THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 2025-089086

In the matter between:

SOUTHERN AFRICAN FRUIT TERMINALS (PTY) LTD	First Plaintiff
COLDHARVEST (PTY) LTD	Second Plaintiff
and	
MAERSK LOGISTICS AND SERVICES SOUTH AFRICA (PTY) LTD	First Defendant
MARIUS NEL	Second Defendant
DESMOND PIENAAR	Third Defendant
SHAUN LEWIS	Fourth Defendant
FRANCO LOVEMBER	Fifth Defendant

Summary:	Exceptions - No Cause of Action - Alleged Unlawful Competition - Malice Not Required - Exceptions Dismissed.
Coram:	Wille, J
Heard:	24 February 2026
Delivered:	9 March 2026

JUDGMENT – [EXCEPTION]

WILLE, J:

INTRODUCTION

[1] The plaintiffs sued the defendants for unlawful competition, misappropriation of confidential information, and the alleged encouragement of employees to breach their contractual obligations. In summary, the defendants, by way of exception, attack two of the prayers in the plaintiff's amended particulars of claim.[1]

[2] There are two exceptions before me for adjudication. The defendants set out their complaints in exceptions *three* and *five* of the exceptions filed. The complaints allege that the pleadings contain conclusions of law unsupported by the factual basis required to sustain the causes of action. Thus, the exceptions concern issues in relation to the *causes of action* as currently formulated.[2]

[3] I will deal with exception number five first and exception number three last. I do this because I hold the view that there is very little merit (in any) in exception number five.[3]

RELEVANT CONTEXT

[4] The plaintiffs (as a group) conduct business in cooling, cold storage, and containerization of fruit and other perishable products in accordance with export and market regulations. The plaintiffs allege that their operations are heavily reliant on certain specific proprietary systems, processes, and human resource structures that they say are peculiar to their business and give them a competitive edge.[4]

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1 The defendants assert that it is impermissible to claim that they be interdicted and restrained from inducing the plaintiffs' employees to breach their employment contracts and or their fiduciary duties to and with the plaintiffs'.
2 The fifth exception does not however concern a "cause of action" in the legal sense.
3 This exception goes to the issue of the scale of the costs order sought against the defendants.
4 The plaintiffs' confidential information and trade secrets.

[5] It is alleged that this confidential information includes the workings of the plaintiffs' cooling regimens, workflow systems, regulatory compliance processes, management structures, skills matrices and proprietary client lists and pricing. Further, it is alleged that the plaintiffs' confidential information is commercially valuable and known only to the plaintiffs and to a limited number of employees who are subject to confidentiality obligations. In summary, this confidential information (in the form of a protectable proprietary interest) would materially benefit any competitor seeking to enter the cold-storage business.[5]

THE ALLEGED INTERFERENCE BY THE DEFENDANTS

[6] The plaintiff's case is that the first defendant constructed and commissioned two cold-storage facilities in direct competition with the plaintiffs' businesses. The second and third defendants (while employed by the plaintiffs) were engaged by the first defendant to provide technical advice on cold-storage systems for its facilities, which were then in the process of construction. The second and third defendants allegedly divulged the plaintiffs' confidential information to the first defendant in breach of their contractual and fiduciary obligations.[6]

[7] The allegation is made that the first defendant knew that the second and third defendants were acting in breach of their obligations to the plaintiff and colluded with them to benefit from this confidential information. The fourth and fifth defendants were former employees of the plaintiffs and had extensive access to the plaintiffs' confidential personnel information. These former employees had signed employment contracts with confidentiality covenants to avoid conflicts of interest and prevent the disclosure of confidential information to competitors.[7]

[8] Thus, it is alleged that the first defendant's use of the plaintiffs' confidential information through the plaintiffs' former employees was part of an orchestrated scheme for purposes of springboarding the first defendant's entry into the cold-storage market. It is pleaded that as a direct result of this stratagem employed by the first defendant, the plaintiffs lost twenty-three of their managers and operators who were subsequently employed by the first defendant.[8]

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[5] The plaintiffs allege an orchestrated campaign of "springboarding".
[6] These defendants had signed restraint and confidentiality covenants to the benefit of the plaintiffs
[7] The inducement to breach their contracts with the plaintiffs was unlawful.
[8] These employees were used to springboard the competitive business of the plaintiff unlawfully.

[9] Further, it is pleaded that, as a direct result of this *filching,* the first defendant avoided significant costs and time required to establish its own compliant cooling systems and human-resource infrastructure for its new competitive business.[9]

[10] Finally, despite demand to refrain, the defendants have continued to use the plaintiffs' confidential information, and this alleged harm-causing conduct will continue unless restrained. Most importantly, the allegation is also made that the defendants have continued to contact and solicit the plaintiffs' key skilled management personnel.[10]

<u>CONSIDERATION</u>

GENERALLY

[11] As a general proposition in deciding an exception, a court must accept all the allegations of fact made in the particulars of the claim as true, may not have regard to any other extraneous facts or documents, and may uphold the exception to the pleading only when the excipient has satisfied the court that the cause of action or conclusion of law in the pleading cannot be supported on *every interpretation* that can be put on the facts. The purpose of an exception is to protect litigants against claims that are bad in law or against an embarrassment that is so serious as to merit the costs even of an exception.[11]

[12] Thus, the purpose of an exception is to raise and obtain a speedy and economical decision on questions of law that are apparent on the face of the pleadings and generally to avoid the leading of unnecessary evidence.[12]

THE FIFTH EXCEPTION

[13] In some of their *prayers* for relief they seek, the plaintiffs seek costs of suit on an attorney-client basis. The defendants complain that the particulars of claim do not contain any allegations that could sustain such orders. In my view, this exception does not raise any question of law that requires a decision by a court. Put another way, the cost orders sought by the plaintiff are not part of the plaintiff's cause of action.[13]

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9 It is alleged that the first defendant was able to get one of its facilities operational six months earlier.
10 This allegation is of significance with reference to the third exception raised.
11 Pretorius and Another v Transport Pension Fund and Others 2019 (2) SA 37 (CC) at [15].
12 Barclays National Bank Ltd v Thompson 1989 (1) SA 547 (A).
13 With reference to Rule 23 (1) of the Uniform Rules of Court.

[14] I say this because orders concerning costs are incidental to the outcome of litigation and, by their very nature, discretionary. It is so that this discretion must be properly exercised and not arbitrarily. The plaintiffs allege unlawful conduct in the form of wrongful interference with their business, and the facts (if demonstrated at the trial) may persuade a court to exercise its discretion to award costs on any punitive scale. The defendants are simply not in a position to assert that no facts exist that could lead a court to award costs on a punitive scale.[14]

[15] The object of an exception is to dispose of a case or a portion thereof in an expeditious manner, or to protect a party against an embarrassment which is so serious as to merit the costs even of an exception. This exception by the defendants does not dispose of or even seek to dispose of any portion of the pleaded case by the plaintiffs as against the defendants.[15]

THE THIRD EXCEPTION

[16] The complaint here is that the mere allegation of an inducement to the plaintiffs' employees to leave the plaintiffs' service for a competitor (the first defendant) is not unlawful unless the primary intent thereof was and is to cripple or eliminate the plaintiffs' business capacity. Put another way, they say the plaintiffs were obliged to plead that the first defendant (at least) had a dishonest motive to cripple the plaintiffs' business.[16]

[17] The plaintiffs (in the particulars of claim) allege, *inter alia*, the following: (a) they allege that the first defendant conceived of an unlawful '*scheme'* to undermine the plaintiffs' businesses and to '*springboard'* itself into unlawful competition with the plaintiffs, and (b) they say the first defendant unlawfully interfered with the plaintiffs' business in various ways (which are pleaded with meticulous detail) and that the second to fifth defendants associated themselves with that conduct and contributed to it.[17]

[18] In summary, the complaint is that the plaintiffs have not alleged that the defendants acted maliciously or that the defendants' sole or dominant purpose was the

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[14] The particulars of claim are replete with allegations of unlawful conduct by the defendants.
[15] The defendants say the unlawful harm-causing conduct alleged is insufficient.
[16] Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd and Others 1981 (2) SA 173 (T) at 200.
[17] The plaintiffs plead unlawful harm-causing conduct by the defendants.

malicious infliction of harm. This failure, the defendants say, is subject to a valid exception.[18]

[19] It seems clear to me (in our law) that harm-causing conduct intentionally and without lawful justification to induce or procure anyone to breach a contract he or she has made with another is actionable, if damage has resulted. In English law, proof of malice (originally a requirement) is no longer a requirement for this type of tort. Put another way, it must be so that a violation of a legal right committed knowingly must sustain a cause of action. Thus, it is a violation of a legal right to interfere with contractual relations recognised by law if there is not sufficient justification for such interference.[19]

[20] In our law, it is well-established that an employee who takes his employer's confidential information and uses it to compete with his employer or former employer acts unlawfully, even after the contractual relationship has ended.[20]

[21] Self-evidently, the inducement or procurement of a breach of contract by rival traders also constitutes unlawful competition without the need to allege or prove malice. Thus, not only inducing, but also assisting or supporting a person to breach his contract with a competitor is unlawful.[21]

[22] In summary, the plaintiffs plead an unlawful scheme conceived and implemented by the first defendant both to springboard its cold storage business into competition with the plaintiffs' cold storage businesses and to undermine the plaintiffs' businesses which involved filching the plaintiffs' confidential information from the plaintiffs' current and former employees and which necessarily involved the employees unlawfully breaching their contracts with and their fiduciary duties to the plaintiffs.[22]

[23] A common-sense approach should be adopted to this pleading. If it is pleaded (as it was) that the defendants' conduct was unlawful, then, in that event, I do not see the need to allege malice or an intention to harm. It is not the plaintiffs' case (as I understand it) that their former employees were lawfully induced to terminate their contracts by the first defendant. I say this because it is pleaded that:

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[18] This they allege despite the repeated allegations of unlawfulness in the plaintiffs' pleadings.
[19] Lumley v Gye (1853) 2 E, & B. 216
[20] Van Castricum v Theunissen at 736 A-B.
[21] Genwest Batteries (Pty) Ltd v Van der Heyden 1991 (1) SA 727 (T) at 728-9.
[22] In the circumstances the complaints by the defendants are not sustainable by way of exception.

(a) The plaintiffs' employees were unlawfully induced by the first defendant to breach their contracts of employment by giving inadequate notice.

(b) The unlawful inducements to the plaintiffs' employees were made to procure the plaintiffs' confidential information.

(c) The purpose of unlawfully inducing the plaintiffs' employees to terminate their contracts was to enable the first defendant to use the plaintiff's confidential information, which they possessed.[23]

[24] The defendants contend that it is not unlawful to induce employees to lawfully terminate their employment contracts. This, they say, is why a pleading of malice is required in these circumstances.[24]

[25] The plaintiffs' pleading makes it abundantly clear that their former employees were unlawfully induced to leave the plaintiffs' employment for a number of reasons and that the first defendant's entire scheme in this connection was unlawful. In these circumstances, malicious intent is not a requirement for the acts of unlawful competition on which the plaintiffs rely, and therefore, it was not required to be pleaded.[25]

[26] Finally, the defendants assert that the first defendant had a legitimate business purpose in constructing and commissioning its own cold storage facilities. This may be so, but the plaintiffs' complaint is that the manner in which this was achieved by the defendants amounts to the unlawful scheme by the first defendant to speed up and improve what would otherwise have been the lawful construction and running of its cold storage facilities.[26]

CONCLUSION

[27] I hold the view that particulars of claim plead a complete cause of action in respect of each plaintiff because their claims, as formulated, rely on the allegations of unlawful interference with their trade, supported by allegations of the misappropriation of their confidential information and the solicitation of employees in breach of their duties of loyalty and confidentiality. In summary, what is pleaded is a 'springboard-scheme' to exploit an unlawful competitive advantage with the resultant suffering of

[23] It is pleaded that all of this was unlawful.
[24] The plaintiffs plead *ad nauseum* that this harr-causing conduct was unlawful.
[25] Nor is it necessary to plead that the harm-causing conduct was done to cripple the plaintiffs' business.
[26] The plaintiffs unlawfully gained an unfair advantage.

economic harm. Thus, there is no reason why the defendants should not be required to plead to the plaintiffs' particulars of claim as currently formulated. The defendants, if they so wish, can plead that they acted lawfully, and this is then an issue which will ultimately be decided by the trial court.[27]

ORDER

[28] The following order is granted:

1. The defendants' exception dated 15 September 2025 is dismissed with costs.

2. The defendants are to file and deliver their further pleadings to the plaintiffs' particulars of claim **by no later than 17 April 2026.**

3. The defendants are to pay the costs and incidental to the exception proceedings (jointly and severally, the one paying the others to be absolved) on the scale as between party and party, as taxed or agreed, together with the costs of two counsel (where so employed) on Scale C.

WILLE, J
(Cape Town)

APPEARANCES:

For the Defendants (Excipients)

Advocate W R E Duminy SC

Advocate G P Solik

Webber Wentzel Attorneys

For the Plaintiffs

Advocate D Melunsky SC

Andrew De Vos and Associates

[27] Nothing prevents the defendants from pleading to the current particulars of claim.