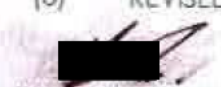


REPUBLIC OF SOUTH AFRICA


 IN THE HIGH COURT OF SOUTH AFRICA
 GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
 SIGNATURE	
25/11/2025 DATE	

CASE NUMBER: 2021/6074

In the matter between:

GARTH ROBERTS**AFRICAN RAINBOW MINERALS LIMITED**

and

NONHLANHLA GCEBILE MABUZA

First excipient

Second excipient

Respondent

Heard: 10 June 2025

Delivered: 25 November 2025

JUDGMENT

YACOUB, J:

- [1] Ms Mabuza, the respondent, issued summons against the first and second excipients (the first and second defendants, respectively, in the action) claiming damages for harm she allegedly suffered as a result of the actions of Mr Roberts, the first excipient, while both she and Mr Roberts were in the employ of African Rainbow Minerals Limited ("ARM"), the second excipient. Ms Mabuza alleges that Mr Roberts was in a position of authority over her in her employment, and that ARM had a duty of care as her employer to protect her in the work environment.

- [2] After particulars and notices of intention to defend were delivered, ARM delivered a notice in terms of Rule 23(1) of the Uniform Rules and Mr Roberts delivered a notice in terms of Rules 23 and 30 of the Uniform Rules. Ms Mabuza then made two abortive attempts to amend the particulars, but eventually both excipients delivered notices of exception.¹
- [3] This exception is heard at the same time as a second exception in which Ms Mabuza is also the respondent and ARM the second excipient, but in which the first excipient is a different person. Because of the differing facts and slightly different issues I have decided to deal with them in separate judgments although they were heard on the same day.
- [4] Ms Mabuza claims two heads of damages in her particulars. For Claim 1, she claims R400 000 on the basis that, at ARM's head office, in Mr Roberts's office, Mr Roberts "caused [her] to look at inappropriate pictures of himself on his mobile phone and in which [he] was in a state of partial undress". She alleges that this was unlawful, inappropriate, humiliating and degrading, and that it happened in circumstances where Mr Roberts was in a position of authority over her. Ms Mabuza claims R400 000 for the humiliation and degradation she suffered.
- [5] In Claim 2, Ms Mabuza alleges that over a period of about 8 months Mr Roberts carried out some unspecified investigations, with no allegations of wrongdoing on her part and the outcomes of which were not communicated to her. Ms Mabuza alleges that the investigations were an unlawful invasion of her privacy and "tampered" with her well-being. She claims R200 000 for this.
- [6] Ms Mabuza also avers that Mr Roberts was in the management of ARM and had authority over her in her employment and that ARM had a duty of care towards her to protect her from these incursions. She relies on this to allege that ARM has vicarious liability for Mr Roberts's actions and is jointly liable for her damages.

¹ Mr Roberts does not persist in the Rule 30 application.

- [7] Mr Roberts's grounds of exception are that the particulars fail to disclose a cause of action, alternatively are vague and embarrassing, because:

(a) For claim 1:

- i. there is no clear and concise statement of the material facts on which Ms Mabuza relies for her claim;
- ii. she does not allege an intention on Mr Roberts's part to injure her;
- iii. Ms Mabuza does not allege any circumstances from which a conclusion can be drawn that her having been shown the pictures was wrongful, and
- iv. the manner in which the damages are set out do not enable Mr Roberts to assess properly the quantum.

(b) For claim 2:

- i. there are insufficient allegations to sustain a cause of action for damages, and
- ii. there are insufficient allegations to support the amount claimed, nor is the manner of calculation of the amount set out as required.

- [8] ARM's grounds of exception are that the particulars fail to disclose a cause of action and/or are vague and embarrassing because:

(a) For Claim 1:

- i. it is not clear what is meant by the words "partial undress";
- ii. it is not clear what is meant by "indecent and unlawful exposure of inappropriate photographic material", or what material is referred to;
- iii. it is not clear what is unlawful about Mr Roberts showing pictures of himself in a state of partial undress to Ms Mabuza;

- iv. Ms Mabuza has not alleged any facts to give rise to an inference of unlawfulness or wrongfulness;
- v. there is no allegation of intention on Mr Roberts's part;
- vi. there is no allegation that a reasonable person in Ms Mabuza's position would have been humiliated or degraded by Mr Roberts's alleged conduct.

(b) For Claim 2:

- i. an employer investigating an employee's workplace conduct cannot, without more, amount to unlawful conduct;
- ii. the particulars fail to state what investigations were conducted, or how and for what purpose;
- iii. the particulars fail to state how and in what respects Ms Mabuza's privacy was invaded, or what was unlawful about the alleged investigations.

(c) With regard to vicarious liability, essentially, that there is no allegation that Mr Roberts was acting in the course and scope of his duties at the time, nor any allegation from which that conclusion can be drawn.

- [9] The parties are *ad idem* regarding what the test is for whether the exceptions succeed, but obviously differ on the outcome of applying the test to the issues before me.

RELEVANT PRINCIPLES

- [10] Since both exceptions are based both on the contention that the pleadings are vague and embarrassing, and that they fail to disclose a cause of action, I set out first the principles applicable to exceptions.

- [11] Rule 23(1) of the Uniform Rules of Court, in terms of which the exceptions are brought, provides that a person may deliver an exception to a pleading where it

"is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be".

- [12] Where the pleading is vague and embarrassing, it would also not comply with Rule 18(4) of the Uniform Rules, which requires a pleading to contain:

"a clear and concise statement of the material facts on which the pleader relies ... with sufficient particularity to enable the opposite party to reply thereto".

- [13] The reason for the requirement is, or ought to be, obvious. It allows a party to know what case they must meet, and it allows the court to properly understand what case is before it. The integrity of the judicial process requires clarity and sufficient particularity in pleadings. This is one of the reasons why it is not sufficient for a plaintiff to say (as was submitted in this case) that the defendant knows what the case is.² The case must be clear from the pleadings without reference to what the other party is presumed to "know", or any other facts or documents other than what may be agreed between the parties.³ Another obvious reason for this requirement is that a party may respond to one case that it "knows" while the other adduces evidence on some other case.

- [14] The exception process permits an excipient to protect itself from the embarrassment which would follow from being obliged to plead to something that is unclear. The court must find both that the pleading lacks particularity to the extent that it either has more than one meaning or no meaning, so that it is vague, and that the resultant vagueness means that the opponent cannot properly plead or prepare for trial, meaning that they are embarrassed in the proceedings. The embarrassment must amount to prejudice. Ordinarily, that prejudice is that the party does not know what factual case it has to meet, but of course there can be no closed list.⁴

² *Cilliers v Van Biljon* 1925 OPD 4 at 9; *Boys v Piderit* 1925 EDL 23 at 25.

³ *Gallagher Group Ltd & Another v IO Tech Manufacturing (Pty) Ltd & Others* 2014 (2) SA 157 (GNP) at [19] – although this deals with an exception on the grounds that there is no cause of action disclosed, I consider the principle to apply to exceptions generally.

⁴ See in this regard the principles enunciated at *Trope v South African Reserve Bank and Another and Two Other Cases* 1992 (3) SA 208 (T) at 210F-211E.

- [15] Where the exception is that the pleadings are vague and embarrassing, it is not necessary that the exception will determine the issue between the parties, although it must, of course, cause prejudice. There appears to be some confusion on this issue, between an exception on the grounds that the pleadings are vague and embarrassing on the one hand, and an exception that the pleadings do not disclose a cause of action or defence, on the other. It is obvious that an exception to pleadings which prejudice a party by their vagueness and the embarrassment that causes prejudice must succeed if that prejudice is real and not merely technical, for the reasons set out above, and whether or not that would dispose of the issues between the parties.
- [16] While an exception on the grounds that a pleading is vague and embarrassing amounts to a defence by the opposing party against the embarrassment and prejudice caused by the pleading, an exception that a pleading fails to disclose a cause of action or defence is an attack on the legal soundness of the pleading.
- [17] An exception on the grounds that the pleadings do not disclose a cause of action is a contention that, even if the facts in the pleading are true, they do not lead to a legal conclusion that the plaintiff has a cause of action.⁵ Again, an over-technical approach is not appropriate, and the court must look at the pleading as a whole. The court must not be over-critical, and the exception must only be upheld if, on any reasonable construction of the pleading, no cause of action is evident.⁶

ARE THE PARTICULARS OF CLAIM VAGUE AND EMBARRASSING?

Claim 1

- [18] Ms Mabuza claims for humiliation, degradation and harm to her dignity occasioned by exposure to certain photographs of Mr Roberts. She contends

⁵ Or the defendant a defence.

⁶ *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* 2023 (2) SA 68 (CC) at [41]; *Hlumisa Investment Holdings RF Ltd and another v Kirkinis and others* 2020 (5) SA 419 SCA at para [22]; *Children's Resource Centre Trust v Pioneer Foods (Pty) Ltd* 2013 (2) SA 213 (SCA) at para [36], and *Gallagher* (note 3 above) at paras [19] and [20].

that the exposure to the photographs was indecent and unlawful and that the content of the photographs was inappropriate.

- [19] Ms Mabuza does not describe any facts to support her claim. Apart from the date and place of the event, there are no facts alleged, but simply conclusions. Whether photographs were appropriate is a legal conclusion, which must be reached on proof of facts such as what was in the photographs, how they were shown to Ms Mabuza by Mr Roberts, and so on.
- [20] It is not clear what Ms Mabuza meant by Mr Roberts being in a state of "partial undress". Was his shirt unbuttoned, was he in a bathing suit on a beach, or was he wearing only underclothing? The specifics of the alleged inappropriateness, which is a conclusion to be reached with reference to relevant facts, are not provided.
- [21] It is similarly not clear how Mr Roberts "caused" Ms Mabuza to look at the pictures. Were they on a screenshot? Was he looking at them or showing them to someone else and she could not avoid seeing them?
- [22] It was submitted on Ms Mabuza's behalf that the defendants impermissibly demand explanations of what Ms Mabuza means, and couch this demand as an exception. This is not the case. What the defendants complain of is that Ms Mabuza pleads conclusions rather than facts, so that it is not clear to anyone what exactly the facts are on which the claim is based.
- [23] It is necessary in my view for Ms Mabuza to plead with sufficient particularity what was in the photographs that made them inappropriate, how she was shown them and what made this unlawful. Without this, the defendants cannot know what to respond to. For example, Mr Roberts may respond about different photographs than those Ms Mabuza complains of.
- [24] Ms Mabuza must describe adequately both the photographs and the manner in which they were shown to her, both so that the court can understand and appreciate the nature of the complaint, and so that the defendants can respond meaningfully.

[25] As far as the quantification of damages is concerned, I am satisfied that there is no merit to the contention that Mr Roberts cannot assess the claim properly. A claim for non-patrimonial damages such as this one is not quantified with reference to specific loss, and therefore at this point in proceedings no more detailed particularity is needed, other than what is needed to establish the merits of the claim. This of course applies to both claims 1 and 2.

[26] I am satisfied that Claim 1 is vague to the extent of causing embarrassment and prejudice to the defendants.

Claim 2

[27] Claim 2 is that Ms Mabuza suffered harm as a result of unspecified and unlawful investigations Mr Roberts carried out into her conduct.

[28] Again, the pleading consists primarily of legal conclusions regarding the investigations. Ms Mabuza does not identify what the investigations were and how they impacted on her. If the investigations were done without her knowledge, she does not set out how she became aware of them, or what knowledge she does have about them. The defendants and the court are left to imagine what the source of the complaint is.

[29] If Ms Mabuza's intention is to find out more information about investigations which may have been carried out into her conduct, this is not the way to do it. Particulars of claim are not intended to be fishing expeditions. Specific material facts must be pleaded, on which the conclusions are based, to which the defendants can respond.

[30] I am satisfied that claim 2, also, is pleaded in a manner that is vague to the point of causing embarrassment and prejudice.

[31] Having found that the particulars are vague and embarrassing, it is open to me to uphold the exception purely on that basis, but it is appropriate to deal with the entirety of the exceptions before me.

DO THE PARTICULARS DISCLOSE A CAUSE OF ACTION?

Claim 1

- [32] The complaint regarding claim 1 is that there is no allegation that Mr Roberts acted with intention to injure Ms Mabuza, or even with negligence. There are also insufficient facts alleged to support an inference of wrongfulness. There is also no allegation that a reasonable person in Ms Mabuza's position would have been humiliated or degraded by the conduct complained of.
- [33] These complaints are raised on the basis that the claim is an *actio iniurarium*, which is not gainsaid on Ms Mabuza's behalf.
- [34] There is obviously no merit in the complaint that there is no allegation of intention. What has to be alleged are facts from which intention can, if necessary, be found. It was conceded in the written and oral submissions that, once wrongfulness is established, intention is presumed. The real complaint is the failure to allege sufficient facts from which it can be concluded that the conduct was wrongful. The mere assertion of wrongfulness is not enough, as that is a legal conclusion.
- [35] The same applies to much of the pleading of claim 1, which, as I have pointed out above, consists primarily of conclusions and not of the facts on which the conclusions are premised. In order to disclose a cause of action, particulars of claim must not simply assert that there is a cause of action. They must set out facts from which the cause of action is evident. Ms Mabuza has not done so, and thus has not set out averments which sustain a cause of action.
- [36] There is obviously no requirement that Ms Mabuza alleges that a reasonable person in her position would have been humiliated or degraded by the conduct complained of. But the averments in the particulars must support that conclusion. Because of Ms Mabuza's failure to plead the material facts on which the claim is based, they do not and it is not possible to interpret the particulars in her favour.
- [37] I am satisfied that the particulars do not disclose a cause of action for claim 1.

Claim 2

- [38] The exceptions to claim 2 are that, again, there are no facts to support the contention that the alleged investigations were unlawful or wrongful, or an invasion of Ms Mabuza's privacy. There is simply a bald assertion of the conclusion that this is the case.
- [39] One interpretation of the pleaded averments is that Ms Mabuza does not know what investigations were conducted. If that is the case, there is nothing to support the conclusion either that she knew that investigations were conducted at all, or that her well-being was affected. It is contingent on Ms Mabuza, as plaintiff, to plead the facts which are within her knowledge which lead to the conclusions she asserts, that she was unlawfully investigated and that this was an invasion of her privacy and impacted on her well-being.
- [40] I am satisfied that, reading the particulars as a whole, the facts alleged do not sustain a cause of action on claim 2.

Vicarious Liability

- [41] ARM excepts to the pleadings on the basis that there are insufficient allegations to sustain a claim of vicarious liability, because Ms Mabuza fails to allege that Mr Roberts was acting in the course and scope of his duties.
- [42] The response on Ms Mabuza's behalf is that it is obvious that, if the events occurred on ARM's premises, while both Mr Roberts and Ms Mabuza were employed by ARM and while Mr Roberts was Ms Mabuza's superior in the employment setting, ARM is responsible for his actions.
- [43] However, if Mr Roberts and Ms Mabuza were simply chatting informally when the events complained of in claim 1 are concerned, the employment connection is not obvious.
- [44] With regard to claim 2, there is no allegation that the investigations were carried out in an employment setting, as part of the employment of Ms Mabuza and in the course of Mr Roberts carrying out his duties. If Mr Roberts conducted an independent investigation into things which do not have anything to do with Ms

Mabuza's employment, such as her personal life, and used external resources, there would be no connection to the employer. If the investigation was conducted for the employer's benefit, then the connection would be obvious. However, that allegation is not there, and there is no fact alleged from which this can be inferred.

[45] This exception too must be upheld.

CONCLUSION

[46] The parties are agreed that, should I uphold the exception, Ms Mabuza should be given fifteen days in which to amend her particulars, failing which the particulars of claim are struck out and the claim regarded as dismissed, and that costs should follow the result.

[47] Considering the time of year at which this judgment is being handed down, it would be unfair to expect the amendment to be effected within fifteen days, as the fifteen days will expire within the period in which most attorneys' firms are closed. It is also unfair to expect parties to drop everything in order to effect an amendment when the timing is determined by the court's own unavoidable delay in handing down judgment. I consider it will be fair to permit the amendment to be delivered on or before 23 January 2026.

[48] As a result, I make the following order:

- (a) The first and second defendants' exceptions are upheld.
- (b) The plaintiff is granted leave to amend her particulars of claim, the amendment to be delivered on or before 23 January 2026.
- (c) Should the plaintiff fail to deliver her amendment on or before 23 January 2026, the particulars of claim shall be struck out and the claim considered to be dismissed.
- (d) The plaintiff is to pay the first and second defendants' costs on exception, on scale C.


S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives by email. The date of this judgment is 25 November 2025.

APPEARANCES

For the first excipient:	Ms C Van der Linde
Instructed by:	Fahdia Bhayat Attorneys Inc
For the second excipient:	Mr S Khumalo SC
Instructed by:	Bowman Giffillan Inc
For the respondent:	Mr VP Ngutshana SC
Instructed by:	Thinane Mabuza Inc