IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)

Case No: 04/26

In the matter between

NICE NEIGHBOUR (PTY) LTD PLAINTIFF

AND

BAREND FERREIRA NO 1ST DEFENDANT

STUART HOLDING NO 2ND DEFENDANT

JANET MARY HOLDING NO 3RD DEFENDANT

Date of Hearing : 17 March 2026

Date of Delivering : 30 March 2026

JUDGMENT

THULARE J

ORDER

(a) All three exceptions are dismissed.

(b) The defendants, jointly and severally, the one to pay the other to be absolved, are to pay the costs on scale B.

[1] The defendants raised three exceptions against the plaintiff's particular of claim on the basis that it lacks averments which are necessary to sustain a cause of action against the defendants, representing the Trust. The exceptions are opposed. The first exception is that plaintiff averred in paragraphs 14 and 15 of the particulars of claim that it fully performed in terms of the lease agreement by virtue of making payments of the total values claimed by the Trust in the invoices which were annexed to the particulars. In paragraph 16 the plaintiff averred that the payments stipulated in another annexure were made *sine causa*. In paragraph 17 the plaintiff averred that the *indebiti* payments were made in the *bona fide* and reasonable believe that such payments were due and payable in accordance with the terms of the lease. *Ex facie* the particulars, the terms of the lease and the content of the invoices the payments were not made *sine causa*. The payments were made in terms of a legal obligation to do so. The plaintiff's particulars therefore did not disclose a cause of action against the Trust.

[2] The second exception was that in paragraph 17 the plaintiff averred that the payments reflected in the annexure were made in the reasonable believe that such payments were due and payable in terms of the lease. On the assumption that the payments were not due and payable in terms of the lease as pleaded, which was denied, the pleaded belief was not reasonable and the proposed error by the

plaintiff was not excusable for the following reasons (a) the purported *indebiti* payments according to the annexure occurred in the period between 1 December 2022 and 5 November 2025. In fact the payments were made since the commencement of the lease on 1 December 2020; (b) from a plain consideration of the lease and the invoices, any reasonable lessee in the position of the plaintiff would have immediately noticed and raised objection to making payments of amounts which were not due and payable in terms of the lease and (c) the plaintiff however made several payments over a period of almost 5 (five) years which according to them were not due and payable in terms of the lease. The alleged *indebiti* payments were therefore not reasonable or excusable. Accordingly, an essential requirement for the existence of the *conditio indebiti* is lacking, and the claim therefore does not disclose a cause of action.

[3] The third exception was that the plaintiff averred in paragraph 17 that in making the purported *indebiti* payments, the Trust was enriched at the expense of the plaintiff. *Ex facie* the lease, the invoices and the items stipulated in the annexure, the amounts were paid for essential services and amenities for plaintiff's use and enjoyment of the lease premises. The payments were not made for the benefit of the Trust, but to pay the relevant service provider(s) or authorities entitled thereto. The trust was accordingly not enriched at the expense of the plaintiff by virtue of the payments as pleaded by the plaintiff. The defendants prayed that the exceptions be upheld, the particulars of claim be set aside and the plaintiff be granted 15 (fifteen) days from the date of the orders to deliver its amended particulars of claim if any.

[4] The Trust bore the onus to prove that the particulars of claim do not disclose a cause of action [*Ocean Ego Properties 327 CC and Another v Old Life Insurance Company (South Africa) Limited* 2018 (3) SA 405 (SCA) at para 9]. This must be assessed on any interpretation that can be reasonably attached to the plaintiff's pleadings. It is where pleadings are so vague that it is impossible to determine the nature of the claim or where the pleadings are bad in law in that their contents do not support a decidable and legally recognized cause of action that an exception is competent [[*Luke M Tembani and Others v President of the Republic of South Africa and Another* 2023 (1) SA 432 (SCA) a. para 14],

[5] There is clearly a dispute between the parties on what costs can be collected from the lessee by the lessor in terms of the lease agreement. Each of the grounds of exception set out by the Trust depended on the merits-based construction of the lease agreement. I am not persuaded that the claim was bad on every reasonable interpretation. The cause of action was not obscure, which is different to whether it was sustainable on the facts. It is the facts and the interpretation of the lease, that can help one determine whether the payments by the plaintiff were made *sine causa*. It is from the facts that one can determine if the payments were made in terms of the lease obligations and whether the Trust was unduly enriched thereby. Whether the claims would succeed was not a question of an exception. From my reading of the particulars of claim, the question whether the allegations made, if accepted as correct, were capable of sustaining a recognized cause of action, should be answered in the affirmative. The plaintiff has set out the material facts necessary to sustain its claim. It has set out the contractual framework, the invoices rendered, the payments made, the impugned payments and the alleged absence of causa, mistake and enrichment. At best, the Trust has shown that their

interpretation of the will was arguable, and not that the plaintiffs claim was bad in law.

[6] The plaintiff’s case was that the items it listed in an annexure were not, on their face, plainly encompassed by the provisions of the lease. For instance, there is the question as to whether the lease agreement made provision for payments for electricity availability and water availability separately, which seems to be a separate claim to address the costs associated with payments to the Municipality. It must be remembered that the Municipality has a duty to provide services that amongst others must be equitable and accessible, regularly reviewed with a view to upgrading, extension and improvement [Section 73(2) of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000) (the Systems Act)]. Section 74 thereof gives the Municipality the power to levy for fees of municipal services provided by the Municipality, which monies are used to meet the Municipality’s costs to maintain, improve and develop its water and electricity infrastructure. From my reading of the papers, the costs for these levies were a separate unit from electricity or water consumption bills which related to the use of such facility by the plaintiff. Other such incidental costs include what is called village market fees and electrical units for a generator. A careful consideration of the annexure of the disputed payments leaves the impression that it is these incidental costs to direct consumption costs, which the plaintiff seems to suggest that they may have been freebies. Some of these costs, it seems, were not measured or measurable, like a water and electricity meter would. The other costs, for instance included vegetables supplied.

[7] Whether all or some of the charges fell out of the lease altogether depended upon the factual context, the evidence and the proper interpretation of the clauses. This question needed an enquiry and not an exception, to answer. The Trust has one interpretation which they advance in the exception, and the plaintiff has its own interpretation which is set out in its particulars of claim. It was impermissible for the trust to enforce its own interpretation as the only permissible interpretation through the exception process. The validity of the charges was a factual and interpretive issue for trial in this matter. The Trust in the second exception especially sought to supplement the particulars of claim by introducing its own factual version, for instance its assertion as to what the plaintiff would, should or must have realized, which allegations do not appear in the pleadings. A court cannot decide factual questions and draw inferences against a party at pleading stage. On the third exception, if the Trust sought to ward off the claim on the grounds that the payments were for services and amenities used by the plaintiff and the Trust was not enriched, it is a pleading point and a substantive defence on the merits. That factual assertion was not pleaded by the plaintiff. The nature of the charges in the annexure, how they arose, what the parties understood and whether they were properly recoverable under the lease are matters for evidence. In my view the particulars of claim, read with the annexures, plainly disclose a recognizable cause of action. Whether the claim will succeed is not a question for this court now. For these reasons I am making the order.

DM THULARE

JUDGE OF THE HIGH COURT