



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 2025-141806

In the matter between:

KWAZULU-NATAL LIGHT TACKLE

BOAT ANGLING ASSOCIATION

PLAINTIFF

Versus

TRANSET SOC LIMITED

FIRST DEFENDANT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Plaintiff instituted an action against Defendant claiming the amount of R425 357.00 plus interest at the prescribed rate from date of summons to date of payment and costs of suit. The claim arises from certain structures which were constructed on the land of Defendant which was let to Plaintiff for some period of over thirty years and which was not renewed.

[2] Defendant filed an exception to the particulars of claim on the basis that it lacked averments to sustain a cause of action. The grounds are:

1. That it is an enrichment lien and that Plaintiff is therefore entitled to compensation for the construction of the buildings.
2. That in the particulars of claim Plaintiff pleads that Defendant estimated the market value of the improvements to be R425 357.00 and therefore Defendant had been enriched in the amount of R425 357.00 without cause.

It sets out in the exception that for unjustified enrichment Plaintiff can only obtain compensation for the lessor of Plaintiff's impoverishment at Defendant's enrichment. The true enrichment of Defendant would be the difference between the market value of the property with the improvements on it and the market value of the property without the improvements. The valuation report provided is for the market rental value of the property. Plaintiff has not pleaded the legal basis of the enrichment claim. It failed to plead the market value of the improvements or market value of the property before the improvement, the market value of the property because of the improvements and therefore disclosed no cause of action.

[3] The exception is opposed by Plaintiff.

[4] It was submitted on behalf of Defendant that for the reasons as set out in the exception that Plaintiff has not shown a cause of action and that the exception must therefore succeed. It was submitted by Defendant that in the case of *Rhooode v De*

Kok and Another 2013 (3) SA 123 SCA at paragraph 15 it was reiterated that the useful improvements, the amount of compensation is limited to the amount by which the value of the property has been increased or the amount of the expenses incurred whichever is less. I was also referred to the case in United Apostolic Faith Church v Boksburg Christian Academy 2011 (6) SA 156 (GSJ) where it was held by the court that the right of the property of the occupier is qualified to the extent that the improvements must on the facts be useful or necessary and properly quantified.

[5] It was submitted that Plaintiff's claim was an enrichment claim and that accordingly the market value of the improvements is to be determined by taking the value of the property without the improvements and the value of the property with the improvements and the difference would then be the value. It was submitted that Plaintiff failed to quantify the enrichment and also the alleged improvements. It was therefore submitted that the exception should succeed and that the claim should be dismissed with costs.

[6] Rule 23(1) of the Uniform Rules of Court allows a party to except to a pleading or to particulars of claim as in this case if it does not sustain an action. That is the basis upon which Defendant has excepted to Plaintiff's particulars of claim.

[7] An exception may only be taken when a defect in the pleadings appears *ex facie* the pleading since no facts may be adduced to show that the pleading is exceptible. Therefore the facts alleged in the pleading must for the decision of the exception be

taken as correct. *Marnie v Watson* 1978 (4) SA 140 (C) at 144 in *Mcelvey v Cowen* N.O. 1980 (4) SA 525 (Z) at 526 it held:

“It is a first principle in dealing with matters of exception that, if evidence can be led which can disclose a cause of action alleged in the pleadings, that particular pleading is not excepiable. A pleading is only excepiable on the basis that no possible evidence led on the pleading can disclose a cause of action.”

[8] It was submitted on behalf of Plaintiff that Plaintiff pleaded that Defendant had been enriched *sine casae* and that the requirements were:

1. Defendant had been enriched through useful improvements made on its land.
2. The extent by which Defendant had been enriched by the improvements.
3. The extent by which Plaintiff had been impoverished and
4. The absence of a legal ground or *casae* to be enriched.

[9] It was submitted that these requirements had been met by averments that Plaintiff was in *bona fide* possession of the property, that Defendant had been enriched by the improvements which have been made and Plaintiff impoverished and that there was no legal ground for Defendant to be enriched by the improvements. It was submitted that the case of *Rhooode v De Kok* and *United Apostolic Faith Church v Boksburg Christian Academy* which was referred to by Defendant was not applicable in this case as they were, firstly in the case of *Roode* an application where evidence had to be set out in the affidavit and secondly a trial where evidence was led and these

conclusions were made. That is distinguishable from the present case where Plaintiff has gone by way of action and only had to plead the necessary averments upon which it relies to prove its cause of action.

[10] It was submitted that the key element of Defendant's exception was the assertion that the market value rental of the property is not market related value of the improvements. This however was submitted is not a basis for an exception. It was submitted that the particulars of claim sustain a cause of action and that evidence can be led in that regard by Defendant in the action. Therefore the particulars of claim is not exceptible.

[11] As set out above the necessary averments to sustain the cause of action is set out in the particulars of claim and further that Plaintiff sets out the amount which it contends was the amount by which Defendant had benefited and by which Plaintiff had been impoverished. The necessary averments are contained in the particulars of claim and the attack by way of exception is against the manner in which the value of the impoverishments has been calculated.

[12] This however is not a basis for an exception as Defendant can plead thereto in detail, can contradict it and set out the way in which it may feel the quantification should be done and such evidence can also be led at the trial. However there is no basis for an exception to the particulars of claim as it sets out all the necessary requirements for the claim which it instituted.

Order:

The exception is accordingly dismissed with costs. Such costs to be on Scale B.

A black rectangular box redacting a signature.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED:

7 MAY 2026

JUDGMENT HANDED DOWN:

COUNSEL FOR PLAINTIFF: A L CHRISTISON

Instructed by: Randles Incorporated

Durban

Tel: 031 301 0726

Email: litigation@randles.co.za

durban@randles.co.za

Ref: A van Lingen/Amisha/06 A005 002

c/o: Randles Inc. PMB Offices

Tel: 033 392 8000

COUNSEL FOR DEFENDANT: K SHAZI

Instructed by: Venns Attorneys

Pietermaritzburg

Tel: 031 823 6102

Email: hiresen@venns.co.za

amisha@venns.co.za

Ref: H Govender/Amisha/4322