

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2024-082985

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
1 April 2026	
DATE	SIGNATURE

In the matter between:

**WILLIAMS FRUIT DISTRIBUTORS CC
T/A WILLIAMS BROS FRUITS**

Applicant

and

AGRICULTURAL PRODUCE AGENTS COUNCIL

First Respondent

PRINSLOO & VENTER N-TVL (PTY) LTD

Second Respondent

Heard: 7 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The time and date for hand-down is deemed to be 1 April 2026.

JUDGMENT

INTRODUCTION:

- [1] This is an application in terms of Rule 28 of the Uniform Rules of Court for leave to amend the applicant's particulars of claim. The applicant seeks to introduce amendments to its pleadings, which have been objected to by both the first and second respondents.
- [2] The applicant instituted action against the respondents arising from alleged misconduct in relation to the Agricultural Produce Agents Act 12 of 1992 (as amended) ("the APA Act"), including claims related to the Fresh Produce Agents' Fidelity Fund ("the Fidelity Fund").

RULE 28:

- [3] The legal principles governing applications for amendment are well-established.
- [4] In **Caxton Ltd and Others v Reeve Forman (Pty) Ltd**¹ Corbett CJ stated that
- "Although the decision whether to grant or refuse an application to amend a pleading rests in the discretion of the Court, this discretion must be exercised with due regard to certain basic principles".*
- [5] These principles include prejudice to the other party, that the amendment is made in good faith, and that the granting of the amendment will ensure that justice is done in deciding the real issues between the parties².

¹ **Caxton Ltd and Others v Reeve Forman (Pty) Ltd and Another** 1990 (3) SA 547 (A) at 565G;
² **Commissioner for the South African Revenue Service v Free State Development Corporation** [2023] JOL 59234 (SCA) at para [42];

[6] In **Moolman v Estate Moolman**³ Watermeyer J stated the following:

"[T]he practical rule adopted seems to be that amendments will always be allowed unless the application to amend is mala fide or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which it is sought to amend was filed."

[7] Nicholls JA in **Media 24 (Pty) Ltd v Nhleko**⁴ held that:

"[16]...Thus, the power of a court to refuse amendments is confined to considerations of prejudice or injustice to the opponent."

[17] ...Prejudice has been found to occur only in situations where the opponent is worse off than he was at the time of the amendment, for example the withdrawal of an admission can have a detrimental effect in certain circumstances. The fact that an amendment may lead to the defeat of the other party is not the type of prejudice to be taken into account."

[8] Where a party consistently relied on a particular, although imperfectly formulated, claim, an attempt to clarify cannot be regarded as the introduction of a new cause of action⁵.

[9] The amendment should not be excipiable and must raise a triable issue. A triable issue is (a) a dispute, which, if it is proved on the basis of the evidence foreshadowed by the applicant in his application, will be viable or relevant;

³ **Moolman v Estate Moolman** 1927 CPD 27 at 29. This principle has been confirmed in numerous cases including the constitutional court in **Affordable Medicines Trust and Others v Minister of Health and Another** 2006 (3) SA 247 (CC) para 9;

⁴ **Nicholls JA in Media 24 (Pty) Ltd v Nhleko**⁴ and another 2023 JDR 1782 (SCA) at [16] and [17];

⁵ **Imprefed (Pty) Ltd v National Transport Commission** 1990 (3) SA 324 (T), at 329C-D;

or (b) a dispute, which will probably be established by the evidence thus foreshadowed⁶.

[10] Importantly, the court hearing an application for amendment is not required to delve into the merits of the case or determine whether the amended pleading would ultimately succeed at trial.

[11] The primary object of allowing amendments is to obtain a proper ventilation of the dispute between the parties, but at this stage the court does not determine whether or not the issues raised will lead to ultimate success.

THE OPPOSITION BY THE FIRST RESPONDENT

[12] As appears from the objection and from counsel for the first respondent submissions, the five objections, in synoptic form, are:

12.1. The plaintiff pleaded the wrong section;

12.2. The pleadings do not contain a proper allegation of theft;

12.3. There has been a failure to exhaust internal remedies;

12.4. Claim one and claim two overlap; and

12.5. Quantum has not been properly pleaded.

[13] The core of the first respondent's objection is that the proposed amendments are premised on a misunderstanding of the conditions under which claims may be made against the Fidelity Fund. The first respondent explains that the Fidelity Fund, established under section 12(1) of the APA Act, is intended to compensate

⁶ Ciba-Geigy (Pty) Ltd v Lushof Farms (Pty) Ltd 2002 (2) SA 447 (SCA) at 463A–B; Consol Ltd t/a Consol Glass v Twee Jonge Gezellen (Pty) Ltd 2005 (6) SA 23 (C) at 36E–J;

persons for monetary losses suffered as a result of an agent's failure to comply with the provisions of the APA Act and the rules made thereunder, as per section 12(5)(a).

[14] The first respondent alleges, such compensation is subject to strict conditions:

14.1. it is payable only from the relevant fund depending on the type of agricultural product (as specified in Parts A or B of Schedule 1 to the APA Act);

14.2. claims must be lodged in writing within six months after the claimant became aware (or reasonably could have become aware) of the loss, and proof must be furnished within three months of a request by the council (section 13(3)(a)); and

14.3. certain persons are excluded from claiming, such as the agent themselves or directors/members of corporate agents (section 13(3)(b)).

[15] Furthermore, under section 14(1), claims for reimbursement must be lodged with the council, and if admitted, payments are limited to the net loss after accounting for benefits from other sources (section 14(2)). If rejected, an action may be instituted, but only after exhausting remedies against the agent (section 14(3)), and the council may raise all defences available to the agent (section 14(4)).

[16] The first respondent contends that the applicant's amendments fail to align with these statutory prerequisites, noting that this is the second such application, the first having been withdrawn after a replying affidavit was filed.

The wrong section pleaded and the failure to disclose a cause of action against the Fidelity Fund

[17] in **Ben-Tovim v Ben-Tovim**⁷ O'Regan J held that:

“This does not mean that the party seeking to rely on the section must explicitly state the number of the section and the statute, but he must state his case with sufficient clarity so that the conclusion can be drawn that the provisions of the section apply”

[18] In **Funds trust (Pty) Ltd (in liquidation) v Van Deventer**⁸ the following was said:-

“It is not necessary in a pleading, even where the pleader relies on a particular statute or section of a statute, for him to refer in terms to it provided that he formulates his case clearly or, put differently, it is sufficient if the facts are pleaded from which the conclusion can be drawn that the provisions of the statute apply.....”

[19] The first respondent contends that the pleadings conflate a delictual claim against the agent with a statutory claim against the Fund and fail to allege the precise conduct required under section 12(4) of the APA Act. It relies on a so called “last resort” principle drawn from **Peffer NO v Attorneys, Notaries and Conveyancers’ Fidelity Guarantee Fund Board of Control**⁹.

[20] This objection is overstated. Section 12(4)¹⁰ expressly creates liability on the Fund for monetary losses caused by an agent’s failure to comply with the APA Act and the Council’s rules and theft by the agent.

⁷ **Ben-Tovim v Ben-Tovim and Others 2001 (3) SA 1074 (C)** at 1090A – B, cited with approval in **Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others 2004 (4) SA 490 (CC)** at para [27];

⁸ 1997 (1) SA 710 (A) at page 725 to 726;

⁹ 1965 (2) SA 53 (C) at 59D;

¹⁰ (4) (a) Subject to the provisions of this Act, the fund is established to reimburse producers for direct losses suffered by them as a result of-

- (i) theft, committed by a fresh produce agent, of any money or agricultural produce entrusted by or on behalf of the producers thereof to him or her as a fresh produce agent; and
- (ii) dishonest conduct by a fresh produce agent in so far as such conduct relates to agricultural produce.;

[21] The proposed amended particulars plead precisely such failure: non-accounting for boxes of produce, sales at reduced prices without mandate or proper accounting, and breach of the Council's rules regulating agent conduct. These allegations, pertaining to the boxes being unaccounted for¹¹ and sales at reduced prices¹², pleaded by the applicant are in any event reserved for the trial court eventually hearing the matter, and are delving into the merits of the matter.

[22] Whether the facts ultimately prove a qualifying loss is a matter for trial, not exception or amendment opposition. The pleading in this regard raises a triable issue.

[23] The claim against the Fund, in terms of the notice of amendment, is expressly pleaded in the alternative to the claim against the agent.

[24] The plaintiff's alternative pleading ensures that if the agent is found not liable or unable to pay, the 'Fund' claim crystallises.

Failure to plead exhaustion of remedies and procedural preconditions

[25] The first respondent argues that sections 13(3) and 14(3) are not addressed.

[26] The amended particulars allege that all internal remedies were pursued against the agent (including demand and the institution of the main action) and that the [applicant] instituted a claim against the Fund for payment and the Fund admitted only partial liability in the amount of R1,515,533.00.

[27] The averment in the particulars of claim as to the latter in the particulars of claim at paragraph 15 reads as follows:

¹¹ implying theft under section 12(4)(a)(i) or dishonest conduct under section 12(4)(a)(ii);

¹² implying conduct contrary to instructions under section 12(4)(a)(ii);

“15. The plaintiff has exhausted all internal remedies when it attempted to recover the amount of damages from the second defendant by instituting a claim against the first defendant for payment, however, despite demand, alternatively summons constitutes demand, defendants have refused, alternatively neglected, alternatively failed to make payment of the claimed amount.”

[28] Another allegation in the particulars of claim at paragraph 23 reads as follows:

“Plaintiff attempted to recover the amount of damages from defendant by instituting a claim against the Fund for payment, however, despite demand, the first defendant has admitted only partial liability in the amount of R1 515 533.06 and accordingly refused, alternatively neglected to pay to plaintiff the balance of the damages suffered.”

[29] At the pleading stage, full proof is not required. The averments suffice at this stage. Whether the averment of exhaustion of internal remedies¹³ will be successful or not, is not for me to determine at amendment stage.

[30] Whether or not the plaintiff can prove all these allegations is not a matter for me to decide now. I must approach the pleading on the assumption that it can prove the facts which it has alleged.

Vagueness and embarrassment

[31] The first respondent complains of duplicate claims and unclear calculation.

[32] In considering the particulars of claim as a whole, and the fact that only one prayer for payment is contained in the relief sought, it is evident that the two claims are pleaded in the alternative, and this was confirmed by the applicant's counsel during argument.

¹³ The allegation in the particulars of claim to found at para 23 provides that 23. ‘The plaintiff has exhausted all legal remedies against the second defendant by lodging a complaint with defendant and, as a result, plaintiff institutes action against defendant for the recovery of the damages sustained in terms of Section 14(3) of the Act.’;

[33] Claim one is for 'selling boxes of produce for less than market value, and furthermore for less than the cost of the produce', and attaches an actuarial calculation of the losses suffered, as POC1.

[34] Claim two, the alternative claim, is for '*dishonest conduct, alternatively theft by the second defendant or its representatives*'. The applicant has attached a sales report as proof of the number of boxes shipped to the agency and the boxes which are unaccounted for are pleaded in paragraphs 18.1, 18.2 and 18.3.

[35] Upon a proper reading of the particulars of claim, claim one and claim two are pleaded in the alternative especially in light of the fact that only one amount is claimed in the relief sought, and the claims are not duplicated.

[36] The calculations for the quantum are set out in the first two annexures and the boxes that are unaccounted for are specifically pleaded.

[37] Uniform Rule 18(4) requires every pleading to contain a clear and concise statement of the material facts relied upon, with sufficient particularity to enable the opposite party to reply. Rule 18(9) specifically provides that a plaintiff suing for damages "shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof".

[38] The two heads of damages are expressly pleaded:

38.1. loss from reduced-price sales (produce sold below the plaintiff's mandated break-even thresholds of R65 / R70 / R75 per box in 2021/2022/2023 respectively) and

38.2. loss from 91 280 missing/unaccounted boxes of produce over the period January 2021 – July 2023.

[39] The quantum is stated as R18 576 425. This figure is fully supported by two annexed documents expressly incorporated by reference:

39.1. Annexure “POC1”, the actuarial report dated 10 November 2023, which sets out the detailed methodology, assumptions, comparable-market prices, and itemised calculations per fruit type (apples, peaches, pears, plums) and per calendar year for both missing stock and reduced-price losses.

39.2. Annexure “POC2”, by the second defendant/respondent, Prinsloo & Venter Daily Sales Summary Report, contains the raw transaction-level data from the second defendant itself.

[40] In a claim involving thousands of daily transactions over three years, the incorporation of a comprehensive expert actuarial report together with the second defendant’s own sales records constitutes the required particularity. It enables the defendants, and the first defendant has already partially admitted liability, to interrogate, verify or dispute every component of the quantum.

THE OPPOSITION BY THE SECOND RESPONDENT

[41] The objections fall under five main grounds:

41.1. Prescription and procedural uncertainty (due to non-service of summons): The amendment introduces a claim for relief against the second defendant for the first time. No summons has ever been served on the second defendant. The proposed amendment gives no clear date of service, making it impossible to determine when prescription was interrupted under section 15(1) of the Prescription Act 68 of 1969.

41.2. Non-existent paragraph and misaligned period of engagement: The plaintiff seeks to amend a non-existent paragraph 6.1. The amendment alleges an oral agreement concluded on 16 September 1998 in

Grabouw, which directly contradicts the pleaded period of engagement (January 2021 to 2023).

- 41.3. Failure to plead a cause of action: The amendment does not plead the material terms of the alleged oral agreement that would make the second defendant liable in contract.
- 41.4. Failure to plead all essential elements, renders the particulars excipiable: Without the essential terms/guarantee, the particulars lack the necessary averments to sustain a valid contractual claim. The second defendant is left to speculate on the basis of liability, making the pleading vague and embarrassing.
- 41.5. Ambiguity in the causes of action and damages claimed: The Plaintiff pleads two separate claims (Claim 1 and Claim 2) for the exact same amount (R18 576 425.00) on different bases:

45.1.1. Claim 1: produce sold below agreed minimum prices without authorisation,

45.1.2. Claim 2: failure to account for a certain number of boxes, and therefore, it is alleged that:

45.1.3. The amendment does not clarify whether the claims are separate or alternative, nor how the identical damages figure is calculated for each. This conflation makes the pleading vague and embarrassing.

Non-service of summons

[42] The Second Respondent's primary objection is that the combined summons was never served on it in terms of Rule 4 of the Uniform Rules of Court.

[43] It submits that this defect renders the entire proceedings a nullity and that it is not properly before the Court.

[44] The second respondent's involvement since the issuing of summons is:

- 49.1. The Second Respondent served a notice of intention to defend on 26 November 2024.
- 49.2. The Second Respondent served a notice in terms of rule 41A(2)(b), opposing referral to mediation, on 26 November 2024.
- 49.3. It served a prior Rule 30(1) notice in respect of an earlier amendment attempt on 11 December 2024.
- 49.4. It served a prior Rule 30(1) notice objecting to the applicant's particulars of claim for want of compliance with rule 18(6) on 11 December 2024.
- 49.5. It has delivered a comprehensive answering affidavit and heads of argument in this application.
- 49.6. It has engaged fully in the proceedings since November 2024.

[45] Lamont J, in **Prism Payment Technologies**¹⁴ in penning his judgement remarked that the fact that appearance to defend was entered is indicative of the fact that a party received and has knowledge of the summons and was able to defend it.

[46] Lamont J¹⁵, furthermore, had the following to say:

¹⁴ **Prism Payment Technologies (Pty) Ltd v Altech Information Technologies (Pty) Ltd (t/a Altech Card Solutions)** 2012 (5) SA 267 (GSJ) at 271F-G;

¹⁵ *Ibid* at 271I-272A;

*“The rules, as was pointed out by Roux J in **United Reflective Converters (Pty) Ltd v Levine 1988 (4) SA 460 (W)**, set out procedural steps. They do not create substantive law. Insofar as the substantive law is concerned, the requirement is that a person who is being sued should receive notice of the fact that he is being sued by way of delivery to him of the relevant document initiating legal proceedings.”*

- [47] I am not tasked with the question whether there was compliance with the rules and neither did the second respondent at the hearing seek any relief regarding non-compliance with the rules.
- [48] The matter before me is an amendment application, the ‘objection’ regarding service is not directed at the amendment itself, and in the words of Nicholls JA¹⁶ the power of a court to refuse amendments is confined to considerations of prejudice or injustice to the opponent.
- [49] Such prejudice or injustice should be as a result of the amendment itself.
- [50] Counsel for the second respondent stated that if judgement is delivered in this matter, I would be sanctioning non-compliance with the rules. This is not correct and as alluded to earlier there is no application before me in terms of rule 30 and I am not tasked with the question whether or not proper service has taken place.
- [51] The second respondent’s right to attack service has not been interfered with in any manner and the second respondent is completely within its rights to raise this in terms of the Uniform Rules of Court.
- [52] As to prescription, the applicant cause of action, in terms of its particulars of claim arose between the period from January 2021 until July 2023, and summons was issued during July 2024 and the second respondent entered appearance to defend during November 2024.
- [53] Prescription is raised as a result of the non-service raised by the second respondent, and as stated hereinbefore I am not tasked with establishing

¹⁶ **Media 24 (Pty) Ltd** *supra* at [16] and [17];

whether or not there has been any non-compliance with the rules as far as the main action is concerned.

Contractual terms insufficiently pleaded and the 1998 agreement is inconsistent with the applicant's pleaded case.

- [54] The applicant pleads the contractual terms it relies on, in paragraph 8.1 of its particulars of claim, and the duty it owed to the applicant in terms under the agreement. The applicant pleaded the terms it relies on.
- [55] A party alleging a contract must allege and prove the terms of the agreement on which reliance is placed¹⁷.
- [56] The terms pleaded are not sought to be introduced as an amendment, it is contained in the original particulars of claim.
- [57] The second respondent can take steps in terms of rule 28(8) which includes making consequential adjustments, or take the steps contemplated in terms of rule 23 and rule 30. These steps provided for in terms of rule 28(8) can address any complaints it may have regarding the initial pleading.
- [58] Another complaint by the second respondent is that paragraph 6.1 is amending a non-existing paragraph. It is evident that it is merely the insertion of a paragraph and although not specifically worded as inserting the paragraph, it is a mere refinement of the agreement pleaded in paragraph 6.
- [59] The second respondent also raises a failure to plead all essential elements, rendering the particulars excipiable (vague and embarrassing).
- [60] The contractual terms and elements upon which the applicant relies and is pleaded in paragraph 8.1 and 8.2 of the initial particulars of claim and the need to introduce terms in terms of the amendment does not arise.
- [61] The second respondent alleges recurring procedural exclusion and prejudice that cannot be cured by a costs order.

¹⁷ Badenhorst v Van Rensburg 1985 (2) SA 321 (T) at p 335;

[62] The second respondent also alleges the failure to serve the amendment application on its attorneys.

[63] The applicant states that it was an admitted administrative oversight by the applicant's candidate attorney. It was promptly remedied by a formal apology letter attached to the replying affidavit and the grant of additional time equivalent to what the second respondent would have received had service been effected timeously. The second respondent has in fact filed a substantive answering affidavit and heads of argument. No prejudice has been shown.

[64] The claim of recurring prejudice is not substantiated by the facts of any irremediable injustice. The second respondent has had full opportunity to oppose the amendment and to prepare its defence.

COSTS:

[65] Costs are in the discretion of the court, the applicant only sought costs against the first respondent in terms of prayer 3 of its notice of motion.

[66] Although the respondents were unsuccessful in their objections, and the applicant sought the court's indulgence, fairness to all the parties dictates that costs are not awarded against a single party and to balance the scales, I intend making costs to be costs in the cause.

CONCLUSION:

[67] The applicant seeks condonation for the late filing of its application for leave to amend, having found that no prejudice has been shown, condonation is granted.

[68] The respondents have not demonstrated *mala fides* on the part of the applicant, nor has any prejudice or injustice been shown especially when the respondents have not pleaded yet and will not require any consequential adjustments.

[69] The application for leave to amend complies with the principles governing rule 28 amendments.

[70] I therefore grant the following order:

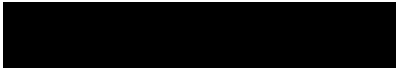
ORDER:

[71] Condonation for the late bringing of the Rule 28 application is granted.

[72] The applicant is granted leave to amend its particulars of claim in accordance with the notice of intention to amend dated 19 March 2025.

[73] The amended particulars of claim shall be filed within 10 (ten) days of this order.

[74] Costs are costs in the cause.



JANSE VAN RENSBURG AJ
JUDGE OF THE HIGH COURT
PRETORIA

For the Applicant: **J Hershensohn SC**
XT van Niekerk

For the First Respondent: **C Richard**

For the Second Respondent: **Z Schoeman**