REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-118206

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

23 February 2026 [redacted]

DATE SIGNATURE

In the matter between:

MAILE MILES SEKHETHELA **PLAINTIFF**

and

iWYZE, OLD MUTUAL INSURE LIMITED **DEFENDANT**

JUDGMENT

TWALA J

Introduction

[1] This is an exception application brought by the defendant against the plaintiff's particulars of claim to the summons dated 3 October 2024. The defendant originally raised four grounds of exception but has since abandoned the first ground relating to Claim A (the insured value of the motor vehicle). The remaining grounds of exception pertain to Claims B, E, and F.

[2] The plaintiff is opposed to the exception and has filed its opposition. I propose to refer to applicant as the defendant and the respondent as the plaintiff in this judgment.

Factual Background

[3] It is common cause that the plaintiff, Mr Maile Miles Sekhethela, entered into a written contract of insurance with the defendant in terms of which his Mercedes Benz motor vehicle was insured for R500 000 against, amongst other risks, theft and hijacking. On 30 December 2023, the plaintiff's vehicle was hijacked. He reported the matter to the defendant timeously. The defendant initially repudiated the claim and cancelled the policy on 7 March 2024. Following a complaint to the National Financial Ombud Scheme, the defendant elected to make an ex gratia payment of R390,200.00 to the plaintiff's credit provider, leaving a shortfall on the insured value of R500,000.00.

[4] It is not in dispute that the plaintiff thereafter instituted action against the defendant, claiming relief under various heads:

1. Claim A: Payment of R500,000.00 for the loss of the motor vehicle (the subject of the abandoned exception);
2. Claim B: Payment of R60,000.00 for six months' car hire (February to July 2024 at R10,000.00 per month);

3. Claim C: Loss of a wallet and R7,000.00 cash (no exception taken);
4. Claim D: Legal costs incurred in defending a claim by the financier (no exception taken);
5. Claim E: Damages of R500,000.00 for emotional and psychological trauma, including Post-Traumatic Stress Disorder, depression and anxiety;
6. Claim F: An order that the defendant change its records to reflect that the claim was settled rather than cancelled.

[5] The defendant excepts to Claims B, E and F on the basis that the particulars of claim lack averments necessary to sustain a cause of action.

Legal Principles

[6] It is trite that an exception that a pleading does not disclose a cause of action strikes at the formulation of the cause of action and its legal validity. The complaint is not directed at a particular paragraph in the pleading but at the pleading as a whole, which must be demonstrated to be lacking the necessary averments to sustain a cause of action. Furthermore, it is trite that exceptions should be dealt with sensibly since they provide a useful mechanism to weed out cases without legal merit. However, an overly technical approach should be avoided because it destroys the usefulness of the exception procedure.

[7] In determining whether to uphold an exception, the court must assume that the facts averred in the pleading to which exception is taken are true. A court must read the pleading as a whole, benevolently and give it the interpretation most favourable to the pleader. An exception can only succeed if the pleading is on every reasonable interpretation thereof excepiable. Furthermore, exceptions are not designed to scrutinise pleadings for every possible flaw or imperfection but are meant to protect litigants against claims that are bad in law or so vague that the opposing party cannot determine the nature of the claim.

[8] In *Telematrix (Pty) Limited t/a Matrix Vehicle Tracking v Advertising Standards Authority*[1] the Supreme Court of Appeal held as follows:

> "Exceptions should be dealt with sensibly. They provide a useful mechanism to weed out cases without legal merit. An over-technical approach destroys their utility. To borrow the imagery employed by Miller J, the response to an exception should be like a sword that 'cuts through the tissue of which the exception is compounded and exposes its vulnerability.'
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> Dealing with an interpretation issue, he added:
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> 'Nor do I think that the mere notional possibility that evidence of surrounding circumstances may influence the issue should necessarily operate to debar the Court from deciding such issue on exception. There must, I think, be something more than a notional or remote possibility. Usually that something more can be gathered from the pleadings and the facts alleged or admitted therein. There may be a specific allegation in the pleadings showing the relevance of extraneous facts, or there may be allegations from which it may be inferred that further facts affecting interpretation may reasonably possibly exist. A measure of conjecture is undoubtedly both permissible and proper, but the shield should not be allowed to protect the respondent where it is composed entirely of conjectural and speculative hypotheses, lacking any real foundation in the pleadings or in the obvious facts.'"[2]

[9] Recently, the Supreme Court of Appeal in *Tembani and Others v President of the Republic of South Africa and Another*[3] referring to the authority quoted above stated the following:

> "Whilst exceptions provide a useful mechanism 'to weed out cases 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 recognised cause of action, that an exception is competent. The burden rests on an excipient, who must establish that on 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

[1] SA 2006 1 ALL SA 6 (SCA); 2006 1 SA 461 (SCA)).
[2] Id para 3
[3] 2023 (1) SA 432 (SCA) at 14.

> 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 upon the facts."[4]

[10] Further, where an exception turns on the interpretation of a contract, the court should be particularly cautious. Interpretation is often context-dependent, and evidence of surrounding circumstances may be admissible to clarify ambiguity. As a rule, a court dealing with an exception is not the appropriate forum to settle questions of interpretation, because evidence may be led at trial to cast light on the correct meaning of the contract. Thus, as a general rule, courts are reluctant to decide upon exception questions concerning the interpretation of a contract.

Discussion

[11] It is apparent that the contract of insurance provides for payment of the claim for car-hire. However, I do not agree that the claim as formulated by the plaintiff in his particulars of claim lacks the necessary averments to sustain a cause of action. The whole issue of the benefit of car hire turns on the interpretation of the terms of the insurance contract which is the contract between the parties. The exception turns on the issue of how many days or months the insured and the plaintiff in this case is entitled to the benefit of car-hire when his or her vehicle is out of service due to an accident, theft or hijack. Based on the principle that an exception is not the appropriate mechanism to resolve disputes concerning the interpretation of a contract, the exception in relation to claim B falls to be dismissed.

[12] On the assumption that the allegations in the particulars of claim are true, it is to be accepted that the defendant breached the terms of the contract in that it did not honour the claim within the prescribed period or within a reasonable time. Had the defendant done so, the plaintiff who suffered a traumatic experience of a hijack would not have been subjected to another traumatic experience of an insurer who refuse and or repudiate his claim. Whether the actions of the defendant were

[4] Id para 14

reasonable and or fair in the handling of the claim of the plaintiff will only be determined by the trial court after hearing the evidence.

[13] In *Shoes Travel and Enterprise CC v Oberthur Technologies (Pty) Ltd*[5] the court stated the following when it quoted with approval from *Victoria Falls and Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd*[6]*:*

> "On the assumption that the defendant has indeed breached the agreement and that there is a causal connection between the alleged breach and any loss that the plaintiff may have suffered, the assessment of damages for breach of contract involves what was seminally described by Innes CJ as "that most difficult question of fact", namely that the innocent party "should be placed in the position he would have occupied had the contract been performed, so far as that can be done by the payment of money, and without undue hardship to the defaulting party". This is an exercise that involves proof by the plaintiff, and not mere presumption. The court must consider the evidence tendered to assess the damages as best it can so as "to arrive at some amount, which in the opinion of the court will meet the justice of the case."[7]

[14] It should be recalled that in determining whether an exception should be granted, the court must consider the whole pleading. I am therefore not persuaded that the plaintiff's claim E is bad in law on every possible interpretation. The dispute between the parties in relation to claim E can only be resolved by the trial court after hearing the evidence. Accordingly, the exception with regard to claim E falls to be dismissed.

[15] I am unable to disagree with the defendant that no party can dictate to another party how it should maintain its internal records. However, as it appears on record, the repudiation and cancellation of the insurance contract was superseded by an ex gratia offer and a payment of R390 200 to the financier of the plaintiff's motor vehicle by the defendant. This is not reflected as such on the records of the defendant as against the name of the plaintiff. Put differently, to record that the contract of insurance was

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[5] Case No: 2020/21134 [GHJ]

[6] 1915 AD 1

[7] Id para 6

cancelled and not to further state that an ex gratia payment or settlement offer and payment was made puts the plaintiff in a disadvantageous position when he seeks insurance as he is regarded as a high risk.

[16] Once again, since in determining whether to grant an exception a court should consider the whole pleading, I am fortified in my view by the principle that a pleading is only excipiable if no possible evidence led on the pleadings can disclose a cause of action. The unavoidable conclusion is that the exception in relation to claim F falls to be dismissed.

Conclusion

[17] In the circumstances, I make the following order:

The exception is dismissed with costs on Scale B

[redacted]

TWALA M L
JUDGE OF THE HIGH COURT,
SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 16 February 2026

Date of Judgment: 23 February 2026

Appearances

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This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the order is deemed to be the 23 February 2026.