

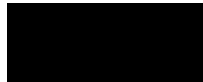


**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case 2024 - 118454

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☐ / No ☒

Date: 16 February 2026



In the matter between:

ARC FUELS PTY LTD

Plaintiff

and

PHAKWE PETROLEUM PTY LTD

Excipient / Defendant

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an exception by the defendant which is out of time, has not been prosecuted, and is, in any event, bad in law on its merits.

[2] Arc Fuels (Pty) Ltd sues Phakwe Petroleum (Pty) Ltd for payment of the outstanding balance of the purchase price for diesel allegedly sold and delivered pursuant to a written credit and cash sales agreement concluded during August 2023. The particulars of claim allege a written agreement, an order in October 2023 for 500

000 litres of diesel, partial collection and partial payment by the defendant, and an outstanding balance of R8 004 000,00 for which the plaintiff seeks specific performance.

[3] The procedural chronology is not in dispute. Summons was served on 1 November 2024, a notice of intention to defend followed on 14 November 2024, and a Rule 23(1) notice on 29 November 2024. A notice of bar was served on 17 March 2025, and the exception itself was delivered on 25 March 2025. Heads of argument and a practice note for the excipient were filed on 31 March 2025, and the plaintiff's heads and practice note followed on 15 April 2025. Thereafter nothing of substance was done by the excipient to prosecute its own exception. Its attorneys withdrew on 16 September 2025, and no fresh notice of representation or appearance has been filed. The matter has been enrolled at the instance of the plaintiff, who has also filed a unilateral 'joint' practice note because the defendant failed to participate.

[4] The exception is thus late relative to the Rule 23(1) notice and the notice of bar; there is no application for condonation, and the excipient does not appear today to seek any indulgence. On that basis alone, the exception is irregular before the court and liable to be dismissed. In deference to the issues raised in the heads, I nevertheless consider the merits on the assumption, without deciding, that condonation could be granted.

[5] The principles applicable to exceptions are trite and are also traversed in the plaintiff's heads. An exception is a legal objection to a pleading. It is aimed at a defect inherent in the pleading itself. The court must accept, for purposes of the exception, that the facts pleaded are true and must confine itself to the four corners of the pleading and any document upon which it is based.¹ The excipient bears the onus to persuade the court that, on every reasonable interpretation of the pleading and the document relied on, no cause of action is disclosed,² or, in the case of a complaint of vagueness and embarrassment, that the pleading is so unclear that the excipient

¹ *Living Hands (Pty) Limited v Ditz* 2013 (2) SA 368 (GSJ) at 374G, para 15.

² *Living Hands (Pty) Limited v Ditz* 2013 (2) SA 368 (GSJ) at 374G, para 15.

cannot reasonably be required to plead.³ As Erasmus⁴ explains in the commentary to Rule 18, the object of pleading is to define the issues so as to enable the other party and the court to know what case has to be met; the test is whether the pleading contains a clear and concise statement of the material facts with sufficient particularity to enable the opposite party to reply.

[6] The first cluster of complaints in the excipient's heads concerns alleged non-compliance with Rule 18(6) and the formal validity of the written agreement. Rule 18(6) requires a party who relies on a contract in a pleading to state whether it is written or oral, and when, where and by whom it was concluded, and, if written, to annex a true copy. Erasmus makes it clear that the purpose of this requirement is to ensure that the basis of the cause of action appears *ex facie* the pleading, and that failure to comply renders the pleading an irregular step which may be attacked under Rule 30 and, where appropriate, condoned. In *Moosa v Hassam*,⁵ which the excipient quotes, the court stressed that a plaintiff who bases a cause of action on a written agreement must annex a copy because the agreement is a "vital link in the chain" of the cause of action; but even there the court recognised that non-compliance may be condoned and that the focus is whether the basis of the claim appears from the pleading. In the more case of *Absa Bank Ltd v Zalvest*,⁶ the court emphasised that a rigid, technical application of Rule 18(6) is inappropriate and clarified that the focus should be on whether the cause of action is properly pleaded and whether any prejudice arises from the inability to annex the written contract.

[7] In this matter, the plaintiff pleads that it relies on a written credit and cash sales agreement, identifies it by date, annexes a copy of the written agreement, pleads the material terms on which it relies, and identifies the defendant's representative by name. The excipient's complaint is that the particulars do not spell out who, on the plaintiff's side, physically concluded or signed the agreement, and that contract is unsigned. Even if one assumes that the pleading is imperfect in this regard, it does not

³ *Living Hands (Pty) Limited v Ditz* 2013 (2) SA 368 (GSJ) at 374G, para 15.

⁴ Erasmus *Superior Court Practice*, vol 2, D1–Rule 18 commentary.

⁵ 2010 (2) SA 410 (KZP).

⁶ 2014 (2) SA 119 (WCC).

follow that no cause of action is disclosed. Erasmus emphasises that pleadings must set out material facts, not every detail of the evidence, and that formal defects in complying with Rule 18(6) are to be addressed via Rule 30 or amendment where there is no real prejudice. The defendant knows precisely what agreement is relied upon, when it was concluded, what its terms are alleged to be, and how it is said to have been breached; authority or internal representation on the plaintiff's side is a matter the defendant can put in issue in its plea, if so advised. It is, in other words, fully able to plead to the particulars as they stand.

[8] The second cluster of complaints relates to alleged inconsistencies between the standard terms of the contract and the pleaded "commercial terms"; the manner in which the order was placed; the absence of a pleaded tender or performance by the plaintiff; and the quantification of the claim. Erasmus's general commentary to Rule 18(4) cautions that an exception for vagueness and embarrassment strikes at the formulation of the cause of action, not its legal validity, and that the excipient must show that the pleading is truly ambiguous or contradictory to the extent that it cannot reasonably be answered. Here, read sensibly, and the particulars of claim allege: a written agreement with standard terms; further commercial terms agreed at or shortly after the conclusion of that agreement regarding price and payment; an order for a defined quantity of diesel at an agreed price; partial performance by the defendant; and a balance calculated by simple calculation. Any tension between the pre-printed terms and the pleaded commercial terms, or between the clause dealing with orders and the allegation of a telephonic order, raises issues of interpretation and evidence. Those are matters for trial and potentially for special pleas or defences; they do not render the pleading self-destructive or so vague that the defendant cannot meaningfully admit, deny or plead over.

[9] The quantification complaint similarly misconceives Rule 18(10). The plaintiff pleads the agreed price, the quantity ordered, the partial payment and the outstanding balance. That provides the defendant with all the information it needs to assess the quantum and respond. Any contention that the plaintiff ought to have mitigated by selling the product elsewhere, or that it has in fact not suffered a loss, is a matter of defence on the merits and not a ground of exception.

[10] Against this legal background, and having regard to the pleadings and the contract annexed, I am not persuaded that the particulars of claim fail to disclose a cause of action on every reasonable interpretation, nor that they are vague and embarrassing in the sense understood in the authorities and in the Erasmus commentary. The defendant can, and should, plead as the particulars stand.

[11] As a result, the exception must fail. The defendant has caused the plaintiff to incur the costs of opposing an unmeritorious exception, which it has then failed to prosecute and which it does not even appear to support. It did not withdraw the exception either, nor has it otherwise engaged with the plaintiff. The meritless exception appears to be a delaying tactic on the part of the defendant, which leads me to conclude that there is no reason why the plaintiff should bear the costs of this application.

Order

[12] The following order is made:

1. The defendant's exception to the plaintiff's particulars of claim is dismissed.
2. The defendant is ordered to pay the costs of the exception, including the costs of counsel, on scale B.


WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing: 16 February 2026

Date of judgment: 16 February 2026

For the plaintiff: T Malungani, standing in for GP Maluleke,
instructed by Otto Krause Inc Attorneys

For the defendant: Heads of argument by M Vimbi, no
appearance on the day, no attorney of
record.