REPUBLIC OF SOUTH AFRICA

Reportable: YES / **NO**
Circulate to Judges: YES / **NO**
Circulate to Magistrates: YES / **NO**
Circulate to Regional Magistrates: YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST HIGH COURT MAHIKENG

CASE NO: 1792/2024

In the matter between:

KERENG ANDREW MORAKILE	**1st PLAINTIFF**
KATLEGO MACDONALD CHOWE	**2nd PLAINTIFF**
And	
LIFE PEGLERAE HOSPITAL	**1st DEFENDANT**
DR. SAM AMOAKWA-ADU	**2nd DEFENDANT**
DR IKENNA CLETUS OKEKE	**3rd DEFENDANT**
DR SHUPING MOKGOSI	**4th DEFENDANT**

Coram: TSAUTSE AJ

Date considered: 6 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the hand-down of the judgment is deemed to be 10h00 on 14 May 2026.

JUDGEMENT

TSAUTSE AJ

Introduction

[1] This is an exception application by the fourth defendant to the plaintiffs' particulars of claim on the basis that they fail to disclose a cause of action, in particular for want of a pleaded causal nexus between the conduct of the fourth defendant and the death of the deceased. For convenience, the parties are referred to as cited in the main action.

[2] The plaintiffs oppose the exception and contend that, on a sensible reading of the pleadings and annexures as a whole, they have sufficiently pleaded both the existence and scope of the fourth defendant's legal duty, as well as a factual and legal nexus between his conduct and the harm suffered.

Applicable principles on exception

[3] The exception is taken on the basis that the particulars of claim fail to disclose a cause of action, as contemplated in Rule 23(1) of the Uniform Rules of Court. In adjudicating such an exception, the court must accept as true all properly pleaded factual allegations. The enquiry is whether, on every reasonable interpretation of those facts, no cause of action is disclosed. If any reasonable reading of the pleading sustains a cause of action, the exception cannot succeed.

[4] The approach to exceptions has been articulated in numerous decisions. In *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* 2006 (1) SA 461 (SCA), the Supreme Court of Appeal emphasised that exceptions must be approached sensibly, as a mechanism to weed out cases lacking legal merit, and that an over-technical approach undermines their utility. Pleadings, together with any annexures, must be read as a whole, and the court is not engaged in a game of puzzles by isolating individual allegations from their broader context.

[5] The determination of whether a pleading is excipiable requires an examination of whether it discloses a cause of action. The concept was authoritatively defined in *McKenzie v Farmers' Co-operative Meat Industries Ltd* 1922 AD 16 at 23 as:

"...every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

[6] The plaintiffs are accordingly required to plead the material facts (*facta probanda*) which, if established, sustain their claim; they are not required, at exception stage, to plead the evidentiary detail (*facta probantia*). This principle was reaffirmed in *Strydom N.O and Others v Van Zyl* (345/2022) [2023] ZANWHC 55, where Petersen J rejected a technical objection to particulars of claim, holding that where a claim is sufficiently clear, any deficiencies may be cured by further particulars for trial. This highlights that exceptions are not directed at inelegant drafting, but at the absence of a legally cognisable cause of action.

The background of this matter

Background

[7] On or about 16 April 2021, the deceased, the daughter of the first plaintiff, underwent a caesarean section performed by the second defendant at the first defendant's hospital, pursuant to an agreement in terms of which the procedure would be conducted with the requisite skill, care and diligence expected of a specialist obstetrician and gynaecologist.

[8] Following the procedure, the deceased developed complications arising from a small bowel injury incurred during the c-section, necessitating a return to theatre where a laparotomy was performed by the third defendant.

[9] Thereafter, the deceased was admitted to the Intensive Care Unit (ICU), where she was placed under the care and supervision of the fourth defendant. The plaintiffs' claim against the fourth defendant arises from the alleged negligent post-operative management of the deceased during her admission in the ICU following the second surgical intervention.

[10] It is alleged that the fourth defendant was the doctor on duty in the Intensive Care Unit (ICU), that he issued instructions regarding the deceased's treatment, including inotropic support, ventilatory management and blood investigations, and that he remained the treating ICU physician until the time of her demise.

[11] It is further alleged that, during periods of clinical deterioration, nursing staff made urgent attempts to contact the fourth defendant, which were unsuccessful as calls did not go through. The fourth defendant is alleged to have continued managing the deceased's care remotely, without conducting a bedside assessment or physical examination.

Duty of Care and Doctor–Patient Relationship

[12] The plaintiffs aver that, on these allegations, a doctor–patient relationship arose by operation of law and, alternatively, by virtue of the contractual arrangement between the first and fourth defendants, in terms of which the fourth defendant undertook to provide ICU cover for patients such as the deceased.

[13] *In M obo M v Dr Shaik & Others* 2021 ZAGPPHC 484, the court held that a doctor–patient relationship arises where a medical practitioner accepts and becomes involved in the treatment of a patient, thereby giving rise, by operation of law, to a duty of care.

[14] Once such a relationship is established, the practitioner owes a duty to exercise the degree of skill, care and diligence reasonably expected of a specialist in that position. This includes reasonable availability, personal assessment of a critically ill patient, and proper handover where the practitioner is unavailable. The complaint against the fourth defendant is not that he ought to have performed surgery, but that, as the ICU physician, he failed to monitor, review and appropriately escalate care, and failed to ensure continuity of care through adequate handover.

Causation - Applicable Legal Principles

[15] The fourth defendant argues that the plaintiffs have failed to plead a causal nexus between his conduct and the deceased's death. To determine this issue, it must be noted that causation in South African law entails a two-stage inquiry, comprising factual and legal causation. As confirmed by the Constitutional Court in *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC), factual causation is generally assessed through the "but-for" (*conditio sine qua non*) test. This test is applied with appropriate flexibility, guided by common sense and the particular facts of each case. Critically, the Court cautioned against a rigid or mechanical application of the test, particularly in matters involving systemic omissions or complex patterns of negligence, where inflexible deductive logic might otherwise result in an injustice.

[16] The second part of the enquiry, which is Legal causation, in turn, determines whether a sufficiently close or direct link exists between the conduct and the harm to justify the imposition of liability. This inquiry is governed by a flexible criterion informed by reasonable foreseeability, remoteness, and broader policy considerations. As emphasised in *Lee v Minister of Correctional Services* (*supra*), causation is ultimately an evaluative matter for the trial court to determine based on the totality of the evidence. Consequently, an overly rigid or mechanical application of the "but-for" test is inappropriate, particularly in complex cases involving medical or systemic omissions.

[17] The fourth defendant argues that the autopsy attributes the deceased's death to septic complications following a small-bowel injury during the caesarean section and that, because he took no part in the surgery or subsequent laparotomy, his conduct can never satisfy factual or legal causation. This, however, misconceives the plaintiffs' pleaded case.

The Plaintiffs' Case on Causation

[18] The plaintiffs do not claim that the fourth defendant directly caused injury to the bowel. However, they assert that by the time the deceased was placed under his care in the ICU, she was already in septic shock. They argue that her condition worsened and that his negligent failures in managing her critical state, such as his unavailability, his failure to respond urgently when called, and his lack of proper coverage and handover, significantly contributed to the progression of the sepsis and ultimately led to her death.

[19] On those facts, it is at least reasonably arguable that, but for the fourth defendant's negligent omissions in the ICU, the deceased would probably have survived, or at least enjoyed a materially better chance of survival. In *Lee v Minister of Correctional Services* (supra) the majority accepted that a plaintiff can succeed on causation where the defendant's omission materially increased the risk of harm in circumstances where, but for the negligent systemic or supervisory failure, the harm would probably not have occurred.

[20] The plaintiffs' allegations that the patient's blood pressure was "alarmingly decreasing", that urgent calls to the fourth defendant went unanswered, that orders were given by other doctors via WhatsApp without proper examination, and that the patient died shortly

thereafter, are all material facts from which the trial court could find factual and legal causation after hearing expert evidence.

[21] The fourth defendant's contention that "logic dictates" the deceased would have died in any event is, in truth, a factual defence which goes to the merits, not to the sufficiency of the pleadings. Whether his presence, timely review and appropriate intervention would have altered the course of the septic shock is a matter that can only be resolved at trial on the basis of medical and expert evidence, including the ICU records and the autopsy report, which the plaintiffs have expressly incorporated. At the exception stage the question is not whether causation will be proved, but whether the pleaded facts are capable of sustaining such an inference and I plainly find that they are.

Application to the pleadings and order

[22] Read holistically and together with the annexures, the particulars of claim allege that:

22.1 the deceased was in a critical, post-operative septic state in the ICU;

22.2 the fourth defendant was the ICU physician on call, responsible for her post-operative care;

22.3 he accepted this responsibility and issued treatment instructions for her management;

22.4 he was then unavailable and did not attend when urgently called during a period of deterioration, and failed to ensure an adequately briefed cover doctor;

22.5 other doctors, not in possession of full information, gave telephonic instructions;

22.6 the deceased's condition continued to deteriorate and she died a few hours after these events;

22.7 but for the fourth defendant's negligent unavailability, failure to attend and failure to hand over properly, the deceased would probably not have died, or at least her prospects of survival would have been significantly better.

[22] These allegations set out all the material facts which the plaintiffs must ultimately prove to sustain a delictual claim in negligence against the fourth defendant, namely:

• conduct (in the form of a negligent omission),

• wrongfulness (arising from the breach of a legal duty flowing from the doctor–patient relationship and his role as ICU physician),

• causation (in that such omission probably contributed to the death, alternatively resulted in a loss of a chance of survival), and

• damages (including loss of support and related heads).

[23] They accordingly go beyond bare legal conclusions or bald assertions and are sufficiently particularised to inform the fourth defendant of the case he is required to meet. In *Burger NO v Nel* (991/2024) [2025] ZANWHC 205, the court reaffirmed that an exception must be determined on the pleadings as they stand, and not on extraneous facts or evidentiary material. It follows that the fourth defendant's reliance on the autopsy findings, and his attempt to draw inferences therefrom to negate causation, are matters for trial and cannot defeat a properly pleaded cause of action at exception stage.

[24] The plaintiffs have pleaded facts which, if proved, establish a legally cognisable claim of negligent post-operative care against the fourth defendant. Those facts include the existence of a doctor–patient relationship, the scope of the attendant duty, and alleged omissions in the management of the deceased during her admission in the ICU. The determination of whether such omissions caused or contributed to the deceased's death, and the precise basis upon which any duty arises, are matters for trial and cannot be resolved at exception stage.

[25] In these circumstances, it cannot be said that, on every reasonable interpretation of the particulars of claim, no cause of action is disclosed against the fourth defendant. The pleaded facts are capable of sustaining the conclusion that the fourth defendant's conduct contributed to the harm suffered. The excipient has therefore failed to discharge the onus resting upon him. I therefore of the view that the exception accordingly falls to be dismissed.

Order

1. The fourth defendant's exception is dismissed.
2. The fourth defendant is directed to deliver his plea within fifteen (15) days.
3. Costs of the exception shall be costs in the cause.

T. TSAUTSE
ACTING JUDGE
NORTH WEST DIVISION, MAHIKENG

Appearances:

For the Plaintiff: Adv V. Vilakazi

For the 4th Defendant : Adv L. Mtukushe