

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

Case Number: 110711-2024

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

In the matter between:

DR ADNAN VARIAVA

First Excipient

RABIA VARIAVA

Second Excipient

and

HELM CONSTRUCTIONS (PTY) LTD
(in liquidation)

Respondent

In re;

HELM CONSTRUCTIONS (PTY) LTD

Plaintiff

and

DR ADNAN VARIAVA

First Defendant

RABIA VARIAVA

Second Defendant

JUDGMENT

INTRODUCTION

- [1] Before me is an opposed motion, predicated on an exception by the first and second defendant against the plaintiff's amended particulars of claim lacking averments necessary to sustain a cause of action against the defendants.
- [2] The defendants seek relief that the amended particulars of claim be struck or dismissed or 10 days to be further amended. The plaintiff seeks relief that the exception be dismissed and defendants to file their plea.
- [3] Having heard argument from the parties and having considered the papers I will give my judgment *ex tempore*.
- [4] There are a number of grounds in the defendants' exception raised and before I summarise, I will refer to the parties as follows:
1. The first defendant is Dr Adnaan Variava, the first excipient and the first applicant before Court.
 2. The second defendant is the second excipient Rabia Variava and the second applicant before Court. I will refer to both as the applicants.
 3. Plaintiff in the amended particulars of claim is Helm Constructions (Pty)Ltd (In Liquidation), the respondent in the exception and respondent in the application today. I will refer to Helm Construction as the respondent.

DISCUSSION

- [5] The amended particulars of claim, specifically paragraph 5 thereof, relies on a letter of appointment dated 23 May 2022 incorporating the JBCC. The JBCC is an abbreviation for Joint Building Contractors and Committee agreement.
- [6] I considered the letter of appointment. The applicants' signatures appear to be those signatures on it as well as the description of the applicants albeit that the date is incorrectly stated as 24 May 2022 in the amended particulars of claim, which is one of the exceptions raised.
- [7] There is a second letter annexed to the letter of appointment, which is signed 24 May 2022, stated as 23 May 2022, referring to a letter of appointment - Revision 15 June 2022, a date in the future, which I find improbable and questionable. The parties, when they contracted as per this document, 24 May 2022, could not have foreseen an amendment in the future, referred to in the same letter.
- [8] Similarly, the respondent's case is the conclusion of a building agreement on 23 May 2022, which date is important in the context of what I have before me.
- [9] The JBCC has a watermark, which reads as follows: "*Dr M Variava, Featherbrooke, 11 April 2023.*" This is not the same as the JBCC alluded to in the letter of appointment of 23 May 2022. I say so, because the applicants' names and that of Dr M Variava are inconsistent.
- [10] The amended particulars of claim, paragraph 7.2, refers to M[...] E[...] Estate, [...] S[...] Close, whereas the JBCC refers to a F[...] property.
- [11] Furthermore, the letter of appointment of 23 May 2022, annexure Helm 3.1, refers to a Meyersdal Eco Estate which might be a typographical error or it might be a different estate. I can only rely on the papers before me.
- [12] On the JBCC, to be found at 004-174 of the amended particulars of claim, the site is left open, which may have clarified what I have in front of me. The employer on the JBCC is one person, a Dr M Variava, whereas there are two different applicants before court today.

CONCLUSION

[13] It is my view that the JBCC before court cannot be the JBCC entered into between the parties and for that reason, the exception must succeed. I need not deal further with the certificates and damages portions as it finds reliance on a different agreement than the agreement alluded to herein before.

ORDER

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

1. The exception is upheld.
2. The respondent is afforded a period of 10 days in which to further amend its amended particulars of claim.
3. The respondent to pay the cost of the exception, scale A.

J. ALLEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 10 March 2026

Date of judgment: 10 March 2026

Appearances:

For the First and Second Excipient: Adv. M Desai

Instructed by: Govender Patel Dlala Inc

For the Respondent: Adv. K Mitchell

Instructed by: Moll Quibell & Associates Inc