



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

CASE NO: 2530/2021

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

24 April 2026

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Date


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ML TWALA

In the matter between:

GOOSEBAY FARM (PTY) LTD

APPLICANT

And

ICON CIVIL ENGINEERING (PTY) LTD

FIRST RESPONDENT

WAYNE FRANCES NEARY N

SECOND RESPONDENT

JUDGMENT

TWALA J

Introduction

- [1] This is an application for leave to amend the plaintiff's particulars of claim to the summons in accordance with the notice of intention to amend dated the 7 March 2024. The proposed amendment is to clarify that the respondent is one of three associated companies trading as the Icon Group with the second respondent as the sole director of each of these companies.
- [2] The first and second respondents are opposing this application on the grounds that the proposed amendment seek to introduce new parties; it is vague and embarrassing and does not disclose a cause action – thus if it is allowed, it would be excepiable. In this judgment, the applicant will be referred to as such and the first and second respondents would be referred to as the respondents.

Background

- [3] On 22 January 2021 the applicant issued summons in this court against the respondents claiming payment, jointly and severally the one paying the other to be absolved, in terms of the first claim, a sum of R802 125; alternatively payment of the sum of R795 150 including a tempore morae interest on the said amount at the prescribed rate of interest calculated from 31 March 2018 to date of payment.

- [4] In the alternative to the first claim and as against the first respondent only, payment of the sum of R13 750 337 with interest *a tempore morae* on the said sum of R13 750 337 at the prescribed rate from date of service of summons to date of payment. Both claims arise from an agreement entered into by the applicant and the respondents on 1 November 2017 which agreement is partly written and partly oral and partly tacit.
- [5] On 5 March 2021, the respondents filed an exception to the applicant's particulars which exception was dismissed by the court on 4 February 2022. The respondents filed their plea to the applicant's summons on the 5 September 2023. On 9 April 2024 the applicant filed its notice to amend its particulars of claim – hence this application before this court.

Legal framework

- [6] The legal principles governing amendments are well established. It is trite that amendments are to be granted freely, unless they are sought in bad faith or would cause an injustice that cannot be cured by a costs order. The modern tendency is to allow amendments that facilitate the proper ventilation of disputes.
- [7] In *Affordable Medicines Trust and Others v Minister of Health and Another*¹ the Constitutional Court confirmed the principles governing the granting or refusal of amendments which were laid down in *Commercial Union Assurance Co Ltd v Waymark No*² and stated the following:

“The principles governing the granting or refusal of an amendment have been set out in a number of cases. The practical rule that emerges from these cases is that amendments will always be allowed unless the amendment is *mala fide* (made in bad faith) or unless the amendment will cause an injustice to the other side which cannot be cured by an appropriate order for costs, or “unless the parties cannot be put back for the purposes of justice in the

¹ (CCT27/04) [2005] ZACC 3; SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005)

² 1995 (2) SA 73 (TK) at 76D-76I

same position as they were when the pleading which it is sought to amend was filed.” These principles apply equally to a Notice of Motion. The question in each case, therefore, is what do the interests of justice demand.”³

[8] In *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH*⁴ the Constitutional Court stated the following:

“I do not agree. The misapplication of law ordinarily occurs when a legal standard that is correctly stated and adopted is then applied to the facts so as to derive a conclusion that cannot be sustained. So, for example, a crime that requires intention when the facts merely support negligence cannot sustain a conviction because the application of the law to the findings of fact does not support the conclusion that the accused is guilty of the crime. Here, though, the Commissioner of Patents, having cited the well-known principles of law relevant to the application before her, then pronounced and adopted an entirely different and incorrect standard: the interests of justice. That is apparent from the salient passage of her judgment quoted above. It is also apparent from the reasoning adopted by the Commissioner of Patents to arrive at her conclusion. There is no trace in that reasoning that the Commissioner of Patents adopted the relevant legal principles that she had referenced. Nothing is to be found of the permissive principle that amendments are always allowed, unless they are sought in bad faith or would cause an injustice that cannot be remedied by an award of costs. Rather, the Commissioner of Patents adopted and applied a distinct and incorrect standard: the interests of justice. She then exercised her discretion to refuse the application to amend, by recourse to that incorrect standard.”⁵

The adoption of an incorrect legal standard to decide an application to amend is to make an error of law. It is not a misapplication of law because the decision does not proceed from a correct legal premise to an incorrect conclusion as a result of a failure properly to apply the law to the relevant facts. And it is an error of law of no small consequence. The legal principles that are restated in *Affordable Medicines* reflect the constitutional right to have a dispute resolved by the application of law before a court. This entails the right of a litigant to frame the dispute that requires resolution, and in the present matter, to formulate a defence. Hence, the importance of the permissive principle, to which I have referred.”⁶

³ Id para 9

⁴ 2024 (1) SA 331 (CC)

⁵ Id para 64

⁶ Id para 65

[9] However, an amendment that would render a pleading excipiable may be refused. The test is whether the amended pleading would clearly be excipiable. If it is merely arguable that the pleading might be excipiable, the amendment should be allowed and the excipiability issue left for determination by the trial court.

[10] In *Crawford-Brunt v Kavnat*⁷, dealing with an amendment to a pleading, stated the following:

“In *Cross v Ferreira* it was laid down that, save in exceptional cases where the balance of convenience or some such reason might render another course desirable, the Court will not allow an amendment to a pleading if the pleading as amended would be excipiable. It seems clear, however, both from a reading of this case and of subsequent cases in which *Cross v Ferreira* has been referred to, that such an amendment will only be refused on the ground that the amended pleading would be excipiable if, it is clear that the amendment would obviously render the pleading excipiable. The operative words in the judgment in *Cross v Ferreira* at p. 449 are 'would be excipiable' and not 'may be excipiable'. If the pleading would appear to be possibly open to exception or even if the Court is of opinion that the question of whether or not the pleading is excipiable is arguable, it would seem to be the more correct course to allow the amendment.”

[11] In *Heafield v Rodel Financial Services (Pty) Ltd*⁸ the court quoted with approval the case of *Myers v Abramson* wherein the following was stated:

“In *Magnum Simplex International (Pty) Ltd v MEC Provincial Treasury, Provincial Government of Limpopo* [2018] ZASCA 78 para 9, the court stated that before an amendment is granted, there must be some explanation why there is a wish to amend if a case has already been made out in the pleadings. As set out in *Trans-Drakensberg*, an explanation must be provided why there is a wish to change or add to the pleadings where a case is already made out. The applicant must show prima facie that a triable issue is being

⁷ 1967 (4) SA 308 (C) at 310F–311B).

⁸ [2022] ZAKZDHC 26

introduced. In *Myers v Abramson* 1951 (3) SA 438 (C) at 449H, the court stated that since it was permissible to allow the introduction of a new cause of action by way of an amendment, there was no reason why amendments should be limited to instances where there is some evidence to support the cause of action contained in the proposed amendment.”⁹

Discussion

- [12] The thread that runs through all the above quoted authorities is that generally amendments should be granted to allow the parties to place and ventilate all the issues before the right forum, which is the trial court. Piecemeal adjudication of the issues by different presiding officers is discouraged for it delays finality of the litigation between the parties.
- [13] The proposed amendment does not introduce a new cause of action nor introduce new parties to the proceedings through the back door. The proposed amendment is not a joinder application, nor does it substitute a different legal entity. Instead, it amplifies the factual basis of the existing contractual claim. In particular, it explains the relationship between three companies which have one person as a sole director in all of them; it provides further detail on the factual matrix surrounding the conclusion of the agreement and clarifying that those associated entities could, on the first respondent’s direction, perform aspects of the agreement on its behalf.
- [14] Critically, the applicant remains suing the same two respondents, and the same contract as originally pleaded remains the foundation of the claim. Whether the agreement entered into between the applicant and the first respondent is binding on all three companies is not a matter to be determined by this court for in these proceedings this court is not empowered to determine issues of interpretation of the agreement.

⁹ Id para 29

- [15] I disagree with the contentions of the respondents that the amendment sought to introduce a new cause of action by impermissibly shifting from a contract with the first respondent to a contract with the Icon Group and thereby seeking to pierce the corporate veil. The applicant's cause of action remains breach of the same agreement and the amendment is sought to provide factual particularity about how the first respondent, as the contracting party, could arrange for associated entities to act on its behalf. I hold the view therefore that it is not a new cause of action but amplification of the existing one.
- [16] There is a reasonable explanation proffered by the applicant for bringing this application to amend the particulars of claim which was triggered by the filing of the respondents' plea. The respondents denied in their plea that they concluded an agreement with the applicant and the existence of any guarantee - hence the applicant seek the amendment to say the three companies are associated and will lead extrinsic evidence at the trial to prove the relationship between the three associated companies and that they are all trading as the Icon Group.
- [17] There is no evidence before this court to suggest that the applicant is malicious in its endeavours to effect the amendment to its pleading. Furthermore, nothing suggests that the pleading will be clearly excepiable should the amendment be allowed. It is for the trial court to determine whether it allows extrinsic evidence to be led regarding the surrounding circumstances which were present when the contract was concluded between the parties.
- [18] The respondents have failed to demonstrate that they will be prejudiced by the amendment and that such prejudice would not be compensated by an order for costs. I hold the view therefore that it is in the interests of justice that the amendment be allowed to enable the parties to ventilate all the issues before the trial court.

Order

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

1. The leave to amend is granted.
2. The respondents are to pay the costs of the application jointly and severally, the one paying the other to be absolved on Scale B.



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JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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Date of Hearing: 20 April 2026

Date of Judgment: 24 April 2026

Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be 24 April 2026.