**THE HIGH COURT OF SOUTH AFRICA**
**(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/ **Not Reportable**

Case no: 380/2012

In the matter between:

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| **FRANCES OBAKENG LONDON** | First Plaintiff |
| **MOTSAME PETRUS RANTHO** | Second Plaintiff |
| **MALEBOGO LOUIS MOKWENA** | Third Plaintiff |
| **NTHABISENG CONSTANCE KEMANE** | Fourth Plaintiff |

and

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| **DEPARTMENT OF TRANSPORT, ROADS AND PUBLIC WORKS, NORTHERN CAPE** | First Defendant |
| **THE PREMIER OF THE NORTHERN CAPE** | Second Defendant |
| **THE MEMBER OF THE EXECUTIVE COUNCIL OF THE NORTHERN CAPE FOR TRANSPORT, ROADS AND PUBLIC WORKS** | Third Defendant |

**Coram:** Lever J.

**Heard:** 01 November 2024.

**Delivered:** 13 March 2026.

**Summary:** Pleadings – Exception – To particulars of claim – Not disclosing cause of action – Amended particulars of claim disclose cause of action – Exception unsuccessful.

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## ORDER

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1. The exception is dismissed.
2. The defendants (excipients) are to pay the party-and-party costs related to this exception on scale C.

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## JUDGMENT

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**Lever J**

[1] The present matter before this Court is an exception by the defendants to the plaintiffs' amended Particulars of Claim. For the sake of convenience, the parties will be referred to as in the main action.

[2] This matter has a long history of procedural and interlocutory issues and is not yet ready for trial. In response to the exception, the first argument raised by the plaintiffs is the question of issue estoppel or *res judicata*. To place this argument in its proper context, it is necessary to give a summary of firstly, the background to the dispute and secondly, a summary of the history of the interlocutory and procedural skirmishes in this matter.

[3] The plaintiffs were shareholders and directors of a company named Canton Trading 159 (Pty) Ltd, which traded under the name and style of Nyumbane Investments (the company).

[4] The interests of the defendants in this matter are identical, and they shall be referred to collectively as the defendants unless the context requires specific reference to any one of them individually.

[5] The company entered into a public-private partnership agreement (the agreement) with the Department of Transport, Roads and Public Works, Northern Cape (the department), in terms of which the company took over the management of the department's fleet of vehicles, which included the obligation to purchase and supply the vehicles.

[6] The agreement foresaw and provided for the fact that the company would have to obtain finance to fulfil its obligations under the agreement. In these circumstances, the agreement provided that the company was entitled to cede its rights under the agreement to its principal financier as security for performance by the company of its obligations to the said financier. This term of the agreement was subject to the proviso that the plaintiffs obtain the prior written approval of the department. The agreement further provided that such prior written approval would not be unreasonably withheld.

[7] The plaintiffs contend, as part of their cause of action, that the department unreasonably refused such approval and that this prevented the company from obtaining the necessary finance.

[8] This resulted in the company being unable to pay for the motor vehicles which it had acquired, and as a consequence thereof, the company was placed into liquidation.

[9] The plaintiffs, in their capacities as shareholders in the company, contend that they suffered damages as a result of the defendants' conduct set out above. That such damages comprised the dividends they would have earned on their respective shareholdings for the duration of the contract. The plaintiffs claimed that the department and the other defendants were liable to make good such loss. In other words, the plaintiffs contend that they, as shareholders and distinct from the company, suffered these damages.

[10] The plaintiffs instituted action against the defendants in which they claimed payment of such damages. The summons was issued during or about February 2012. The defendants gave notice to defend the said action on 16 April 2012 and on 14 June 2012, the defendants delivered a special plea and plea in the matter.

[11] The special pleas contended that the plaintiffs had no *locus standi* to bring the action, and that the liquidators of the company should have been joined in the action.

[12] The special pleas were argued before my sister Williams J on 12 June 2014 and on 6 February 2015, the Court delivered judgment in terms of which the special pleas were dismissed with costs.

[13] The defendants thereupon brought an application in terms of Rule 33(4) of the Uniform Rules of Court (the Rule/s) to have a separate issue heard

before the commencement of the trial. The matter was argued before my brother Matlapeng AJ on 4 November 2016. On 10 February 2016, Matlapeng AJ granted an order separating the issue as prayed for by the defendants.

[14] The effect of such separation was that the defendants took an exception that the plaintiffs' Particulars of Claim did not disclose a cause of action.

[15] Such exception was argued before my sister Vuma AJ on 22 March 2018. In her judgment, Vuma AJ upheld the exception and granted the plaintiffs leave to amend their Particulars of Claim within 20 days of her order in the matter being handed down.

[16] The plaintiffs sought and were granted leave to appeal the said judgment on that exception. On 18 September 2018, the plaintiffs noted an appeal to the Supreme Court of Appeal (SCA).

[17] The appeal was heard by the SCA. The judgment is reported as 2019 JDR 2137 (SCA) under the name *London and Others v Department of Transport, Roads and Public Works, Northern Cape* ("*London*"). The SCA upheld the judgment of Vuma AJ and dismissed the appeal.

[18] The SCA granted the plaintiffs leave to amend their Particulars of Claim. The plaintiffs duly amended their Particulars of Claim. Such amended Particulars of Claim were delivered on 20 November 2019.

[19] The defendants then brought an application to strike out the plaintiffs' amended Particulars of Claim together with a special order of costs either

*de bonis propriis*, alternatively, on the scale as between attorney and own client against the plaintiffs.

[20] The said application to strike out was argued before my sister Mamosebo J on 19 November 2020. On 5 February 2021, Mamosebo J handed down judgment dismissing the application to strike out with costs.

[21] The defendants applied for leave to appeal from Mamosebo J which was refused. The defendants did not take the matter any further and the judgment of Mamosebo J stands.

[22] This brings us to the present exception, the subject of this judgment. This exception was filed by the defendants on 1 September 2021. The plaintiffs' notice to oppose was dated 17 September 2021.

[23] The defendants' exception is a substantive document. It comprises some 15 typed pages. In summary, the exception is to the effect that the amended Particulars of Claim in their current form do not disclose a cause of action.

[24] In support of this contention, that the said amended Particulars of Claim do not disclose a cause of action, the defendants submit that: The dispute relates to a public-private partnership; That the agreement establishing this public-private partnership was concluded between the Northern Cape Department of Transport, Roads and Public Works and a corporate entity named Canton Trading 159 (Pty) Ltd, which traded under the name and style of Nyumbane Investments (already referred to herein as "the company"); The said company has been liquidated under the provisions of

the Companies Act[1]; The action has not been brought by the liquidators of the company, instead, the plaintiffs seek to claim against the defendants where there is no legal connection between them and the defendants.

[25] Finally, the defendants argue that all of this is contrary to the relevant provisions of the Companies Act.

[26] The plaintiffs, in turn, oppose the exception on two grounds. Firstly, that the issues raised in the exception have already been determined, and that issue estoppel or *res judicata* would be a bar to this being entertained again. Secondly, that the plaintiffs' Particulars of Claim as amended after the decision of the SCA referred to above, do disclose a cause of action.

[27] Turning to the issue of *res judicata* or issue estoppel. Mr Segal, who appeared for the plaintiffs in opposing this exception, referred this Court to the judgment of Olivier JA in the matter of *National Sorghum Breweries Ltd (t/a Vivo African Breweries) v International Liquor Distributors (Pty) Ltd*[2]. He submitted, on the authority of the said case and the authorities cited therein that the requirements for a party to succeed on a plea of *res judicata* are that the party pursuing him in the new suit has previously pursued him, and in such new suit is demanding the same thing in respect of: the same cause of action; for the same relief as that claimed in the earlier suit which has been determined; and the parties in the new suit are exactly the same as they were in the suit already determined.[3]

[1] 71 of 2008.
[2] 2001 (2) SA 232 (SCA).
[3] *Supra* at 239F-G, para 2.

[28] Then Mr Segal referred to the following passage in the matter of *Boshoff v Union Government*[4] which sets out the position as follows:

> "Where the decision set up as a *res judicata* necessarily involves a judicial determination of some question of law or issue of fact, in the sense that the decision could not have been legitimately or rationally pronounced by the tribunal without at the same time, and in the same breath, so to speak, determining that question or issue in a particular way, such determination, though not declared on the face of the recorded decision, is deemed to constitute an integral part of it as effectively as if it had been made so in express terms; but, beyond these limits, there can be no such thing as a *res judicata* by implication."[5]

[29] Mr Segal also referred to the matter of *Mkhize N.O. v Premier of the Province of KwaZulu-Natal and Others*[6] ("*Mkhize*"), where the Constitutional Court held that *res judicata* is a legal doctrinal shield that was designed to bring finality to judgments and precluded continued litigation after a final court order "on the same case, on the same issues, [and] between the same parties".

[30] In *Mkhize's* case, the Constitutional Court went on to explain that issue estoppel is an extension of *res judicata* to cases where the 'same issue' must have arisen between the same parties. The enquiry into the 'same issue' entails determining whether the relevant issue of fact or law was an essential part of the relevant previous judgment.[7]

[31] Then Mr Segal referred this Court to the matter of *Smith v Porritt and Others*,[8] where Scott JA explained issue estoppel in the following terms:

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[4] 1932 TPD 345.
[5] *Supra* at 350 to 351.
[6] 2019 (3) BCLR 360 (CC) para 36.
[7] *Supra* para 37.
[8] 2008 (6) SA 303 (SCA) at 307J to 308G, para 10.

"Following the decision in *Boshoff v Union Government* 1932 TPD 345 the ambit of the *exception rei judicata* has over the years been extended by the relaxation in appropriate cases of the common-law requirements that the relief claimed and the cause of action be the same (*eadem res* and *eadem petendi causa*) in both the case in question and the earlier judgment. Where the circumstances justify the relaxation of these requirements those that remain are that the parties must be the same (*idem actor*) and that the same issue (*eadem questio*) must arise. Broadly stated, the latter involves an inquiry whether an issue of fact or law was an essential element of the judgment on which reliance is placed. Where the plea of *res judicata* is raised in the absence of a commonality of cause of action and relief claimed it has become commonplace to adopt the terminology of English law and to speak of issue estoppel. But, as was stressed by Botha JA in *Kommissaris van Binnelandse Inkomste v ABSA Bank Bpk* 1995 (1) SA 653 (A) at 669D, 670J-671B, this is not to be construed as implying an abandonment of the principles of the common law in favour of those of English law; the defence remains one of *res judicata*. The recognition of the defence in such cases will however require careful scrutiny. Each case will depend on its own facts and any extension of the defence will be on a case-by-case basis. (*Kommissaris van Binnelandse Inkomste v ABSA Bank* (supra) at 670E-F.) Relevant considerations will include questions of equity and fairness not only to the parties themselves but also to others. As pointed out by De Villiers CJ as long ago as 1893 in *Bertram v Wood* (1893) 10 SC 177 at 180, 'unless carefully circumscribed, [the defence of *res judicata*] is capable of producing great hardship and even positive injustice to individuals'."

[32] Mr Segal then argues that the issue raised by the defendants in the application to strike out the amended Particulars of Claim was that the plaintiffs were not entitled to deliver amended Particulars of Claim pursuant to the SCA judgment but had to first file a notice of intention to amend. That in light of the aforesaid, the defendants accordingly applied for such amended Particulars of Claim to be dismissed. Mr Segal submits that the issue raised by the defendants in the application to strike out the amended Particulars of Claim is the same issue that the defendants now

raise in the current exception. Mr Segal argues that the defendants contend that the plaintiffs are not entitled to proceed with their amended Particulars of Claim and the defendants thereby seek the dismissal of the plaintiffs' claim.

[33] Mr Segal then proceeds to argue that this falls within the parameters of *res judicata* and issue estoppel. He bases this argument on the submission that in the application to strike out, the issue to be decided by Mamosebo J, was whether the plaintiffs' amended Particulars of Claim fell to be dismissed. Mr Segal then submits that this is the same issue to be decided in the present exception namely, that the amended Particulars of Claim fall to be dismissed.

[34] In my view, this is a fallacious and superficial argument. It is also factually incorrect. On my reading of the judgment of Mamosebo J, the application to strike out was reasoned on a purely procedural question, being that the amended Particulars of Claim were filed with the leave of the SCA and that in those circumstances, a notice of intention to amend was not required.[9] Mamosebo J did not consider the underlying principles of company law, nor was she required to in the circumstances. Accordingly, in my view, the issue of *res judicata* or issue estoppel is not applicable in the present circumstances, and it does not assist the plaintiffs.

[35] Turning now to consider the exception itself. The defendants' exception is based on the contention that the plaintiffs' amended Particulars of Claim do not disclose a cause of action. The defendants do not rely on the

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[9] *Department of Transport, Roads and Public Works of the Northern Cape and Others v London and Others* (380/2012) [2021] ZANCHC 17 (7 May 2021) para 6.

alternative ground for an exception provided by Rule 23(1) being that the amended Particulars of Claim are vague and embarrassing.

[36] In the case of *Living Hands (Pty) Ltd and Another v Ditz and Others*[10] ("*Living Hands*"), Makgoka J provides a helpful overview of the general principles relevant to exceptions distilled from the existing case law. The said overview reads as follows:

> "(a) In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by the plaintiff to assess whether they disclose a cause of action.
>
> (b) The object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw, but to dispose of the case or a portion thereof in an expeditious manner, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception.
>
> (c) The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a very clear case before it would be allowed to succeed.
>
> (d) An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclosed.
>
> (e) An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.
>
> (f) Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained.
>
> (g) Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars."[11] (Footnotes omitted.)

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[10] 2013 (2) SA 368 (GSJ).

[11] *Supra* at 374G to 375C, para 15.

[37] On the basis of the first general principle quoted above, in assessing an exception which asserts that the relevant Particulars of Claim do not disclose a cause of action, this Court accepts the allegations as pleaded by the plaintiffs in their amended Particulars of Claim as being factually correct or true, for the purposes of assessing whether such Particulars of Claim disclose a cause of action or not.

[38] The passages that are at the root of the defendants' exception read as follows:

"20. Pursuant to the acceptance of Canton's bid set out above and on or about 27th January 2009 at Kimberley the company and the first defendant entered into a Public Private Partnership Fleet Agreement (the agreement); a copy of the agreement is annexed hereto marked A.

21. *Inter alia* in terms of the agreement:

21.1 The company undertook to carry out certain fleet solution services for and on behalf of the first defendant for an agreed remuneration.

21.2 . . .

21.3 Clause 32.1 of the agreement provided as follows:

*'<u>Restriction on Assignment or Transfer of this Agreement</u>*

*Neither party shall be entitled to assign or otherwise transfer the benefits or obligations of all or any part of this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the aforesaid, the Private Party may cede its rights under this agreement to its principal financing bank (Principal Financier) as security for performance by the Private Party of its obligations to such principal financier in respect of this agreement, provided that the private party receives prior written approval of DTRP/User Department and such written approval shall not be unreasonably withheld by DTRPW/User Department.'*

21.4 'Parties' is defined in clause 2.29 of the agreement to mean 'the DTRPW/User Department and the Private Party.'

21.5 'Private Party' is defined in clause 2.33 of the agreement to mean 'Canton Trading 159 (Pty) Limited t/a Nyumbane (Proprietary) Limited, Registration Number 2008/004267/07 its agents, sub-contractors and any other duly appointed representative of the Private Party.'

21.6 The parties would at all times owe each other a duty of good faith (clause 31.4).

22. The plaintiffs were all directors of the company and participated in its management while Joseph was the company's Chief Executive Officer in overall control of its day-to-day management; the plaintiffs were accordingly parties to the agreement in terms of clause 2.33 thereof referred to above.

23. <u>The plaintiffs had a direct and substantial interest in whether or not consent to cession or assignment was granted and acquired rights under the agreement independently of the company.</u> (My emphasis.)

24. The first defendant was obliged to act in good faith to the plaintiffs.

25. It was known to all parties to the conclusion of the Agreement that:

25.1 In order for the plaintiffs to render the necessary fleet management services to the first defendant through the company under the agreement, it would be necessary for the plaintiffs through the company to obtain finance from an outside source.

25.2 Such finance could only be obtained through an arrangement between the company and the financier in terms of which the company would assign or otherwise transfer the benefits of all or any part of the fleet management agreement with the first defendant (the agreement) it had to such financier in respect of loan funding to be made available by the financier in respect of the agreement.

25.3 Such arrangement by the company with a financier to finance the company's obligations under such agreement with the first defendant was commonly known as a Finance Direct Agreement (FDA).

25.4 It would be necessary for the first defendant to consent to such FDA.

25.5 If the first defendant should unreasonably refuse to consent to such FDA, the company would not be able to carry out its obligations under the agreement and would have to be liquidated, which would cause the shareholding in the company to become worthless and the plaintiffs would be deprived of the dividends which they would have earned as shareholders of the company.

26. . . .

27. The first defendant orally represented to the plaintiffs that it would consent to the FDA.

28. However, the first defendant nevertheless unreasonably refused to consent to the FDA, as will be set out further below.

<u>TACIT AGREEMENT</u>

29. In the premises the first defendant and the plaintiffs entered into a tacit or implied agreement by their conduct as set out above at Kimberley during or about January 2009 on the following terms:

29.1 The first defendant would consent to the necessary FDA.

29.2 The first defendant would act reasonably in consenting to the necessary FDA and would not unreasonably refuse such consent.

29.3 If the first defendant should nevertheless refuse to consent to the necessary FDA and should act unreasonably in this regard, and the company should as a result thereof be placed in liquidation, the first defendant would be liable for the damages suffered by the plaintiffs in consequence thereof, being the loss of the value of the shareholding of the plaintiffs in the company and/or the loss of the dividends which they would have received as shareholders of the company.

<u>REPRESENTATION</u>

30. Alternatively, to 29 above:

30.1 The first defendant orally represented to the plaintiffs that it would consent to the FDA and that it would not unreasonably withhold its consent to the FDA (the representation).

30.2 The representation was material in that it induced the plaintiffs to cause the company to enter into the agreement with the first defendant.

30.3 The first defendant deliberately and intentionally breached the representation in that it unreasonably withheld its consent to the FDA.

30.4 In the premises the first defendant was under a legal duty not to withhold its consent to the FDA and wrongfully and unlawfully breached such legal duty.

30.5 It was foreseeable by the first defendant that if it should so breach such legal duty, the company would be placed in liquidation and the plaintiffs would suffer damages being the loss of dividends which they would have received from the company.

STATUTORY DUTY

31. Further alternatively to 29 and 30 above:

31.1 The statutes referred to above[12] were intended to give a right of action.

31.2 The plaintiffs were persons for whose benefit the said statutory duty was imposed.

31.3 The defendants' conduct in refusing to consent to the FDA constituted a breach of such duty.

31.4 Such breach caused the liquidation of the company and the loss to the plaintiffs of the dividends which they would have received from the company.

31.5 The damages suffered by the plaintiffs were of the kind contemplated by the said statutes.

31.6 The said breach caused or materially contributed to the said damages.

. . ."

[39] The essence of the defendants' exception is that in the defendants' view, the plaintiffs are claiming damages which were suffered by the company itself. The argument is that in circumstances where the company has been liquidated, as in the present case, the only person who can claim such damages is the liquidator of such a company.

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[12] Here reference is made to paragraphs 13 and 14 of the amended Particulars of Claim. These paragraphs refer to section 217 of the Constitution as read with the relevant BBBEE Act.

[40] The SCA, in upholding the first exception in this matter in the appeal relating to the judgment of Vuma AJ,[13] dealt with this issue by setting out the essence of the defendants' then exception in paragraph 29 of such judgment, and then dealt with it in paragraph 30 of such judgment. Quoting the said paragraphs would be the most expeditious way of dealing with the exception in the present matter.

"In essence, the Department's response to the appellants' pleaded cause of action is the following: First, if any wrong was committed at all, that wrong was not to the appellants, whose shareholding in Canton remained unaffected by the alleged breach of legal duty, but against Canton. Secondly, the Department owed a contractual duty in terms of the agreement not to the appellants but to Canton. Thirdly, in the appellants' amended particulars of claim there is no allegation that the loss allegedly suffered by them was separate and distinct from that suffered by Canton, and arose from a breach of a legal duty independently owed to them as shareholders.

I propose dealing first with the law relating to the relationship between an incorporated company and its shareholders. In *Johnson v Gore Wood & Co (a firm),* after considering the authorities on the recoverability of damages by shareholders, the relationship between a company *vis-à-vis* its shareholders in respect of wrongs committed against the company was succinctly captured by Lord Bingham in the following terms:

'(1) Where a company suffers loss caused by a breach of duty owed to it, only the company may sue in respect of that loss. No action lies at the suit of a shareholder suing in that capacity and no other to make good a diminution in the value of the shareholder's shareholding where that merely reflects the loss suffered by the company. A claim will not lie by a shareholder to make good a loss which would be made good if the company's assets were replenished through action against the party responsible for the loss, even if the company, acting through its constitutional organs, has declined or failed to make good that loss. So much is clear from *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1982] 1 All ER 354 esp at 266-267…

[13] *London v Department of Transport, Roads and Public Works, Northern Cape* 2019 JDR 2137 (SCA).

(2) Where a company suffers loss but has no cause of action to sue to recover that loss, the shareholder in the company may sue in respect of it (if the shareholder has a cause of action to do so), even though the loss is a diminution in the value of the shareholding. …

(3) Where a company suffers loss caused by a breach of a duty to it, and a shareholder suffers a loss separate and distinct from that suffered by the company caused by a breach of a duty independently owed to the shareholder, each may sue to recover the loss caused to it by breach of the duty owed to it but neither may recover loss caused to the other by breach of the duty owed to that other.'"[14] (Endnotes omitted and the emphasis is mine.)

[41] The SCA, in the said *London* appeal, went on to find that the Particulars of Claim relevant to the appeal on the exception before it did not pertinently allege that the plaintiffs' loss was separate and distinct from the loss suffered by the company (Canton). The SCA in those circumstances dismissed the appeal.[15]

[42] Mr Segal submits that the amended Particulars of Claim were drafted to cater for the decision of the SCA on the prior exception. He argues that the plaintiffs have now corrected the fault found by the SCA in its prior pleadings. Further, that the current amended Particulars of Claim, in respect of each of the three alternative claims, fell within the third category set out by Lord Bingham in the case of *Johnson v Gore Wood & Co (a firm)*[16] cited in the quote in the SCA decision quoted above.

[43] Mr Mokhare SC who appeared for the defendants, who took the exception in this matter, argued that the now amended Particulars of Claim do not fall into Lord Bingham's third category, and that the current amended

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[14] *Supra* paras 29 and 30.
[15] *Supra* para 36.
[16] [2001] 1 All ER 481 (HL).

Particulars of Claim still do not disclose a cause of action for the reasons already set out above.

[44] In my view, the current amended Particulars of Claim, read as a whole, but more especially the passages quoted above, do in fact disclose a cause of action. It is alleged that the plaintiffs acquired rights under the public-private partnership agreement separate to the rights acquired by the said company under such agreement. This fits into the third category set out by Lord Bingham quoted above. I believe this applies to all three of the alternative bases of the plaintiffs' claim as set out in the current amended Particulars of Claim.

[45] As can be seen from the general principles collated by Makgoka J in the *Living Hands* judgment quoted above, and the first of such principles: for the purposes of the exception, this Court accepts the contentions set out in the current amended Particulars of Claim as being true and correct. In all these circumstances, I find that the plaintiffs have set out a cause of action. Accordingly, the exception stands to be dismissed.

[46] That leaves only the question of costs to be determined. Mr Mokhare SC and Mr Segal were both of the view that the costs should follow the result. No reason was placed before me why this approach should not be followed, and I too cannot find any reason not to order that costs should follow the result. That is the order I intend to make.

[47] An ancillary issue still to be considered is, on what scale should the said order for costs be taxed. There is a long history of litigation in this matter. The issues are of obvious importance to the parties. The defendants have made use of Senior Counsel in most of the proceedings already brought

before the courts. Considering all of these issues, I think it is appropriate that the costs be taxed on scale "C".

[48] In the circumstances, the following order is made:

1. The exception is dismissed.
2. The defendants (excipients) are to pay the party-and-party costs related to this exception on scale C.

[redacted]

L.G. LEVER
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION, KIMBERLEY

Appearances

| | |
|---|---|
| For the Plaintiffs: | Adv N Segal |
| Instructed by: | Adrian B Horwitz & Associates |
| For the Defendants: | Adv WR Mokhare (SC) & Adv R Mathebula |
| Instructed by: | Mjila & Partners Inc. |