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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION: GQEBERHA)**

CASE NO: 2861 / 2024

In the matter between

ECO CAR HIRE CC

PLAINTIFF

(Registration No.: 2006/204304/23)

and

NELSON MANDELA BAY

DEFENDANT / EXCIPIENT

MUNICIPALITY

JUDGMENT

NGOQO AJ

Introduction

[1] This is an exception taken by the defendant against the plaintiff's particulars of claim. The plaintiff instituted an action against the defendant, claiming an amount of R1 300 780.24 together with interest and costs, for breach of agreement.

Background

[2] The basis for the exception is that the plaintiff's particulars of claim are vague and embarrassing and lack averments which are necessary to sustain a cause of action. Essentially, it rests on two grounds, ie. the plaintiff's non-compliance with Rule 18¹ in failing to attach copies of the written contracts referred to in the particulars and in failing to identify the parties involved in the conclusion and execution of the said contracts.

[3] The second ground is based on the allegation that there is an incomplete or insufficient description of the parties to the contract in the particulars.

[4] In opposing the exception, the plaintiff contended that the defendant's exception has no merit in that it is based on a complete misunderstanding of its claim. According to the plaintiff the claim is not based on any of the two written contracts entered into between the parties. It is based on a liquid document prepared by the defendant subsequent to the plaintiff's invoices being rendered and approved by the defendant.

[5] The plaintiff further contended that the verbal contract upon which its claim is based is the contract that bridged the gap between the termination of contract

¹ Uniform Rules of Court

SCM/17-63/S which came to an end by effluxion, and contract SCM/19-322/S which was concluded a couple of months after contract SCM/17-63/S came to an end.

[6] The plaintiff further contended that the defendant is not correct in saying that the parties to the agreements are not clearly identified. It was submitted on behalf of the plaintiff that, from the onset, it clearly stated that at all times it was represented by either its sole member, Maseeha Adam and/or its manager, Muhammed Adam. The defendant was represented by one or more unidentified officials, unknown to the plaintiff, or as further stated in the particulars of claim.

The Issue

[7] The primary question that this court has to answer, therefore, is whether in the instant matter the plaintiff's particulars of claim are excipiable on the grounds that they are vague and embarrassing as well as whether they lack averments which are necessary to sustain a cause of action.

The legal principles / The law applicable

[8] Rule 18(4) of the Uniform Rules of Court requires that every pleading contain a clear and concise statement of the material facts upon which the pleader relies for his/her claim. Consequently, where a pleading lacks averments which are necessary to sustain an action or defence, as the case may be, an exception can be taken against such a pleading.²

[9] An exception is a legal objection to an opponent's pleading. Its purpose is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If not taken for that purpose, the excipient must make out a very clear case before the exception would be allowed to succeed. In this

² Rule 23(1) of the Uniform Rules of Court

regard, the Supreme Court of Appeal (SCA), in the matter of *Vermeulen v Goose Valley Investments (PTY) Ltd*³ stated the following;

‘It is trite that an exception that a cause of action is not disclosed by a pleading cannot succeed unless it be shown that ex facie the allegation by a plaintiff and any document upon which his or her cause of action may be based, the claim is (not may be) bad in law.’

[10] An exception, particularly in this case, asserts that the pleading does not disclose a cause of action due to its vagueness and lack of averments which are necessary to sustain a cause of action. Where it is taken, the court must look at the pleading excepted as it stands, as no facts other than those stated in the pleading can be brought into the issue. In order to succeed, an excipient must persuade the court that upon every interpretation which the pleading in question can reasonably bear, no cause of action is disclosed, failing which the exception cannot be upheld.

[11] In the matter of *Tembani and others v President of the Republic of South Africa and another*⁴ the court had the following to say;

‘While exceptions provide a useful mechanism ‘to weed out causes without legal merit,’ it is nonetheless necessary that they be dealt with sensibly. It is where pleadings are so vague that it is impossible to determine the nature of the claim or where pleadings are bad in law, in that their contents do not support a discernible and legally recognized cause of action, that an exception is competent. The burden rests on an excipient, who must establish that every interpretation that can reasonably be attached to it, the pleading is excipiable. The test is whether on all possible readings of the facts no cause of action may be made out, it being for the excipient to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put on the facts.’

³ 22001 (3) SA 986 (SCA) para 7

⁴ 2021 (1) SA 432 (SCA) at para 14

[12] The purpose of any pleading is to crystalize the issue(s) in dispute. An exception on the ground that a pleading is vague and embarrassing requires of the court to consider first, whether it lacks particularity to the extent that it is vague and secondly, whether the vagueness causes embarrassment.

[13] In the case of *Mosothokazi Share Trust and Others v Broll Auctions and Sale (PTY) Ltd and another: in re Broll Auctions and Sale (PTY) Ltd and another v Mosothokazi Share Trust and Others*⁵ the court said that ‘it is trite that exceptions are there to ‘weed out unmeritorious causes of action whether claims or defences. They are not there to exact perfection to pleadings.’

[14] When it comes to the aspect of the cause of action it is important to bear in mind that every fact that would be necessary for the plaintiff to prove, in order to support his/her right to judgment, must be pleaded. Note must however, be taken that this does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.⁶ What the proven facts are in each particular case is essentially a matter of substantive law and not of procedure.

Application of the law to the facts

[15] For a proper assessment and evaluation of the issues raised in the matter, it is necessary to restate the plaintiff’s particulars of claim. They are set out as follows:

‘1. The plaintiff is ECO CAR HIRE CC, a close corporation, duly incorporated in terms of the laws of the Republic of South Africa with registration number 2006/204304/23 and with its principal place of business at 5[...] A[...] Road, Walmer, Gqeberha.

2. ...

⁵ 929772/2015) [2016] ZAGPJHC 111 (13 May 2016)

⁶ See *McKenzie v Farmers Co-operative Meat Industries Ltd* 1922 AD 16 at 23; see also *Evins v Shield Insurance Co. Ltd* 1980 (2) SA 814 (A) at 825G

3. Defendant is NELSON MANDELA BAY MUNICIPALITY, a municipality duly established in terms of section 12 of the Local Government Municipal Structures Act 117 of 1998 and with its principal place of business situated at City Hall, V[...] Mini Square, G[...] M[...] Avenue, Gqeberha.

4. At all relevant times Plaintiff was represented by its sole member, Maseeha Adam and/or Plaintiff's manager, Muhammed Adam.

5. At all relevant times, Defendant was represented by one or more officials whose identities are unknown to Plaintiff or as stated further herein.

...

22. From the date of termination of contract SCM/17-63/S to the date of the provisional awarding of contract SCM/19-322/S, Plaintiff, at the specific request and instance of Defendant, agreed that the Defendant would be permitted to continue to retain and use the vehicles by Plaintiff in accordance with the scope of work referred to in paragraphs 20.1 to 20.5 above.

23. The agreement was verbal and amounted to an extension of contract SCM/17-63/S on the same terms and conditions as set out in the contract.

24. Plaintiff performed its duties fully in terms of the verbal agreement.

25. Defendant failed and/or neglected to issue Plaintiff with an official order number with regards to these vehicles rented, effectively preventing Plaintiff from issuing an invoice.

26. As required, Plaintiff brought the issue to the attention of Defendant by email, dated 15 February 2021.

27. After Defendant finally awarded the contract to Plaintiff under number SCM/19-322/S in August 2021, Defendant provided Plaintiff with the official purchase order numbers for the vehicles hired.

28. Subsequent to being provided by Defendant with the order numbers, Plaintiff compiled and submitted to Defendant the relevant invoices in the total amount of R1 300 780.24.

29. Subsequent to Plaintiff submitting the invoices to Defendant, Defendant compiled and submitted to Plaintiff a spreadsheet reflecting all the unpaid invoices. A copy is attached hereto as **ECO1**.

30. Despite the invoices being rendered, and despite Defendant by submitting the spreadsheet to Plaintiff, effectively admitting receipt of the invoices, Defendant fails and/or neglects and/or refuses to settle the amount of R1 300 780.24, which amount is due and payable.

ALTERNATIVELY

31...

32...

33. Defendant is therefore liable to pay to Plaintiff the amount of R1 300 780.24...

[16] Dealing with the first ground raised for the exception (non-compliance with Rule 18), upon a close examination of the plaintiff's particulars, I hold the same view as the defendant for the reasons I state below. The particulars state that the agreement bridging the two contracts between the parties was verbal in nature and was at the instance of the defendant. They however go further and state that 'the verbal agreement was on the same terms and conditions as set out in contract SCM/17-63/S,' thus bringing the written contract into the claim. Rule 18(6) Provides as follows:

'A party who in his 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 written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.'

[17] I agree with the defendant's argument that the annexed 'ECO1' document does not entitle the plaintiff to remuneration without the plaintiff pleading material facts in support thereof. Paragraph 23 of the particulars states that the agreement was verbal, it being an extension of contract of SCM/17-63/S (a written contract). This paragraph further states that the verbal agreement was on the same terms and conditions as in the said written contract. Surely the terms and conditions of a contract are material facts in support of the claim that need to be pleaded in one's particulars. As per the provisions contained in Rule 18(6), it follows that contract SCM/17-63/S or at the least the portion that deals with the terms and conditions thereof ought to have been annexed to the plaintiff's particulars. Therefore, the argument by the defendant that there is an incomplete or insufficient description of the nature of the performance is valid given that such performance is contained in the terms and conditions of a written contract (SCM/17-63/S) which was not annexed to the particulars.⁷ It cannot, therefore, be gainsaid that the plaintiff's particulars are excipiable.

[18] The second ground by the defendant, is dealt with in detail in the particulars of claim.⁸ The verbal agreement between the plaintiff and the defendant extended the life of the first contract between the two parties. The conditions and terms remained the same. It is therefore correct that there is an incomplete or insufficient description of the nature of the performance required of the parties to the contract.

[19] Taking a closer look at the cases cited herein, it can be concluded that it is only if the court can conclude that it is impossible to recognize the claim, irrespective of the facts as they might emerge at the trial that the exception can and should be upheld.

⁷ Paragraph 23 of the particulars of claim

⁸ See paragraphs 20 – 30 of the particulars of claim.

[20] The plaintiff's claim is based on a breach of a contractual agreement. It is imperative that the plaintiff pleads the material facts which are relevant to the performance of any obligation in terms of the contract which it relies on. Failure to do so strikes at the core of the pleading as a whole. The natural consequence thereof is that the excipient is left prejudiced and unable to plead meaningfully.

[21] The plaintiff having failed to annex the said contract or the relevant portions thereof, the ineluctable conclusion is that the particulars are excipiable for being vague and embarrassing.

[22] The excipient referred to the provisions of Rule 23(1) of the Uniform Rules of Court in asking for costs against the plaintiff. This rule has since been amended.⁹ It was argued by the plaintiff's legal representative that this position left the plaintiff in limbo as to how it should proceed in dealing with the exception by the defendant. Seeing as the Defendant was not setting the exception down for hearing, Plaintiff was left with no option but to bring an interlocutory application to compel the defendant to set the matter down in accordance with the Rules.

[23] On those basis the plaintiff is seeking punitive costs in respect of the interlocutory application. This was borne by the fact that subsequent to the interlocutory application being brought on the 23rd May 2025, the defendant on the 30th May 2025 complied, effectively rendering the interlocutory application moot. Instead of making an offer to settle the plaintiff's costs, defendant chose to file opposing papers of twenty-five pages.

[24] When any party takes a step to advance its case, it is incumbent on the opposing party to take any step it deems necessary, in accordance with the Rules,

⁹ See GN R2164 of 1987, GN R2642 of 1987 and GN R1262 of 1991

to make sure that its interests are protected and it too, gets to be heard. It is therefore not surprising that the defendant took the necessary steps to oppose the interlocutory application. Failure to do so, may have led to the plaintiff possibly proceeding with it, to the detriment of the defendant.

[25] Consequently, I am not persuaded that a punitive scale of costs is warranted. The general rule is that costs follow the successful party and they are at the discretion of the court. I see no reason why the general rule should not apply in this matter in respect of both the interlocutory application and the exception.

Order:

[26] In the result, I therefore make the following orders:

- a. The defendant's exception is upheld with costs.
- b. The defendant is ordered to pay the Plaintiff's costs in respect of the interlocutory application.

D. N. Ngoqo
Judge of the High Court (Acting)

Date judgment reserved: 7 August 2026

Date judgment delivered on: 05 February 2026

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