



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

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED

DATE

SIGNATURE

CASE NO.: 49997/2019

In the matter between:-

PASSENGER RAIL AGENCY OF SOUTH AFRICA ACTING

THROUGH ITS CORPORATE REAL ESTATE SOLUTIONS DIVISION

Applicant

v

VIDUAL INVESTMENTS (PTY) LTD

(Registration Number: 1996/011575/07)

First Respondent

SUN 1 HOTELS (PTY) LTD

(Registration Number: 1990/005841/07)

Second Respondent

In re:

VIDUAL INVESTMENTS (PTY) LTD

(Registration Number: 1996/011575/07)

First Plaintiff

SUN 1 HOTELS (PTY) LTD

(Registration Number: 1990/005841/07)

Second Plaintiff

v

PASSENGER RAIL AGENCY OF SOUTH AFRICA ACTING

THROUGH ITS CORPORATE REAL ESTATE SOLUTIONS DIVISION

Defendant

Heard on: 17 November 2025

Delivered: 05 December 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 05 December 2025.

Summary:

1. Application for leave to amend instituted a few days before the trial hearing.
2. The proposed amendments constituted for special pleas.
3. The principles relating to amendments have been established by our authorities which *inter alia* are that:
 - 3.1. Amendments will not be allowed if they were *mala fide* or if the amendments causes an injustice/prejudice to the other party which cannot be cured by a cost order.
 - 3.2. A delay in amending pleadings is not a reason to refuse the same. Prejudice must be established.
 - 3.3 The primary purpose of allowing an amendment is to allow triable issues to be properly ventilated at trial stage and to determine the real issues between them.

ORDER

It is ordered:-

1. The applicant is granted leave to amend in terms of the special pleas on prescription and non-joinder raised in its notice for leave to amend dated 23 October 2024.
2. Costs shall be costs in the cause.

JUDGMENT

KOOVERJIE J

- [1] The applicant, Passenger Railway Agency of South Africa (“PRASA”), sought leave to amend its plea. The respondents, Vidual Investments Ltd and Sun 1 Hotels (Pty) Ltd, are the plaintiffs in the main action.
- [2] In addition, the respondents initially sought relief that PRASA pay the wasted costs occasioned by the postponement of the trial on 4 November 2024. This relief was sought in the form of a counterclaim.
- [3] However upon hearing both parties, they agreed to ventilate the said issues of costs, and further the applicant abandoned the special plea on “jurisdiction”.

Issues for determination

- [4] The main issues that remain for determination is whether the proposed amendments raised have merit, particularly:
- 4.1 The special plea in terms of Section 3 and 4 of the Institution of Legal Proceedings Against Organ of State, Act 40 of 2002;
 - 4.2. The special plea on prescription, and;
 - 4.3 The special plea on non- joinder.

Analysis

[5] Rule 28(10) stipulates:

“(10) The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.”

[6] It is trite that court hearing an application for an amendment has a judicial discretion whether to grant it or not. The party requesting the amendment has the onus to establish that the other party will not be prejudiced by it.

[7] The proposed amendments initially raised were four special pleas, where it was pleaded that:

7.1 no application in terms of Section 3 and 4, the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 was made by the respondents;

7.2 the respondents' claims have prescribed in terms of the Prescription Act 68 of 1969;

7.3 the City of Johannesburg should have been joined as a party, hence the plea of non-joinder;

7.4 the jurisdiction of this court was challenged in that the matter should have been referred to arbitration.

The Disputes

[8] The respondents contended that there was no *bona fides* in raising the amendments so late. The amendments was just another ploy to delay the trial proceedings. The litigation between the parties have become unnecessarily protracted. The plea was delivered on 2 March 2020, that is eight months after summons was instituted. The matter was eventually allocated for a trial hearing on 4 November 2024. On 23 October 2024, a few days before the said hearing, the applicant caused the matter not to proceed, by filing its notice of intention to amend its plea.

[9] In argument, I have noted that both parties blame each other for the trial not proceeding on 4 November 2024. The applicant was blamed for not filing its notice to amend earlier and the respondents were faulted for not objecting to the amendment timeously and before the trial. If this was done, then it would have allowed the application for leave to amend to be filed timeously at the trial. The objection regarding the amendments was only filed on 1 November 2024, only two court days before the hearing.

[10] The applicant particularly argued that in any event, the trial could not have proceeded as the parties failed to comply with the Practice Directives, inter alia by not convening a further pretrial. In my view, this was not the main reason for the delay. Moreover, the applicants Practice Note highlighting the non-compliance of the Practice Directives was filed after the notice of intention to amend was served.

- [11] The applicant also requested this court to take judicial notice of the unprofessional manner in which the respondents were litigating in this application. It objected to the manner in which the 'without prejudice' correspondence was disclosed in the papers. The applicant sought the striking-off of those portions where reference is made to the said correspondence.
- [12] The applicant's contended that a party seeking an amendment does not have to demonstrate that there are triable issues. The trial court is the appropriate court to deal with these points of law. Thus, if there is uncertainty at this stage, this court should allow the amendments to be ventilated by the trial court.
- [13] In any event the applicant submitted that triable issues have in fact been raised. The fact that the amendments were filed shortly before the hearing was not a reason to deny the amendments. The determining factor is prejudice, and this prejudice was not raised by the respondent in its papers. The applicants further informed the court that the amendments were necessitated after it received the respondents Rule 36(9) notice. This information is vague as the applicant does not explain on what basis the pleas were raised.
- [14] The applicant further contended that the special pleas raised are material to its defence and would require proper ventilation at the trial stage. The amendments raised will bring clarity to its case.
- [15] The objection raised by the respondent centered on two main grounds as namely:

15.1 The amendments were filed to merely cause a delay. At paragraph [61] of its answering papers alleged:

“The inescapable inference in this regard is that the amendment was mala fide and was orchestrated purely to scupper the trial proceeding, in the knowledge that, if this could be achieved, PRASA could secure for itself a delay to the matter and escape the inevitable consequences of having to meet (and satisfy) the plaintiffs’ claims.”

15.2 The special pleas raised are bad in law. They do not constitute triable issues and will be excipiable if allowed.

The law on amendments

[16] The principles relating to amendments have long been established through our authorities. I outline the salient principles, namely:

16.1 Amendments will always be allowed unless the application to amend is *mala fide* or unless such amendment causes an injustice to the other side which cannot be compensated by costs¹.

16.2 A delay in amending pleadings in itself is not a reason to disallow such amendments. Prejudice must be established. It is trite that an application to amend can be granted at any stage²;

¹ *Devonia Shipping Ltd v MV Luis* (Yeoman Shipping Company Ltd) 1994 (2) SA 363 (C) at 369 F-I See also *Moolman V Estate Moolman* 1927 CPD 27 at 29

16.3 Even if it was a careless mistake on the part of the applicant in not raising the amendments earlier, it would still be entitled to the amendment provided that there is no prejudice³. Moreover, the application could be granted if the necessity for the amendments had arisen through some reasonable cause;

16.4 The primary objective of allowing an amendment is to ensure that there is proper ventilation of the dispute between the parties.⁴

16.5 It was further affirmed that prejudice is a key factor. In ***Imperial Bank Ltd v Barnard and Others NNO***⁵ the court stated:

“The primary consideration in applications of this nature seems to be whether the amendment will have caused the other party prejudice which cannot be compensated by an order for costs or by some other suitable order such as a postponement.”

16.6 A party wishing to amend must show that it is something deserving of consideration and is a triable issue⁶.

[17] Our courts have allowed amendments and found there to be no prejudice in instances namely:

² Zarug v Parvathie 1962 (3) SA 872 D

³ Rosenberg v Bitcoin 1935 WLD 115 at 117

⁴ Trans-Drakensberg Bank Ltd (Under Judicial Management) v Combined Engineering (Pty) Ltd 1967 (3) SA 632 and Another 1993 (2) SA 960.

⁵ Imperial Bank Ltd v Barnard and Others NNO 2013 (5) SA 612 (SCA) at par 8

⁶ Trans-Drakensberg Bank matter at p641

- 17.1 if the amendment was granted with a suitable cost order. Mere loss of the opportunity in gaining time is not in law prejudice or injustice⁷;
- 17.2 if the amendment sought would cause the reopening of a case for further evidence to be led is not a ground for refusing the amendment, especially if the reason for the failure to lead that evidence was due to the state of the pleadings and not the deliberate failure on the part of the applicant;
- 17.3 in instances where a party makes a mistake in its pleadings, such as claiming less than what he is actually entitled, the opposing party would not be prejudiced because he would not be in a worse position than he would have been if the pleading in its amended form would have been filed in the first instance;
- 17.4 the fact that an amendment may cause the other party to lose its case against the party seeking the amendment also does not constitute prejudice.

[18] The respondent pointed out that not only has it been prejudiced by the delay, but the very amendments proposed do not constitute triable issues and would eventually render the pleas excipiable.

[19] It was aptly expressed in **Trans-Drakensberg Bank**⁸ :

⁷ Union Bank of South Africa Ltd v Woolf; Union Bank of South Africa Ltd v Shipper 1939 WLD 222 at 225

⁸ Trans-Drakensberg Bank at pg 641

“However it has been held that a party who wishes to change or add to his original pleadings must show that it is something deserving of consideration and a triable issue. He cannot harass the opponent by an amendment which has no foundation or which would introduce a pleading that would make it excipiable.”

- [20] The proposition that amendments would be granted if they facilitate the proper ventilation of the disputes between the parties has to be qualified. It is not open ended. Triable issues must be raised which can be supported by evidence foreshadowed in the application for leave to amend ⁹.

THE AMENDMENTS

Notice In Terms of the Institution of Legal Proceedings Act Against Certain Organs of State

- [21] The applicant sought to raise this special plea on the premises that no notice was given to PRASA as envisaged in Section 3 and 4 of the said Act. Such notice had to be given within 6 months from the date on which the debt became due.
- [22] The respondent with reference to various authorities demonstrated that legal point raised is bad law. The authorities have clearly outlined that notification need only be given in respect of claims for damages¹⁰.

⁹ Rosenberg v Bitcoin at page 115

Compass Insurance Co Ltd v Cobus Smit Projekbestuur CC and Another 2019 (1) SA 413 WCC

¹⁰ Thabani Zuu Pty Ltd v Minister of Water Affairs and Another 2012(4) SA 91 KZN, Nicor IT Consulting Pty Ltd v North West Housing Corporation 2010 (3) SA 90 NWM at para 27 to 30

[23] The applicant has not even attempted to address the defence raised by the respondents. Clearly there is no triable issue on the legal point raised. Hence the amendment proposed is without merit.

[24] It is not in dispute that PRASA is considered to be an organ of state in terms of the definition set out in the Act. Furthermore, the term “debt” is defined in the Act as *arising from any cause of action-*

(a) *which arises from delictual, contractual or any other liability including a cause of action which relates or arises from:*

- i. act performed under or in terms of any law, or;*
- ii. omission to anything which should have been done under or in terms of any law, and;*

(b) *for which an organ of state is liable for payments of damages whether such debt becomes due before or after the fixed state.*

[25] The definition of the term “debt” in the said Act was extrapolated in **Nicor IT Consulting** and where the court concluded:

“As such this ordinary and natural meaning is to be preferred above a wider interpretation of the definition of “debt” in the Act qualifies paragraph (a) of such definition and consequently a debt for the purposes of the Act is confined to a claim for damages however such claim arose”

- [26] It is evidently clear that the plaintiff's cause of action is premised on a written commercial development lease agreement entered into on 10 April 1998 where the plaintiff's (Vidual) hired certain property from PRASA. Vidual was to develop and use the property for the purposes of essentially operating a hotel.
- [27] Amongst the terms stipulated in the contract, Vidual was liable for the municipal deposits and charges in respect of electricity and water actually consumed by it on the property. Vidual also had to ensure that payment of all charges due and payable was made directly to the municipality.
- [28] Vidual and Sun 1's cause of action is premised on the said contract. In the pleadings it was alleged PRASA would be liable to Vidual and Sun 1 in terms of 2016/2017 invoices on the basis that PRASA was unjustifiably enriched at their expense. I find that this amendment is bad law and is unsustainable.

Prescription

- [29] The applicant introduced the special plea on prescription on the basis that the claims have prescribed.
- [30] On the applicant's version, prescription commenced from the dates appearing on the respective invoices. It was argued that although the invoices had come to the attention of the plaintiff on 5 July 2016, it only instituted summons on 15 July 2019, which is past the three year period.

[31] The respondent's version, on the other hand, was that the claims arose from the back billing dispute agreement which was concluded on 22 July 2016 and the amounts were erroneously paid on 18 August 2016 and between September 2016 and June 2017. In terms of this timeline the plaintiffs claim was launched timeously.

[32] Hence the dates on the invoices as the determining factor is incorrect and thus no triable issue has been raised.

[33] Noting the factual disputes as to when prescription commenced, I am of the view that the amendments sought by virtue of this plea constitutes a triable issue and evidence would have to be led at the trial on the point of prescription.

Non-Joinder

[34] The proposed amendment in respect of the point on non-joinder is premised on the fact that the City of Johannesburg (the City) ought to have been joined to these proceedings as it had a direct interest in the matter. It was pointed out that the water consumption was the responsibility of the City. The meter readings of the water consumption and billing is the responsibility of the City. The applicant *inter alia* contended that the meter readings of the water on the property was erroneous as it was based on a meter that was nonexistent. The City would be required to clarify the meter consumption and billing.

[35] The applicant further alleged that the City was overpaid. It has a direct interest in the matter and would be required to furnish the necessary information.

[36] The respondent contended that the claim arose by virtue of the parties contractual relationship. The principle *res inter alios acta* finds application. This relationship therefore does not affect the City and neither does it bind it. The claims arose from a private agreement between the parties.

[37] In reply, the applicant contended that the proposed special plea has merit and further argued that the respondent will have a full opportunity to arise is contentions at trial stages

[38] In my view although the privity of contract is relied upon, I am not in a position at this stage, to dismiss the point taken without the benefit of fully understanding the City's role. The trial court will be equipped with all the facts and evidence to make a proper determination on the non-joinder issue.

Further Amendments

[39] While the notice refers to the insertion of a new paragraph 9 and 21 there appears to be no amendments. It is clearly vague and embarrassing.

Conclusion

[40] In conclusion I find that the amendments pertaining to the special plea on prescription and the special plea on non-joinder should be granted.

Costs

[41] Although the applicant has been partially successful in this application, the proposed amendments would have to be tested at the trial stage. In exercising my discretion, I find that the appropriate order should be that costs be costs in the cause.

H. KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the defendant/applicant:

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Instructed by:

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Counsel for the plaintiffs:

Adv. D Hodge

Instructed by:

David Shapiro & Associates Inc. Attorneys

Date heard:

17 November 2025

Date of Judgment:

05 December 2025