

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION. PRETORIA**

CASE NO.: 24569/20

(1) REPORTABLE: ~~NO~~

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED

DATE: 28/11/2025

SIGNATURE:

In the matter between:

SB GUARANTEE COMPANY (RF) (PTY) LTD

Plaintiff

[Registration Number: 2006/021576/07]

and

PHENYO LOYISO BENJAMIN NONQANE

Defendant

[Identity Number: 6[...]]

JUDGMENT

EASTES AJ:

[1] This is an opposed application. The Plaintiff gave Notice of Intention to amend its Particulars of Claim. The Defendant delivered a Notice of Objection thereto. The Plaintiff then launched this application in terms whereof, it seeks leave to amend its Particulars of Claim. The application is opposed by the Defendant.

[2] For the purposes of this judgment the salient chronology are as follows:

[3] On 8 June 2020, the Plaintiff instituted an action against the Defendant and the Plaintiffs Summons was served on the Defendant's *domicilium citandi et executandi* address by way of sheriff on 22 June 2020; and

[4] On 12 October 2021, the Defendant entered an Appearance to Defend to the instituted action, but failed to deliver a Plea and/or an Exception and/or Notice to Strike Out within the 20 (twenty) day period allowed for doing so; and

[5] On 24 August 2023, a Notice of Bar was served, calling upon the Defendant to deliver his Plea within 5 (five) days from service thereof, failing which the Defendant shall be in default of filing such Plea and ipso facto barred.

[6] On 19 October 2023 the Defendant served a Plea; and

[7] On 26 March 2024, the Plaintiff proceeded to serve a Notice of Intention to Amend its Particulars of Claim on the Defendant.

[8] In terms of the Plaintiffs Notice of Intention to Amend, the Plaintiff indicated that it intends to amend its Particulars of Claim as follows:

"1. By deleting paragraph 3.3 in its entirety and replacing it with a new paragraph 3.3, to read as follows -

3.3 The Loan Agreement forming the subject matter of this action was concluded within the above Honourable Court's area of jurisdiction."

[9] On 24 May 2024, the Defendant proceeded to deliver a Notice of Objection, to the Plaintiffs Notice of Intention to Amend.

[10] The Defendant objected to the amendment on the following grounds:

"1. The Defendant objected to the Plaintiff's first attempt to amend its Particulars of Claim when it wanted to delete paragraph 3.3 which reads as follows:

3.3 *The immovable property forming the subject matter of this action is situated within the above Honourable Court's area of jurisdiction.*

2. *The Defendant objected to the attempt to amend the Plaintiff's Particulars of Claim through a notice delivered on 16 November 2023.*

3. *On 26 March 2024, the Plaintiff purported to withdraw its 'Notice of Intention Amend in terms of Rule 28 filed on Caselines on 26 October 2023'.*

4. *On the same day, 26 March 2024, the Plaintiff issued the second unsigned Notice of Intention to Amend the same Particulars of Claim, an exercise that would entail deletion of paragraph 3.1 and its replacement with a new paragraph reading as follows:*

'The loan agreement forming the subject matter of this action was concluded within the above Honourable Court's area of jurisdiction.'

5. *The Defendant vehemently objects to the amendment of the Plaintiff's Particulars of Claim and the reasons given in objecting to the first attempt still stand.*

6. *The Defendant's reasons for objecting to the second attempt to amend the Plaintiff's Particulars of Claim are as follows:*

6.1 *The notice issued by the Plaintiff is unsigned which renders it invalid. It is invalid because of the absence of a signature. A copy is marked "X" and attached to this notice.*

6.2 *The Plaintiff is trying to cancel the Defendant's special plea issued on 19 October 2023 by amending its Particulars of Claim dated 2 June 2020 wherein the Defendant argues that the immovable property, which is the subject of the Plaintiff's action, is not situated within the above Honourable Court's area of jurisdiction.*

6.3 *The Plaintiff is attempting to avoid admitting to the truth that the location of the immovable property (Erf 9[...]) is Grahamstown in the Makana Municipality, Division of Elbony, Province of the Eastern Cape and it is not within the area of jurisdiction of the above Honourable Court.*

6.4 *It is worth noting that the Plaintiff does not dispute the fact that the immovable property is situated outside the area of jurisdiction of the above Honourable Court as it has provided the property's description in its Particulars of Claim.*

6.5 *The Plaintiff's Summons was signed on 2 June 2020 and it only raised the issue of amending its Particulars of Claim for the first time three (3) years and four (4) months later and this happened after the Defendant raised the issue of a lack of jurisdiction of the above Honourable Court.*

6.6 *The Defendant vehemently objects to the Plaintiff's attempt to incorrect position the above Honourable Court as having jurisdiction to hear its case through the backdoor.*

6.7 *Since the immovable property does not fall within the Jurisdiction of the above Honourable Court, the Plaintiff has to take its case to the correct court which is the Eastern Cape Division of the High Court of the Republic of South Africa which is situated in Grahamstown/Makhanda.*

6.8 *The Plaintiff has not issued a Notice of Withdrawal of the first Notice of Bar it issued and yet wants the Defendant to agree to the amendment of its Particulars of Claim when he is already said to be ipso facto barred.*

7. *The Plaintiff is abusing court process by attempting to amend, withdrawing the Notice of Intention to Amend when challenged and attempting to amend the same page again.*

8. *It appears the Plaintiff is on a desperate mission to disregard the Uniform Rules of the Court."*

NO VALID OBJECTION TO THE AMENDMENT:

[10] From the chronology the Defendant was barred from pleading. This is confirmed by the Defendant in paragraph 6.8 of his Notice of Objection to the amendment. There were some debate in Court whether or not the Defendant was barred or whether the bar was uplifted by agreement. The debate was based on a letter that was written by the Plaintiff's attorney shortly after receiving the plea. In terms of this letter it was indicated that the Plaintiff was willing to "suspend" the bar whatever that means. It appears that no agreement was reached to the effect that the bar be uplifted by agreement and, accordingly the Defendant remained barred from pleading, because the Plaintiff did not consent to the upliftment of the bar. The

Defendant also did not obtain an order in terms of Uniform Rule 27 that uplifted the bar.

[11] In Manufacturing Engineering & Related Services Sector Education and Training Authority v Dr Joseph Qhinaphi Mhlaba (033076/2022) [2023] ZAGPJHC 1039 (18 September 2023), the court held to the effect that after a party is barred, that party must if the other party does not consent, apply to court in terms of Uniform Rule 27 to uplift the bar and, only once that is done, will that party be given an opportunity to be allowed back and participate in the case.

[12] In Ntoko Charmaine Petunia N.O. v Road Accident Fund (2024/073741) [2024] ZAGPJHC 1042 (16 October 2024), the court, held to the effect that where a Defendant did not launch an application to have a bar uplifted, and neither applied for condonation for the delivery of a Plea, but instead relied upon the mistaken proposition that a bar is automatically lifted with the filing of a Notice of Intention to Amend, such a Defendant made such an election at his, her or its own peril.

[13] If the Defendant, or any Defendant for that matter was barred, and such a Defendant has not successfully applied for relief uplifting the bar in terms of Uniform Rule 27, then such Defendant is barred from participating in the case further. Such a Defendant will be disqualified from pleading and, in this matter before the Court, from objecting to the Plaintiff's proposed amendment, whilst barred.

[14] In Qhamakoane v Road Accident Fund (19131/2020) [2024] ZAGPPHC 795 (12 August 2024), the court reasoned differently. The Court *inter alia* found the following:

"If a party has been barred from pleading, they have the option of bringing an application in terms of Rule 27 to uplift the bar, but same can also be 'uplifted' by agreement between the parties. In my view, this does not pertain to a situation where the Plaintiff, by his conduct, through amending the Particulars of Claim, 'invites' the Defendant back into litigation by re-opening the pleadings, as the Defendant had been barred to the pre-amendment pleadings and not to the re-opened and amended pleadings. Therefore, in my

view, it is not necessary for the Defendant to bring an application to uplift the bar, but through the amendment, attains the right to plead to the amended Particulars of Claim."

[15] I do not agree with the finding of the court in *Ohamakoane*. In my opinion the judgment is wrong on the point in question. If the opposition party does not consent to the upliftment of the bar, then the only manner in which the barred party can achieve the upliftment of a bar is by way of a successful application in terms of Uniform Rule 27(3).

[16] Therefore, I find that if a Defendant is barred from pleading, and whilst being barred, a Plaintiff proceeds to give notice of its intention to amend its Particulars of Claim, that does not automatically uplift the bar, or give the Defendant a right to participate in the litigation. The parties in this matter appears to have been unaware of this and proceeded with the litigation, and not addressing the bar issue.

[17] There was never a valid lawful objection to the amendment and. therefore no reason for the application. In my view the Plaintiff can proceed to apply for judgment by default. To dismiss the application on that basis will not do justice to the parties in this matter. There has already been lengthy delays in this matter. The Defendant appeared in person and he is a lay person. He travelled from the Eastern Cape to come and argue the application. This Court therefore proceed to deal with the application on the basis that the Defendant was not barred, but by doing so, it does not mean the Defendant is not barred.

THE PLEADING OF JURISDICTION:

[18] In paragraph 3 of the initial Particulars of Claim the Plaintiff averred facts why this Court has jurisdiction. Based on the specific averred facts, the Defendant delivered the Defendant's Plea despite being barred as indicated above. In terms of the plea, the Defendant *inter alia* attacked the jurisdiction of this Court based squarely on the facts as averred by the Plaintiff in paragraph 3 of the initial Particulars of Claim.

[19] The Plaintiff then indicated its intention to amend paragraph 3 of its Particulars of Claim. The Defendant delivered a Notice of Objection to the proposed amendment. This ultimately culminated in the opposed application before this Court. The claim is a contractual claim and the amendment relates only to the pleading of jurisdiction in the self-standing paragraph 3 of the initial Particulars of Claim.

[20] In High Court litigation there is no obligation on a litigant to in its Particulars of Claim aver facts in support of jurisdiction as one must do in Magistrates Court litigation to disclose a cause of action. A High Court is empowered to exercise jurisdiction over a matter, or to assume jurisdiction over a matter based upon the averred particularity in a Particulars of Claim. When dealing with a contractual claim as in this matter, Uniform Rule 18(6) dictates that the Particulars of Claim must contain specific particularity, failing which it will be deemed to be an irregular step as envisaged in Uniform Rule 18(12).

[21] In this case, the Particulars of Claim in paragraphs 4 and 5 complies with Uniform Rule 18(6) in that it averred what is required by the aforesaid rule and a copy of the agreement was annexed. It was expressly averred that the loan agreement was concluded at Pretoria. *Ex facie* the annexed loan agreement it is evident that it was signed and concluded by the Defendant in Pretoria. The Defendant in court during argument also conceded that he signed the loan agreement in Pretoria. There is no objection by the Defendant to the averments in paragraphs 4 and 5 of the Particulars of Claim.

[22] The agreement was concluded at Pretoria. Pretoria is within this court's territorial area of jurisdiction. Consequently, this court has jurisdiction to adjudicate upon the contractual claim in this matter by virtue of Section 21(1) of the Superior Court Act, Act 10 of 2013, on the basis that the cause of action arose within this Courts territorial area of jurisdiction [See. Moodley v Nedcor Bank Ltd [2007] SCA 27 (RSA)].

[23] The averred allegations in paragraphs 4 and 5 of the Particulars of Claim is and was sufficient for jurisdiction, or for this Court to at this stage assume jurisdiction

over the matter. It was not necessary for the Plaintiff to have embarked upon giving notice of its intention to amend paragraph 3 of its Particulars of Claim. Paragraph 3 of the Particulars of Claim is superfluous because of paragraphs 4 and 5 thereof. It is not the Defendants objection in his plea or in this application that the Particulars of Claim is vague and embarrassing.

AN UNSIGNED NOTICE OF INTENTION TO AMEND:

[24] The Defendant also objected to the amendment on the basis that the Notice of Intention to Amend that was served and received by him from the sheriff was an unsigned Notice of Intention to Amend. The Plaintiff has a different view and is of the view that the Notice of Intention to Amend was indeed signed by the Plaintiff. This is a trivial issue. It does not take the matter any further. To bring such trivial matter into play after the lengthy delays already in this matter, will be in neither party's interest. There is no prejudice to the Defendant.

THE AMENDMENT WILL DEPRIVE THE DEFENDANT OF A DEFENCE:

[25] The Defendant also objected to the amendment on the basis that if it to be granted, it will render the Defendant's defence being the attack on the jurisdiction of this court academic. This is not so. There is no challenge to paragraph 4 and 5 of the Particulars of Claim as above.

CONCURRENT JURISDICTION:

[26] The Defendant further objected to the amendment on the basis that this court does not have jurisdiction, by virtue of the fact that the relevant immovable property forming the subject matter of the execution order, falls within the territorial area of jurisdiction of another court. It is common cause that the immovable property is situated in the Eastern Cape Province.

[27] However, the fact that the immovable property is situated in the Eastern Cape Province and, therefore within the jurisdiction of another Court, does not mean that

this Court does not have jurisdiction. It is reported in Moodley above that the Supreme Court of Appeal at paragraph [4] held as follows:

"[4] Following the rescission of the order, the Appellant filed a plea and counterclaim on 2 February 2004. In his special plea, he alleged that the Pretoria High Court lacked jurisdiction over the matter because the property was situated within the province of KwZulu-Natal and also because his chosen domicilium citandi et executandi was there. The special plea was clearly bad because the Pretoria High Court obviously had jurisdiction over the matter on the basis that the cause of action arose there - inexplicably however, on 31 May 2004, the Respondent withdrew the action and paid the Appellant's wasted cost." This is therefore also not a basis for opposing the amendment. (Own Emphasis)

THE LATENESS ISSUE:

[28] Lastly, the Defendant objected to amendment because of the lateness of the amendment. The action has been ongoing for three years and four months at the time the objection was delivered. A delay on its own is not necessary a ground for the refusal of an amendment (see Mabaso v Minister of Police, 1980 (4) SA 310 (W)). The delay in this matter is not such that the amendment should be refused on that basis.

CONCURRENT JURISDICTION:

[29] In this matter, another court may have concurrent jurisdiction with this Court. In Standard Bank of SA Ltd & Others v Thobejane & Others; Standard Bank of SA Ltd v Gqurana N.O. & Another, 2021 (6) SA 403 (SCA), the Supreme Court of Appeal held to the effect that a court is obliged by law to hear any matter that falls within its jurisdiction and, a court has no power to exercise a discretion to decline to hear a matter on the ground that another court has concurrent jurisdiction. A Plaintiff as the *dominus litis* party choose whichever forum may have jurisdiction and, he, she or it cannot be faulted for exercising that available election.

CERTAIN GENERAL PRINCIPLES:

[30] A court hearing an application for an amendment has a discretion whether or not to grant it and, that discretion must be exercised judicially. The primary object of allowing an amendment is to obtain a proper ventilation of the disputes between the parties, to determine the real issues between them, so that justice may be done.

[31] An amendment will *inter alia* not be allowed if the application to amend is made *mala fide* or if the amendment will cause the other party such prejudice or injustice as cannot be cured by an order or costs and, where appropriate, a postponement. [See MacSteel Tube & Pipe, a division of MacSteel Service Centres SA (Pty) Ltd v Vowles Properties (Pty) Ltd (680/2020) [2021] ZASCA 178 (17 December 2021)].

[32] In conclusion, the loan agreement relied upon was concluded in Pretoria, and therefore within this Courts territorial area of jurisdiction. To dismiss the application at this late stage, on the basis that it was never necessary to have brought the application, will be in neither parties interest, and accordingly the Plaintiffs application is granted.

COSTS:

[33] Turning to the aspect of costs. Uniform Rule 28(9) of the Uniform Rules of Court *inter alia* indicates that a party giving notice of amendment in terms of subrule (1) shall, unless the court otherwise directs, be liable for the costs thereby occasioned to any other party. The court has a discretion when it comes to matters of costs. The grant of an amendment is an indulgence to the party requiring it and, therefore generally that party is liable to pay the costs.

[34] In this matter the Plaintiff was legally represented. The Defendant a lay person appeared in person. Because of what transpired in this matter as dealt with above it is just and equitable that there be no order as to costs.

[35] The following order is issued:

[35.1] The Plaintiff is granted leave to amend its Particulars of Claim as set out in its Notice in terms of Uniform Rule 28(1) dated and signed 26 March 2024 (Annexure "FA5" to the Founding Affidavit).

[35.2] There will be no order as to costs.

J EASTES
ACTING JUDGE OF THE HIGH COURT
PRETORIA

For Plaintiff:

Adv M Rakgoale

Instructed by: Van Hulsteyns Attorneys

In Person the Defendant:

Phenyo Loyiso Benjamin Nonqane