

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2023/087955

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
27 November 2025	
DATE	SIGNATURE

In the matter between

**21A 1ST AVENUE HOUGHTON (PTY)
LTD**

Plaintiff/Applicant

And

ELLIS HOUSE (PTY) LTD

Defendant/Respondent

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 27 November 2025.

JUDGMENT

KEKANA AJ

Introduction

- [1] This is an application for exception taken by the applicant, the plaintiff in the main action against the respondent, the defendant in the main action on the basis that the defendant's plea is vague and embarrassing and that the appropriate remedy would be to strike the defendant's defence or grant the defendant an opportunity to amend its plea. The respondent opposes the application on the basis that the plaintiff's exception lacks merit and that the defendant's defence as pleaded is complete and valid.

Background

- [2] The facts can be summarised as follows:

The plaintiff alleges the defendant to be in breach of contract in that an amount of R 2 928 751. 44 of the sale price and interests remains outstanding. The defendant denies any breach of contract and alleges that the total amount payable was paid to the plaintiff in terms of a set-off in the amount of R 3 050 000. 00. The defendant pleaded that the plaintiff was indebted to the defendant in terms of a 'loan account' part of which was then used to set-off and extinguish the purchase price. The plaintiff alleges that the defendant fails to plead the basis of this 'loan account', whether is there a written or oral agreement and when was it concluded.

- [3] On or about 28 November 2023, the plaintiff filed a Rule 23(1)¹ notice against the defendant on the grounds that the defendant's plea is vague and embarrassing, as a result the plaintiff is unable to plead thereto. Even after the Rule 23(1) notice

¹ Uniform Rules of Court.

the defendant failed to remove the cause of complaint and hence this exception application.

Contentions by the parties

- [4] The applicant submits that relying on a 'loan account' serves a vital link to the case, consequently the respondent must allege and prove the existence of a loan agreement and also in terms of Rule 18(6) of the Uniforms Rules of the Court, attach it or give information related thereto in precise terms.
- [5] In retort the respondent argues that an application for an exception as brought by the applicant is not the correct route as that which is sought by the applicant is *facta probantia* which can be cured later through the request for further particulars. Also, that the applicant has failed to show or prove any prejudice.

Legal principle and analysis.

- [6] The Rule relating to pleading generally dictate 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":²

- [7] The [very purpose] of pleadings is to ascertain definitely what is the question at issue between the parties; and this object can only be attained when each party states his case with precision³. The defendant pleaded a set-off making reference to a 'loan account'. It is my view that the phrase 'loan account' was vaguely and deliberately used, forcing the applicant to speculate that what is pleaded is the existence of a 'loan agreement' hence the argument about non-compliance with Rule 18(6). It is even incorrect for the applicant to assume that the defendant has pleaded the existence of a 'loan agreement' but for the vague nature of the defendant's plea, the plaintiff was forced to assume that which may not be pleaded.

² Rule 18(4) of the Uniform Rules of Court.

³ Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice 22nd ed at 113.

[8] The Rule relating to exception is that:

“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”⁴.

[9] The object of a pleading was also explained by the Court in **Dharumpal Transport (Pty) Ltd v Dharumpal**⁵ as follows:

“The object, of course, of all pleadings is that a succinct statement of grounds upon which a claim is made or resisted shall be set forth shortly and concisely; where a statement is vague, it is either meaningless, or capable of more than one meaning. It is embarrassing in that it cannot be gathered from it what ground is relied on, and therefore it is also something which is insufficient in law to support in whole or in part the action or defence. . . .”

[10] For the defendant to simply say a ‘loan account’ is ambiguous and can mean different things. Without further details, the plaintiff is left guessing about the true nature of the defendant's plea. Because of the plea being vague, the plaintiff cannot properly prepare, making a fair trial difficult. Reference to a ‘loan account’ is impermissibly vague. Leaving the plaintiff in a position of having to speculate on the nature of the defence, which prejudices their ability to prepare for trial. If a party is unable to distil a clear, single meaning from an allegation in a pleading, that will render the pleading vague and embarrassing.⁶

[11] It is therefore strong that "minor blemishes in, and unradical embarrassments caused by, a pleading" could be cured by further particulars.⁷ An exception to a pleading on the ground that it is vague, and embarrassing involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent

⁴ Rule 23(1) of the Uniforms Rules of Court.

⁵ 1956 (1) SA 700 (A) at 705D.

⁶ Erasmus Superior Courts Practice, Commentary on Rule 23 at RS 6, 2018, D1-299.

⁷ Purdon v Muller 1961(2) SA 211 (A) at 215F.

that it is vague. The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced.⁸

- [12] There exists a misunderstanding or misinterpretation of the plea by the defendant leading the plaintiff to conclude that what is pleaded is a set-off emanating possibly from a 'loan agreement', this is triggered by the vagueness in the defendant's plea. Clearly, this is something that cannot be cured by the request for further particulars as contended for by the respondent. The situation could have been different had the defendant pleaded set-off making reference to a 'loan agreement' at least the plaintiff could be in a much better position either to deny its existence, dispute its terms and or argue its unenforceability. However, for the defendant to loosely make reference to a 'loan account' it is not clear the ground upon which the resistance by the defendant is relied on.

- [13] In **Koth Property Consultants CC v Lepelle-Nkumpi Local Municipality Ltd** it was held that:

"...[a party] is required to plead its cause of action in an intelligible and lucid manner that identifies the issues relied on and in respect of which evidence will be led".⁹

- [14] This lucidity is lacking in the defendant's plea; I am of the view that the applicant is left with having to speculate and it is for this that the applicant is prejudiced. I disagree with the contention raised by the respondent in para 5 above regarding the applicant's failure to prove prejudice. Prejudice must ultimately lie in an inability to prepare to meet the opponent's case.¹⁰ That the plaintiff is unable to plead to the defendant's case is sufficient to prove prejudice. Pleadings must give the other party fair notice of the claims and defenses being asserted so they can adequately prepare their case. A vague defense plea violates this principle. It creates a "trial by ambush," where the plaintiff is forced to guess what the defendant's true arguments are, making it impossible to investigate, gather evidence, or prepare effective rebuttals, this points at one direction that of prejudiced on the part of the plaintiff.

⁸ Trope v South African Reserve Bank 1992 (3) SA 208 (T) at 211-B.

⁹ 2006 (2) SA 25 (T).

¹⁰ Francis v Sharp 2004 (3) SA 230 (C) at 240.

Conclusion

[15] The defendant's plea lacks necessary averments to sustain a cause of action and/or defence. It is vague and embarrassing that the plaintiff is prejudiced in pleading thereto. The law values clarity and fairness over tactical ambiguity. I'm persuaded to agree with the applicant on the grounds upon which it raised the exception. For that reason, the exception application is to succeed.

Order

[16] In the premises, the following order is granted:

1. That the exception brought by the applicant is upheld.
2. The respondent/defendant is granted leave to amend its plea within a period of 5 days from date hereof.
3. That the respondent/defendant is ordered to pay the costs of this application on scale B.



KEKANA ND

Acting Judge of the High Court

APPEARANCES

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Date of Hearing: 11 November 2025

Date of Judgment: 27 November 2025