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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable
Case no: 1883/2024**

In the matter between:

CENTLEC(SOC)LTD

EXCIPIENT

and

FREE STATE DEVELOPMENT CORPORATION

RESPONDENT

In re:

FREE STATE DEVELOPMENT CORPORATION

PLAINTIFF

and

CENTLEC(SOC)LTD

DEFENDANT

Neutral citation: *Centlec (SOC) Ltd v Free State Development* (1883/2024) [2025]
ZAFSHC 330 (24 October 2025)

Coram: NTSULANA AJ

Heard: 05 September 2025

Delivered: 24 October 2025

Summary: Rule 18(6) and 23(1) of the Uniform Rules of Court- exception to vague and embarrassing particulars of claim - whether cause of action is sufficiently disclosed.

ORDER

The exception is dismissed with costs.

JUDGMENT

Ntshulana AJ

Introduction

[1] Centlec (Soc) Ltd, an electricity utility solely owned by the Mangaung Metropolitan Municipality (hereafter referred to as the excipient), who was sued by the Free State Development Corporation, an entity mandated to play a developmental role in growing the economy of the Free State (hereafter referred to as the respondent), for an amount of R8 788 851.99 for arrear rental consequent to a written lease agreement concluded on or about 29 November 2016, as well as interest thereon *a tempora morae* and costs of suit on the attorney and own client scale.

[2] In its particulars of claim, the respondent pleads that its claim against the excipient is premised on a written lease agreement, a certified copy of which was attached. Paragraph 3 of the particulars of claim reads as follows:

'3.1 During about 29 November 2016 and at Bloemfontein, the plaintiff, duly represented by Maphafo Winnie Chokoe, and the defendant, duly represented by Chantelle Moodie, concluded a written lease agreement, consisting of a schedule and the terms and conditions (herein after referred to as the "lease agreement"), a true copy of which is attached hereto marked annexure "POC1"

3.2 The salient express and/or tacit terms and/or implied terms of the lease agreement included the following:

3.2.1 The defendant hires the premises known as 1[...] O[...] Street, Site 207 Industrial Area, Botshabelo, measuring approximately 2319 square m; and

includes all buildings and improvements, all of which shall collectively be referred to as "the premise".

(Clause A - Schedule to the lease agreement)

3.2.2 The rental referred to in paragraph D of the Schedule, shall be payable monthly in advance; (Clause 5.1 - Terms and Conditions of the lease agreement)

3.2.3 Without prejudice to the plaintiff's rights in terms of clause 26 in the event of the monthly instalments of rental not having been paid on due date, the plaintiff shall be entitled to charge interest on any arrears due and owing; (Clause 5.3 - Terms and Conditions of the lease agreement)

3.2.4 All rentals shall be payable without any deduction, retention, and remission abatement or set-off, despite any alleged or real claim or counterclaim of whatever origin of the defendant against the plaintiff, whether emanating from this agreement or otherwise;

(Clause 5.5- Terms and Conditions of the lease agreement)

3.2.5 The defendant shall pay monthly rental to the plaintiff as follows:

3.2.5.1 For the period of 1 May 2016 until 30 April 2017 the amount of R46 559.19 (inclusive of VAT) per month;

3.2.5.2 For the period of 1 May 2017 until 30 April 2018 the amount of R51 215.01 (inclusive of VAT) per month;

3.2.5.2 For the period of 1 May 2018 until 30 April 2019 the amount of R56 336.52 (inclusive of VAT) per month;

(Clause D - Schedule to the lease agreement)

3.2.6 The lease agreement shall commence on the date specified in E OF THE SCHEDULE and be for a period specified in F OF THE SCHEDULE where after it will run indefinitely subject to 1 (one) calendar month's written notice by either party to the other to cancel provided that if the commencement date does not fall on the first day of the month, the proportionate share of the rental shall be calculated by dividing the remaining days of the month by 30 days and the duration shall be calculated from the first- day of the new month.

(Clause 2 - Terms and Conditions of the lease agreement)

3.2.7 The lease agreement became effective and commenced on 1 May 2016 irrespective of the date of signature thereof.

(Clause E - Schedule to the lease agreement)

3.2.8 The lease will remain in force and effective for a fixed period of thirty six (36) months ("the original lease period"), where after it will continue indefinitely, terminable by way of one (01) calendar month's written notice by either party to the other, such notice, however, not to be effected before expiry of the original lease period.

(Clause F - Schedule to the lease agreement)

3.2.9 The lease agreement contains all the terms and conditions of the contract between the parties and no representations, warranties, undertakings or promises of whatsoever nature which may have been made by any of the parties, their agents or servants other than those herein contained, shall be binding or enforceable against them, unless explicitly contained in this contract. (Clause 24 - Terms and Conditions of the lease agreement)

3.2.10 No variation or agreed cancellation hereof or amendment hereof or addition hereto shall have any force or effect unless reduced to writing and signed by the parties or their duly authorized agents. No indulgence, extension of time, relaxation or latitude shown, granted or allowed by either party to another shall in any way constitute a waiver by that party of any of its rights hereunder, nor shall that party be stopped from exercising any of its rights hereunder by virtue hereof and that party shall not in any way be prejudiced by that party having shown, granted or allowed any such indulgence, extension of time, relaxation or latitude to the other party.

(Clause 25 - Terms and Conditions of the lease agreement)

3.2.11 In the event of the rental or any other amount due in terms hereof not being paid on due date or either party committing or permitting the commission of breach of any of the other terms of this agreement, whether or not such breach) goes to the root of this contract, and failing to remedy such breach, the aggrieved party shall be entitled but not obliged, at this option either to claim specific performance or to cancel this agreement forthwith and claim damages which it has suffered as a result of the breach or both.

(Clause 26.1.1-26.1.2 - Terms and Conditions of the lease agreement)

3.2.12 The defendant shall be liable to pay to the plaintiff all attorney and own client costs, including collection commission according to the current tariff of

the rules of the Law Society of the Free State, expended by the plaintiff to enforce any of its rights contained whatsoever in this agreement.

(Clause 26.2 - Terms and Conditions of the lease agreement).'

[3] The excipient is, in terms of rule 23(1) of the Uniform Rules of Court, excepting to the respondent's particulars of claim on the basis that it is averred to be vague, prejudicial and embarrassing, and, as such, making it unable to sensibly and logically answer or plead. The respondent was afforded 15 days from the date of the notice to remove or address the cause of the complaint.

[4] The exception raised was based on two grounds:-

(a) While the respondent had averred in its particulars of claim that a certified copy of the lease concerned was appended as Annexure 'POC 1', such copy was at best a partial one consisting only of unevenly numbered pages. The pages which should contain the signatures of the parties to the lease, were omitted. Consequently, so the excipient suggested, that which was appended to the particulars, does not *ex facie* constitute the written agreement on which the Respondent relied in its action.

(b) Secondly, while it was averred that the excipient had been obliged to pay a monthly rental of R1 849 327.50 (inclusive of VAT), as is evident from the contents of the 'partial document' supplied by the respondent, the particulars of claim contained no allegation that any further rentals had been due. Yet, the respondent claimed payment of the sum of R8 788 851.99 from the excipient, an amount contradicted by what was stated in an earlier letter of demand addressed to the excipient, wherein a lesser amount of R8 602 434.62 was said to be due and payable. The composition of such amount is not known to the excipient and it does not appear either from the partial written document or from any averments contained in the particulars of claim. As a result, the excipient contends that the respondent's particulars of claim are vague and embarrassing and that the excipient is unable to sensibly and logically answer thereto. Thus, it is contended by the excipient, it is prejudiced and embarrassed in its defence against the claim.

[5] In reply, the respondent submitted that its particulars of claim contain sufficient particularity to enable the excipient to plead to it and denied that the particulars are vague and embarrassing and that the excipient is not suffering any prejudice whatsoever.

[6] In expounding further on its submissions, counsel for the respondent contended that if one is to read the entire paragraph 3 of the respondent's particulars of claim with clauses 1, 2 and 3 of the lease agreement, it is abundantly clear what the material, express and/or tacit and implied terms of the lease agreement were. For instance, at paragraph 3.2 of the particulars, it is clearly stated that the respondent relied on express and/or tacit, and/or implied terms of the lease agreement. On the back of page 28 of the indexed papers, the signature of the lessee to the lease agreement is exhibited.

[7] Counsel also drew attention to the respondent's averment in the particulars that its claim against the excipient was premised on a written lease agreement, and that the excipient was in breach of its obligations in that it had failed and/or neglected to pay the respondent an amount of R8 788 851.99 in respect of arrear rentals.

The applicable legal principles

[8] The principles governing exceptions are well-established in our case law and codified in rule 23(1) which provides:

'Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception ...'

[9] Rule 23(3) furthermore prescribes that:

'Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.'

[10] Significantly, rule 18(4) provides that:

'Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.'

[11] In an application of this nature, the excipient, bears the burden of proof to show that the pleading accepted against, is expiable.¹

[12] The excipient has the duty to persuade the court that upon every interpretation which the pleading can reasonably bear, no cause of action or defense is disclosed.² The party against whom the exception is taken is confined to the allegations contained in his or her relevant pleading.

[13] It is said that the court must decide whether such pleadings are so vague or lacks particularity as to be impossible to determine the nature of the defense or the counterclaim to such extent that they do not disclose a defense in law or sustain a cause of action. It is important to note that the defect must appear *ex facie* the pleadings, the onus lies on the excipient to prove this and that the objection raised by the excipient must go to the root of the defense or cause of action. It must be examined whether it complies with rule 18(4) of the rules of court, it must contain a clear and concise statement of the material facts on which the pleader relies upon, it must also be sufficient particularity to enable the opposite party to plead to it. It is also trite that, when an exception is based on the interpretation of the contract, it is necessary for the excipient to demonstrate that the contract is unambiguous. I must therefore establish if evidence can be led to prove the pleadings in the particulars of claim.

[14] An exception to a pleading on the basis that it is vague and embarrassing, usually involves a two-fold consideration. First, the question as to whether the

¹ *Vogel and 2 Others v Kleynhans* [2002] ZAWCHC 41; 2003 (2) SA 148 (C) para 8.

² Van Winsen et al: *The Civil Practice of the High Court of South Africa* at 639.

pleading lacks particularity to the extent that it is vague to be entertained. The corollary hereof is whether the vagueness causes embarrassment of such a nature that an excipient is prejudiced.³ The core principle is that an exception is sustainable only if the pleading, taken as a whole, does not present a cause of action in the sense that the legal conclusion sought by the excipient cannot be supported on any possible interpretation of the facts. The excipient, who bears the onus of proving that the pleading is excipiable, must demonstrate that on every reasonable interpretation, including a generous interpretation of the facts, the pleading is excipiable in that it cannot support a valid cause of action. The court is to read the pleading in its entirety to assess its validity, rather than focusing on individual paragraphs.

[15] An exception which is 'founded upon the contention that a summons discloses no cause of action... is designed to obtain a decision on a point of law which will dispose of the case in whole or in part and avoid the leading of unnecessary evidence at the trial. If it does not have that effect, the exception should not be entertained'.⁴

[16] In *Jowell v Bramwell-Jones and Others*, the court noted as follows:⁵

'The plaintiff is required to furnish an outline of its case. This does not mean that the defendant is entitled to a framework like a crossword puzzle in which every gap can be filled by logical deduction. The outline may be asymmetrical and possess rough edges not obvious until actually explored by evidence. Provided the defendant is given a clear idea of the material facts which are necessary to make the cause of action intelligible, the plaintiff will have satisfied the requirements.'

[17] In essence, counsel for the excipient argued that the pleading is so poorly drafted that it is impossible to discern the nature of the claim, causing embarrassment to the excipient. This is denied by the counsel for the respondent, who has argued that the pleading contains clear and concise material facts to enable

³ *C Quinlam v MacGregor* 1960 (4) SA 383 (D) at 393E-H and *Trope v SA Reserve Bank and two others* 1992 (3) SA 208 (T) at 210F-211B.

⁴ DE Van Loggerenberg *Erasmus Superior Court Practice* at 0296-297.

⁵ *Jowell v Bramweff-Jones and Others* 1998 (1) SA 836 (W) at 913E-F.

the excipient to understand the case, and have sufficient particularity to allow for a proper response by it.

[18] The principles applicable to an exception on the basis that the pleadings are vague and embarrassing on the one hand, and on the other hand that the pleadings lack the necessary averments to sustain the cause of action, differ. I shall bear this in mind when applying same to the facts of the case.

Vague and embarrassing

[19] Vagueness, in the sense required by rule 18(4), will be present when the excipient is unable to distil from the pleaded case of the respondent, a clear single meaning.⁶

[20] In *Venter and Others NNO v Barritt Venter and Others v Wolfsburg Arch Investments 2 (Pty) Ltd (Venter)*,⁷ the court held inter alia that:

'Generally the information in a declaration or particulars of claim thus need only be sufficient for the defendant to plead thereto. The exception stage is not the time for the defendant to complain that he does not have enough information to prepare for trial or may be taken by surprise at the trial. That comes later in the (often long and cumbersome) journey to the doors of the court, after, inter alia, discovery of documents and requests for trial particulars had been made.'

[21] The law is clear as to what degree of vagueness in pleadings justifies an exception. Facts need to be presented so as to comply with rule 18(4). It was held in *Nasionale Aarlappel Kooperasie Bpk v Price Waterhouse Coopers Ing en Andere*,⁸ that:

⁶ *Venter and Others NNO v Barritt Venter and Others v Wolfsburg Arch Investments 2 (Pty) Ltd* 2008 (4) SA 639 (C) (Venter) para 11.

⁷ *Ibid* para 14.

⁸ *Nasionale Aarlappel Kooperasie Bpk v Price Waterhouse Coopers Ing en Andere* 2001 (2) SA 790 (T) at 7938.

'[A] pleading contained sufficient particularity if it identified and defined the issues in such a way that it enabled the opposite party to know what they were.'

[22] A pleading will only be regarded as being 'embarrassing' if it is not possible for the party who is required to respond thereto, to determine what the actual meaning (if any), is that is sought to be conveyed in the pleading.⁹

[23] If the particulars of claim stated the nature, extent and grounds of the causes of action, the court will not generally uphold an exception on the basis that the pleading is vague and embarrassing.¹⁰

[24] Unless the information which is allegedly lacking strikes at the heart of the cause of action, thereby rendering the pleading vague and embarrassing, the defendant is required in such circumstances to plead thereto and to obtain the detail which is allegedly lacking by way of discovery or by means of a request for further particulars.¹¹

Lacking essential averments to sustain the case

[25] An overview of the general principles which apply to the adjudication of exceptions on the basis that the pleading lacks averments to sustain a cause of action, distilled from case law, was conveniently summarized by Makgoka J in *Living Hands (Pty) Ltd NO and Another v Ditz and Others*,¹² as follows:

(a) In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by the plaintiff to assess whether they disclose a cause of action.

(b) 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

⁹ *Trope v SA Reserve Bank and two others Cases* 1992 (3) SA 208 (T) at 211E.

¹⁰ *Lockhat & Others v applicant minister of the Interior* 1960 (3) SA 765 (D) at 777O-E.

¹¹ *Venter* para 25

¹² *Living Hands (Pty) Ltd NO and Another v Ditz and Others* [2012] ZAGPJHC 218; 2013 (2) SA 368 (GSJ) para 15.

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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars.'

[26] Where an exception is taken, the court must look at the pleading excepted to as it stands together with the facts agreed to by the parties, if any, and no facts outside of those stated in the pleading can be brought into issue.

[27] An exception founded upon the contention that a summons discloses no cause of action is designed to obtain a decision on a point of law which will dispose of the case in whole or in part and avoid the leading of unnecessary evidence at the trial. If it does not have that effect the exception should not be entertained.¹³

Application to the facts

[28] What is to be determined is whether the respondent's claim for payment of R8 788 851.99, plus interest *a tempora morae* and costs of suit on an attorney and own client scale, is excipiable or not. The principal claim is said to be for the outstanding or arrear amount due to the Respondent in terms of the lease agreement concluded

¹³ DE Van Loggerenberg *Erasmus Superior Court Practice* D1 at 296.

by the parties in respect of premises known as 1 [...] O[...] Street, site 2017 Industrial Area, Botshabelo.

[29] Rule 18 (6) provides that:

'A party who in his or her pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is in written, a true copy thereof *or of the part relied on in the pleading*, shall be annexed to the pleading.' (My emphasis)

[30] From the authorities referred to above, it is clear that it is not necessary for the respondent to set out the *facta probantia* of its claim; but only the *facta probanda* (the facts to be proved), provided that the claim is pleaded with sufficient logic, and lucidity for the excipient to discern what case it has to meet.

[31] As stated earlier, pleadings must be read and considered as a whole. In my view, if one reads the entire paragraph 3 of the respondent's particulars of claim with clauses 1, 2, and 3 of the lease agreement annexed as 'POC 1', it is clear from the appended part thereof (Annexure POC 1) what the material terms of the agreement relied upon by the respondent are. The corollary thereof is that the material terms of the agreement were pleaded sufficiently to enable the excipient to plead or respond thereto.

[32] It follows that the court accepts that a written lease agreement between the parties had been concluded, in terms of which the respondent leased its premises to the excipient. It is trite that agreements of this nature generally contain both written clauses and implied or tacit terms.

[33] When one looks at the nature of the written lease agreement, the background to the whole contract and the issues raised in this exception, it is clear to me that the respondent's particulars of claim contain sufficient details or particularity to enable the excipient to plead thereto. The claim is premised on failure to pay arrear rentals in terms of the agreement. The respondent's case will be tested in the trial, where evidence will be led to support the averment that a lease agreement had been concluded between the parties and that the respondent had breached its obligations.

The excipient is at this juncture required to plead to the averments and have its defence evaluated in the trial. In other words, both versions will be evaluated and weighed up in a trial.

[34] The excipient is not at this stage entitled to ask the court to interpret the agreement concerned. The courts are with good reason reluctant to decide upon questions of interpretation of a contract by way of exceptions. In *Sun Packaging (Pty) Ltd v Vreulink*,¹⁴ it was held that:

'As a rule, courts are reluctant to decide upon exception, questions concerning the interpretation of a contract. But this is where its meaning is uncertain.'

[35] In my view, the additional issues which have been raised by the excipient must be raised in a plea and be ventilated at a trial.

[36] Consequently, I find that the respondent's particulars of claim contain averments with a sufficient degree of particularity to identify the existence of a contract or lease agreement between the parties; a causal nexus between the breach and the excipient, leading to alleged liability for an amount owed over a period. They are therefore not vague and embarrassing. In fact, the respondent's particulars contain sufficient details to sustain an action against the excipient / defendant. The fact that the amount contained in the letter of demand was not the same amount contained in the summons, may be pleaded as such by the excipient. Evidence can be led at the trial to determine or challenge the specific amount owed or whether it was in arrears at the time of the issue of summons by the respondent. Further, I find that the excipient will not be prejudiced.

[37] Consequently, I make the following order:

The exception is dismissed with costs. I find no reason to award costs on any other basis.

¹⁴ *Sun Packaging (Pty) Ltd v Vreulink* 1996 (4) SA 176 at 186J-187A.

X NTSHULANA
ACTING JUDGE OF THE HIGH COURT

Appearances

For the excipient: C. Snyman
Instructed by: Raynard & Associates Inc, Bloemfontein

For the respondent EG Lubbe
Instructed by: Peyper Attorneys, Bloemfontein.