



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case no: 2025-056322

In the matter between:

ERWIN SONWABILE METH

Plaintiff / Respondent

and

NEDBANK LIMITED

First Defendant / Excipient

LUNTU NGCWABE

Second Defendant / Excipient

SUN INTERNATIONAL LIMITED

Third Defendant / Excipient

Heard: 12 September 2025

Delivered: 03 October 2025

JUDGMENT

BHIMA AJ

Introduction

- [1] The plaintiff has instituted an action or claim for adjudication out of this Court; claiming damages, from the defendants, jointly and severally.
- [2] The defendants have all excepted to the statement of claim for various reasons.
- [3] The first defendant/excipient ("*Nedbank*") contends (broadly) that:

- 3.1 this Court lacks the requisite jurisdiction as the matter should have been brought before the CCMA and/or the conclusion of a mutual separation agreement (“MSA”) excludes this Court’s jurisdiction; and
- 3.2 no cause of action has been disclosed by the plaintiff (for various reasons).
- [4] The second defendant/excipient (“Ngcwabe”) contends that this Court lacks jurisdiction as there was no “*employment relationship*” between Ngcwabe and the plaintiff.
- [5] The third defendant/excipient (“Sun City”) contends that no cause of action is disclosed against it as, stripped of surplusage, the plaintiff has failed to plead the requisites to sustain a claim in delict.
- [6] All of the excipients effectively aligned themselves with each other.

Legal principles relating to exceptions

- [7] The law regarding exceptions is settled.
- [8] In *Living Hands (Pty) Ltd and another v Ditz and others*¹, Makgoka J summarised the basic principles with regard to exceptions as follows:
- 8.1 In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by H the plaintiff to assess whether they disclose a cause of action.
- 8.2 The object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw, but to dispose of the case or a portion thereof in an expeditious manner, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception.
- 8.3 The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a very clear case before it would be allowed to succeed.

¹ 2013 (2) SA 368 (GSJ) at para [15].

- 8.4 An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclosed.
- 8.5 An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.
- 8.6 Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained.
- 8.7 Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars.

[9] In *Merb (Pty) Ltd v Matthews*², Maier-Frawley J referred to the aforesaid principles and added the following:

- 9.1 Exceptions are also not to be dealt with in an over-technical manner, and as such, a court looks benevolently instead of over-critically at a pleading.
- 9.2 An excipient must satisfy the court that it would be seriously prejudiced if the offending pleading were allowed to stand, and an excipient is required to make out a very clear, strong case before the exception can succeed.
- 9.3 Courts have been reluctant to decide exceptions in respect of fact bound issues.
- 9.4 Where an exception is raised on the ground that a pleading lacks averments necessary to sustain a cause of action, the excipient is required to show that upon every interpretation that the pleading in question can reasonably bear, no cause of action is disclosed. It is trite that when pleading a cause of action, the pleading must contain every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment (*facta probanda*). The *facta probanda* necessary for a complete and properly pleaded cause of action importantly does not comprise every piece of evidence which is necessary

² Unreported, GJ case no 2020/15069 dated 16 November 2021.

to prove each fact (being the *facta probantia*) but every fact which is necessary to be proved.

- 9.5 An exception to a pleading on the ground that it is vague and embarrassing requires a two-fold consideration: (i) whether the pleading lacks particularity to the extent that it is vague; and (ii) whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced in the sense that he/she cannot plead or properly prepare for trial. The excipient must demonstrate that the pleading is ambiguous, meaningless, contradictory or capable of more than one meaning, to the extent that it amounts to vagueness, which vagueness causes embarrassment to the excipient.

Factual synopsis

- [10] Before I delve into the merits of the exceptions it is necessary to summarise certain facts.
- [11] I pause to mention that the factual synopsis herein contained is by no means common cause; it is taken mainly out of the plaintiff's pleadings which, for the purpose of exception, I may accept as true.
- [12] The plaintiff was an employee of Nedbank. During the tenure of his employment, he had an affair with Ngcwabe who was in a heterosexual marriage at the time. The affair was apparently kept secret for a while whereafter it was discovered by Ngcwabe's wife and became common knowledge amongst the employees of Nedbank.
- [13] The plaintiff appears to allege that as a result of the foregoing he was victimised, discriminated and harassed at work.
- [14] During his employment with Nedbank, the plaintiff also travelled to Sun City's resort during the Nedbank Golf Challenge. He stayed with Ngcwabe who was there in an official capacity. During the course of his stay there, the plaintiff was involved in numerous arguments with third parties including Sun City staff and damaged Sun City's property. Sun City of course had footage of the relevant incident and shared this footage with Nedbank.

[15] Pursuant thereto, Nedbank sought to discipline the plaintiff as a result of his conduct. Following therefrom, the plaintiff agreed to terminate his employment and concluded the MSA with Nedbank.

[16] The plaintiff now contends, however, that the conclusion of the MSA was actuated by duress or undue influence and is therefore invalid. He also contends that Nedbank is in breach of the MSA, in breach of the Public Disclosures Act, No. 26 of 2000 and its own policies.

[17] It further contends that by sharing the footage with Nedbank, Sun City has violated his constitutional rights and is jointly liable with Nedbank for the damages suffered, to the tune of R45 million.

[18] Ngcwabe is also alleged to be jointly liable with Nedbank and Sun City for the aforesaid damages.

Nedbank's exception

[19] Nedbank has raised nine grounds of exception to the statement of claim.

[20] The primary one is the contention that this Court lacks jurisdiction for two reasons:

20.1 the conclusion and terms of the MSA; and

20.2 section 191 of the Labour Relations Act, No. 66 of 1995 ("LRA").

[21] Nedbank also contends, for various reasons, that the statement of claim does not disclose a cause of action and/or is vague and embarrassing.

Jurisdiction

[22] It is generally accepted that if it appears *ex facie* the relevant pleading that the Court has no jurisdiction, a litigant can except thereto on the basis that no cause of action has been disclosed.³

[23] Nedbank contends that the conclusion of the MSA (being a settlement agreement in full and final settlement of the disputes between the plaintiff and

³ *Dusheiko v Milburn* 1964 (4) SA 648 (A) at 651H; *Communication Workers Union and another v Telkom SA Ltd and another* 1999 (2) SA 586 (T) at 594B-C.

Nedbank), means that this Court lacks jurisdiction to adjudicate the dispute. Put differently, there is no live dispute as the dispute has been settled.

[24] In *Nkosi v SSG Security Solutions (Pty) Ltd*⁴, this Court succinctly set out the legal principles relating to agreements in full and final settlement of disputes as follows:

‘In *SA Municipal Workers Union & others v City of Johannesburg Metropolitan Municipality*⁵, the LAC considered the nature of an agreement in full and final settlement and held that:

‘An agreement more often is a product of compromise between two or more parties. In most cases, it is embodied in a written document which records the compromise made and is held up as an enforceable deal. The written agreement is therefore conclusive as to the rights and obligations of the parties.’

In *Buthelezi v Liberty Group Ltd*⁶ this court held that:

‘Is the settlement agreement valid and binding between the parties? If yes *cadit quaestio*. It is correct as submitted by the respondent’s representative that as a general rule a person is bound by the terms of a signed agreement — the caveat rule. The rule applies even where the signatory has not read the agreement. ... A party seeking to resile from the agreement has to prove that the agreement is not binding on him or her.’

In *Gbenga-Oluwatoye v Reckitt Benckiser SA (Pty) Ltd & another*⁷, the Constitutional Court also considered a full and final settlement and held that:

‘The public, and indeed our courts, have a powerful interest in enforcing agreements of this sort. The applicant must be held bound. When parties settle an existing dispute in full and final settlement, none should be lightly released from an undertaking seriously and willingly embraced. This is particularly so if the agreement was, as here, for the benefit of the party seeking to escape the consequences of his own conduct. Even if the clause excluding access to courts were on its own invalid and unenforceable, the applicant must still fail. This is

⁴ (2020) 41 ILJ 1408 (LC) at paras [12]-[15].

⁵ (2013) 34 ILJ 1944 (LAC) at para [20].

⁶ (2012) 33 ILJ 607 (LC) at para [7].

⁷ (2016) 37 ILJ 902 (LAC) at para [24].

because he concluded an enforceable agreement that finally settled his dispute with his employer.’

In summary, the legal position is that a person is bound by the terms of a signed agreement and the signed agreement is conclusive as to the rights and the obligations of the parties.’

[25] The MSA is such an agreement, and is dispositive of all disputes between the parties.

[26] Furthermore, as Nedbank’s counsel pointed out, the plaintiff does not seek to set aside the MSA nor does it tender restitution of performance received under the settlement agreement.

[27] In *Makiwane v International Healthcare Distributors*⁸, this Court dealt with the effect of an agreement where payment was effected as full and final settlement of all claims an employee might have against his employer. It was held as follows:

‘[18] It is common cause between the parties that the applicant has been paid all the monies set out in the settlement agreement, that he has kept such monies and has made no tender to return them to the respondent. To my mind this clearly signifies his acceptance of such monies in full and final settlement of his claims against the respondent.

[19] Our law is trite that where a party accepts the benefits under any settlement agreement in full and final settlement of the benefits owing to him by his former employer arising from the termination of his employment relationship with such employer, and has abided by such acceptance of those benefits, he has placed himself beyond the jurisdiction of this court.

[20] Similarly, in the present case I am of the view that when the applicant signed the agreement, thereby signifying his acceptance of its terms, and later accepted the benefits paid to him in terms thereof, the dispute between him and the respondent was finally settled. From that time onwards there was no live dispute between the parties. There being no live dispute for this court to determine, it follows that this court has no jurisdiction to deal with this matter.’

⁸ (2003) 24 ILJ 2150 (LC).

[28] While the plaintiff has pleaded that the MSA is void for a number of reasons, the plaintiff also alleges that its claim is based on a breach of the MSA. At the very least this renders the statement of claim vague and embarrassing.

[29] As such, Nedbank's exception on this score is sound.

Cause of action / vague and embarrassing

[30] Having found that the primary ground of Nedbank's exception is sound I do not deem it necessary to spend too much time in relation to the contentions that the statement of claim fails to disclose a cause of action and/or is vague and embarrassing.

[31] The simple answer is that the statement of claim does not disclose a valid cause of action. On a generous interpretation, it may disclose some vague claim for damages however; it is trite law that a party wishing to claim damages resulting from a breach of contract must allege the terms of the contract, breach of the contract, damages, a causal link between the breach and damages and that the loss was not too remote.⁹

[32] At best for the plaintiff, necessary allegations are missing, as such, the statement of claim does not meet the requisite standard.

Ngcwabe's exception

[33] Ngcwabe's exception is that the Court lacks jurisdiction as there was no employment relationship between the plaintiff and Ngcwabe.

[34] This Court's jurisdiction is generally governed by section 157 of the LRA, which reads:

'Jurisdiction of Labour Court.

(1) Subject to [the Constitution](#) and [section 173](#), and except where *this Act* provides otherwise, the **Labour** Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of *this Act* or in terms of any other law are to be determined by the **Labour** Court.

⁹ *Eloff v Imvula Roads and Civils (Pty) Ltd* (JS1079/18) [2020] ZALCJHB 208 (1 September 2020) at para [16].

(2) The **Labour** Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in [Chapter 2](#) of [the Constitution](#) of the Republic of South Africa, 1996, and arising from—

(a) employment and from **labour relations**;

(b) any *dispute* over the constitutionality of any executive or administrative **act** or conduct, or any threatened executive or administrative **act** or conduct, by the State in its capacity as an employer; and

(c) the application of any law for the administration of which the *Minister* is responsible.

[35] The only conceivable way that this Court would have jurisdiction with regard to the claim against Ngcwabe in the present circumstances is if there was a violation of a fundamental right entrenched in the Constitution and it arose from 'labour relations'.

[36] Unfortunately for the plaintiff, the statement of case is devoid of the necessary allegations to support any such conclusion.

[37] Counsel for the plaintiff also conceded, correctly in my view, that no proper cause of action had been pleaded against Ngcwabe.

[38] In these circumstances, Ngcwabe's exception must succeed.

Sun City's exception

[39] Sun City complains that no cause of action has been disclosed against it, in delict or otherwise.

[40] The pleaded case against Sun City is unfathomable. On a generous reading, there may be a claim in delict.

[41] Unfortunately, the basic elements to sustain such a claim: conduct, wrongfulness, fault, causation and damage have not been properly pleaded. It is also unclear from the pleading why Sun City owed the plaintiff a duty of care and if it did, how it breached same.

[42] Accordingly, on any contention, no cause of action has been disclosed against Sun City, and its exception must also succeed.

Costs

[43] While I am mindful that costs do not always follow the event in this Court; in this matter I believe that an award of costs is justified.

[44] The plaintiff was legally represented by attorneys and counsel and the statement of claim emanated from an attorney. It was however so badly drafted that there can be no finding other than the upholding of the exceptions. In my view, in those circumstances, it would be unfair for the defendants to bear the costs associated with the exceptions which were not only well taken but, in my view, necessary.

[45] All the parties sought costs; Ngcwabe persisted with seeking a punitive cost order while Sun City waived the costs of two counsel. Ngcwabe is an individual who has been put through expense for, on the present stated case, no legal reason at all.

[46] In the circumstances of this matter, I believe the costs orders sought by all the defendants are justified.

Conclusion

[47] Labour Court Rules 11(1)(b)(ii) and (ii) require the statement of claim to contain “**a clear and concise statement of the material facts ...**” and “**a clear and concise statement of the legal issues that arise from the material facts ...**” respectively.

[48] Respectfully, the statement of claim filed in this matter is the antithesis of the aforesaid rules.

[49] It is impossible to discern what claim in law is made against the defendants.

[50] In the premise, I make the following orders:

Order

1. The exceptions of Nedbank, Ngcwabe and Sun City are upheld;
2. The statement of claim is set aside;

3. The plaintiff is to pay the costs of Nedbank's exception;
4. The plaintiff is to pay the costs of Ngcwabe's exception, on the attorney and client scale;
5. The plaintiff is to pay the costs of Sun City's exception, not including the costs of two counsel.

R Bhima

Acting Judge of the Labour Court of South Africa

Appearances

For the First Excipient: Adv L Kutumela

Instructed by: Molatudi Attorneys

For the Second Excipient: Adv M van As

Instructed by: Fluxmans Inc

For the Third Excipient: Adv T Govender and Adv L Bedhesi

Instructed by: D Naidoo & Associates Inc.

For the Plaintiff: Adv JKM Mosime

Instructed by: T Nyawose Attorneys Inc