical grounds relating to pleading, and legal grounds, not on whether the proposed amendments were bona fide, which might have occasioned the need for the

plaintiffs to deal with facts demonstrating that the proposed amendments were in fact bona fide.

12. What is more, the most significant ground on which the application was opposed in argument was not identified in the answering affidavit. I will deal with that below.
13. I intend to deal only with the grounds of objection which were pressed in argument on behalf of the defendants. I am in any event of the view that those not expressly dealt with in this judgment are without merit, in that the defendants are not embarrassed in their ability to plead thereto.
14. In the first objection, the defendants took issue with the way the plaintiffs pleaded the value of the company's business for purposes of their claim C. In claim C the plaintiffs allege that at all material times the value of the company's business was R9 274 590.71 based on the average monthly turnover of the company's business taken over the period July to October 2022 multiplied by 14, plus R2 317 750, being the value of the company's rights to the use and enjoyment of the motor vehicles as at October 2022 in terms of certain specified instalment sale for lease agreements. Additional particulars were provided in the proposed amendment of the manner in which the monthly turnover of the company had been calculated.
15. In essence the defendants take issue with the soundness of this approach to the calculation of the value of the company's business. The principle they invoke is that an amendment will not be allowed where it will render the pleading excipiable on vague and embarrassing grounds, or on the grounds that it is legally unsustainable. Where the complaint is that the pleading will be rendered vague and embarrassing, the test is whether the pleading is formulated in such a way

that the opposing party is unable to ascertain the case they must meet and are prejudiced in their ability to plead thereto.¹

16. In my view it is neither possible nor appropriate for this court at this stage to adjudicate whether the way the plaintiffs' calculate the value of the business is sound. That is a matter for the trial court. The defendants are entitled to know what the value is and how it is calculated. That has been pleaded in some detail. The defendants are entitled to plead a denial or elaborate in their plea as to how and why they differ with the way the plaintiffs have approached this question. They are not prejudiced in their ability to plead.
17. This objection is therefore in my opinion unsound.
18. The objection which dominated the argument before me related to claim C and whether section 31 of the Insolvency Act, which relates to impeachable transactions concluded "*before the sequestration*", can be invoked where the transaction sought to be set aside was alleged to have been concluded "*immediately after the liquidation.*"
19. Claim C as it will read if the proposed amendments are allowed, will include the following allegations:
 - 19.1. The application for liquidation of the company was issued on 16 November 2022 and a final order was made on 16 November 2022. In terms of section 348 of the Companies Act, 61 of 1973, the date of liquidation is therefore 16 November 2022.²

¹ *Jowell v Bramwell-Jones and Others* 1998 (1) SA 836 (W) at 901H – 902B.

² Para 18

- 19.2. Immediately after the date of liquidation and during the period between 16 November 2022 and 15 March 2023, the first defendant acting for the company, and the second defendant, disposed of the whole of the company's business as a going concern to the second defendant.³
- 19.3. The disposal was effected after the date of liquidation and is void in terms of section 341 of the Companies Act, 1973.
- 19.4. The disposal of the business as a going concern constitutes a disposition as defined in section 2 of the Insolvency Act.
20. That is on the face of it a complete cause of action as far as it goes.
21. Claim C goes on to invoke section 31 of the Insolvency Act and to that end, further allegations are made:
- 21.1. The transfer was done in collusion between the first and second defendants in that the parties knew that the transfer would prejudice the company's creditors and prefer the second defendant over the other creditors;
- 21.2. It had that effect;
- 21.3. It caused the company to suffer loss in the amount of the value of the business;
- 21.4. Accordingly in accordance with section 31 of the Insolvency Act, the transfer falls to be set aside and the second defendant is liable to make good the loss and pay a penalty in an equivalent amount. The plaintiffs also

³ Para 46

claim an order for forfeiture of any claims the first or second defendants may have against the company.

22. It is apparent therefore that flowing from the same alleged transaction, relief is being claimed pursuant to section 341 of the Companies Act, 1973, and section 31 of the Insolvency Act, read with the relevant provisions of the Companies Act (both the 1973 and 2008 Acts).
23. Section 31 of the Insolvency Act is made applicable to liquidations by virtue of section 340 (1) of the Companies Act, 1973:

340 Voidable and undue preferences

(1) Every disposition by a company of its property which, if made by an individual, could, for any reason, be set aside in the event of his insolvency, may, if made by a company, be set aside in the event of the company being wound up and unable to pay all its debts, and the provisions of the law relating to insolvency shall mutatis mutandis be applied to any such disposition.

24. Section 31 of the Insolvency Act reads:

31 Collusive dealings before sequestration

(1) After the sequestration of a debtor's estate the court may set aside any transaction entered into by the debtor before the sequestration, whereby he, in collusion with another person, disposed of property belonging to him in a manner which had the effect of prejudicing his creditors or of preferring one of his creditors above another.

(2) Any person who was a party to such collusive disposition shall be liable to make good any loss thereby caused to the insolvent estate in question and shall pay for the benefit of the estate, by way of penalty, such sum as the court may adjudge, not exceeding the amount by which he would have benefited by such dealing if it had not been set aside; and if he is a creditor he shall also forfeit his claim against the estate.

(3) Such compensation and penalty may be recovered in any action to set aside the transaction in question.

25. The defendants' opposition to the plaintiffs' reliance on section 31 is that it relates to dispositions made pursuant to transfers made before the sequestration, whereas this disposition is alleged to have been made after the deemed date of liquidation.

26. What is more, section 340 (2) of the Companies Act, 1973 in relevant part reads:

(2) For the purpose of this section the event which shall be deemed to correspond with the sequestration order in the case of an individual shall be-

(a) in the case of a winding-up by the Court, the presentation of the application, unless that winding-up has superseded a voluntary winding-up, when it shall be the registration in terms of section 200 of the special resolution to wind up the company;

27. This is consistent with section 348 of the Companies Act, 1973 which states that

“[A] winding-up of a company by the Court shall be deemed to commence at the time of the presentation to the Court of the application for the winding-up.”

28. Mr van der Merwe for the plaintiffs points out that whereas in the case of a sequestration, the insolvent is with effect from the date of the provisional order divested of any control over his estate which is placed in the hands of the provisional trustee,⁴ this is not the case in a liquidation, where not even a provisional order, much less the mere issuing of the application for liquidation, divests the board of a company of control over the assets of the company until a liquidator is appointed pursuant to the final liquidation order and passing of control to the Master and liquidators.⁵

29. Mr van der Merwe contends that it would lead to an absurdity which could not have been intended by the legislature that a transaction executed before the application for liquidation was issued would be susceptible to impeachment under section 31, whereas the same transaction executed between the date of issue of the application and the final order would not.

⁴ See section 18 read with section 20 of the Insolvency Act.

⁵ *Engen Petroleum Ltd v Goudis Carriers (Pty) Ltd (In Liquidation)* 2015 (6) SA 21 (GJ) at para [8].

30. There is some force in this submission. Questions of interpretation and whether the words “*mutatis mutandis*” in section 340(1) can assist the plaintiffs in their interpretation involve an analysis of the scheme and purpose of section 31 as it is made to apply to liquidations of the sort carried out by Sutherland J (as he then was) in *Engen Petroleum Ltd v Goudis Carriers (Pty) Ltd (In Liquidation)* 2015 (6) SA 21 (GJ), dealing with a similar issue regarding the interpretation of section 341 of the Companies Act, 1973.
31. In my view, it would not be appropriate for me, sitting in this interlocutory application for amendments to the plaintiffs’ pleadings, to rule on whether the correct interpretation of the applicable sections would render the relief claimed on the basis of section 31 excipiable. I say so for several reasons:
- 31.1. The determination of this question will not obviate the need for a trial. Although a decision favourable to the defendants at this stage would curtail the ambit of evidence required for claim C, it would not in my view materially curtail the duration or ambit of the trial.
- 31.2. A finding by me against the plaintiffs’ interpretation and consequent refusal of the amendment of claim C at this stage would be appealable, because it would close the door on much of the relief claimed by the plaintiffs in claim C.
- 31.3. Any such appeal would further delay proceedings already significantly delayed and add to the costs of litigation for both parties. If the plaintiffs elected not to appeal for these reasons, they would potentially forfeit what could in theory be a sound claim.

- 31.4. Finally, I do not feel that this legal issue was as fully argued as would be the case at the conclusion of the trial. It was barely mentioned in the written heads and neither counsel referred me to any authority directly or indirectly in point.
32. In the circumstances, I do not consider it expedient to tie the hands of the trial court on this issue of interpretation, especially as I do not believe that even a decision favourable to the defendants will significantly curtail the proceedings that lie ahead.
33. The third and final objection dealt with by counsel relates to claim D.
34. The plaintiffs' cause of action in claim D is based on section 40 and specifically, alleged non-compliance with 40(5) of the Companies Act, 2008, in that the consideration due by seventh defendant for 50% of the shares issued to it was alleged to be in the form of future services or benefits. The other 50% was issued to the fourth plaintiff.
35. The defendants object to the formulation of the claim essentially on two bases.
36. The first is that the plaintiffs place reliance on an assignment agreement which refers to a company to be incorporated, referred to in the assignment agreement as "*PHP Mamba East Rand Proprietary Limited*", whereas plaintiffs allege that the "*Newco*" which was incorporated pursuant to the assignment agreement was the company (i.e. the third plaintiff) and the assignment agreement contains a non-variation clause.
37. The second is that there is no basis to claim that the 50% of shares issued to the seventh defendant should be transferred to the fourth plaintiff.
38. In my view there is no merit in these complaints.

39. As to the first complaint, the fact that Newco, in the event, is alleged to have been given a name different to the one envisaged at the time that the assignment agreement was concluded is no basis to suggest either that the particulars are vague and embarrassing or lack a cause of action. The complaint is one of form over substance, in that the plaintiffs allege that the parties instead incorporated the company to serve the role of the Newco envisaged in the agreement. That is either factually true or not, but the plaintiffs' case is clearly pleaded on the point, and the defendants can plead thereto.
40. As to the second complaint, the plaintiffs do not claim an order for the transfer of the seventh defendant's shares in the company to be transferred to the fourth plaintiff. They assert that once the issue of the shares to the seventh defendant is set aside, the fourth plaintiff will be the sole shareholder. That is consistent with the relief claimed under claim D.

Condonation

41. The application was made outside of the 10-day period permitted after the defendant had delivered its objection to plaintiffs notice of amendment in terms of rule 28 (1).
42. In the application for amendment the plaintiffs' seek condonation. Their attorney explains that she was unable to attend to the matter within the requisite period because she was traveling at the time and that there was no prejudice to the defendant occasioned by the late filing of the application. Upon inquiry Mr. Kaplan who appeared for the defendant confirmed that the defendant persisted in objecting to the application on the basis that the explanation for the delay was inadequate and condonation ought to be refused.

43. Mr. Kaplan asserted that the plaintiff ought to have re-served its notice of intention to amend so that the defendant could re-serve its objection and the applicant could then timeously make its application for amendment. Whilst this solution would have obviated the need for condonation, it would also have resulted in a duplication of processes already before the court and resulted in further delay and additional costs. To what end, I am unable to fathom. Insisting on compliance with the rules simply for the sake of it casts this court into the role of a slave to its own rules, which as has been stated time and again, it is not.
44. While the explanation for the delay could have been more detailed and comprehensive, I have a wide discretion to reach a decision which best serves the interests of justice. In my view adequate grounds for condonation have been made out and I am prepared in the interests of justice to grant condonation.

Time within which the defendants must plead

45. I do not see any reason to order the defendants to deliver their plea within any specified period. This is a matter adequately governed by the rules.

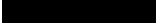
Costs

46. The two notices of objection resulted in the plaintiffs making significant amendments to their particulars of claim. In my view and specifically considering the conclusions to which I have come regarding the objections to the proposed amendments, this substantive application should not have been necessary.
47. The defendants' opposition to the application for condonation was also impractical and obstructive, leading to the inference that there is something to be said for the proposition that they are in no hurry to proceed to trial.

48. In my view, on a conspectus of all relevant factors, the costs of this application should be borne by the defendants. The parties agreed that the applicable scale would be scale C. I do not however see any basis to award punitive costs as claimed by the plaintiffs.
49. In the circumstances, I make the following order:
1. The late filing of the application dated 28 May 2024 is condoned.
 2. The plaintiffs are given leave to amend their particulars of claim in accordance with the proposed amendments reflected in annexure "KJ4" to the founding affidavit.
 3. The defendants are ordered to pay the costs of the application on Scale C.

BY THE COURT

REGISTRAR



**CE WATT-PRINGLE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 26 September 2025.

Date of hearing: 27 May 2025

Date of judgment: 26 September 2025

Appearances

Counsel for the plaintiffs: Mr H van der Merwe

Instructed by: Andersen

Counsel for the respondents: Mr J Kaplan

Instructed by: MJ Hood and Associates