

REPUBLIC OF SOUTH AFRICA



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

Case Number: **2024-147415**

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

25 February 2026

DATE

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SIGNATURE

In the matter between:

LINRAW CC

Applicant

and

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

1st Respondent

CITY POWER JOHANNESBURG SOC LTD

2nd Respondent

JUDGMENT

MODIBA, J

[1] The defendants, except to the plaintiff's particulars of claim on the ground that they lack averments necessary to sustain a cause of action as contemplated in Rule 23(1) of the Uniform Rules of Court. They seek an order upholding the exception with costs and striking out the plaintiff's particulars of claim. The plaintiff opposes the exception on the basis that valid causes of action are adequately set out in its particulars of claim. It seeks an order dismissing the exception.

[2] I set out the legal principles for exceptions. I then apply the legal principles with reference to the defendants' grounds of exception and the plaintiff's causes of action as pleaded and make findings. Lastly, I rule on costs and set out the order.

[3] The legal principles for an exception are trite. An exception is a pleading¹ in which a party objects to a pleading. It may do so, as the defendants do, on the basis that it fails to disclose a cause of action. Exceptions are decided on the pleadings as they stand at the time when the exception is taken.² The purpose of an exception is to oppose a pleading on which a cause of action cannot or is not disclosed to save the parties from the burden of going through a trial to essentially arrive at the same finding.³ The defendants bear the onus of establishing that the pleading is excipiable.⁴

[4] The defendants contend that in paragraphs 5 to 10 of the particulars of claim, the plaintiff alleges that the first defendant has statutory obligations to provide municipal services, including electricity, but fails to identify the precise legal

¹ *Haarhoff v Wakefield* 1955 (2) SA 425E at 426G – H and *Barclays National Bank Ltd v Thompson* 1989 (1) SA 547A at 556J.

² *Jugwamth v Mobile Telephone Networks (Pty) Ltd* [2021] (4) ALL SA 346 SCA para. 12 at 351G – H.

³ *Colonial Industries Ltd v Provincial Insurance Co Ltd* 1920 CPD 627 at 630.

⁴ *Odendaal v Van Oudtshoorn* 1968 (3) SA 433T at 436D – E.

provision allegedly breached. There is no merit to this contention. The plaintiff has specified the statutory provisions that it bases its cause of action on in paragraphs 5, 6 and 10 of its particulars of claim.

[5] The defendants also allege that the plaintiff has pleaded a cause of action based on contract but failed to set out the following essential particulars: the date and manner of conclusion of the alleged contract, the specific contractual obligations of each party and the nature and terms of the alleged breach. There is no merit to this ground of exception. The nature of the contract concluded between the parties is pleaded as a written application for the supply of electricity which the plaintiff made to the first defendant who accepted it on behalf of the second defendant. The date the contract was concluded is also pleaded in paragraph 11.1 of the particulars of claim. The alleged breach by the defendants is pleaded in paragraphs 13, 14, 15, 16, 24, 30, and 35.

[6] The defendants contend that the plaintiff further pleads that the alleged breach resulted in financial loss due to electricity disconnection but does not specify whether such loss arises from a contractual, statutory, or delictual obligation. There is no merit to this ground of exception. When the particulars of claim are read as a whole, the alleged loss was caused by any of the pleaded causes of action.

[7] The defendants further allege that in paragraphs 16 to 37 of the particulars of claim, the plaintiff references multiple court orders and alleges that the defendants have acted in contempt of these orders. However, rather than seeking relief for contempt of court, the defendants further contend, the Plaintiff instead claims delictual damages. It is not for the defendants to choose a cause of action for the plaintiff. They have not provided any legal authority for the

proposition that the plaintiff has no cause of action in delict for failure to comply with court orders. This contention is also inconsistent with their alleged ground of exception that the particulars of claim do not disclose a cause of action. It is not the defendant's case that the particulars of claim do not disclose a cause of action in delict.

[8] Lastly, the defendants allege that the plaintiff failed to quantify its damages. Therefore, there is no basis upon which to assess the reasonableness of the plaintiff's alleged damages for the purpose of pleading. There is no basis for this contention. The plaintiff claims damages in the amount of R3 700 000. In paragraph 41.3 of its particulars of claim, it has set out a breakdown of this amount. Further damages it continues to incur are pleaded at paragraph 43. The defendants should plead to these averments.

[9] For all the above reasons, the defendants' exception falls to be dismissed. The plaintiff has invited the court to consider granting costs *de bonis propriis* against the defendants' attorney but failed to make out a proper case for such an order. The fact that the defendants are organs of state and that the excipient's attorney and counsel boasted about drafting the exception without more, does not justify such an order. Other than that, no reasons were advanced as to why costs should not follow the cause.

[10] I therefore made the following order:

Order

The defendants' exception is dismissed with costs.



L.T. MODIBA
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicant: Adv R Cohen
Instructed by: Glyniss Cohen Attorneys

For the Respondents: Adv Bvumbi
Instructed by: Magagula Attorneys

Date of hearing: 16 February 2026
Date of Judgment: 25 February 2026.

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The date for the handing down is deemed to be 10am.