

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, PRETORIACASE NO: 039358/2025DATE: 07-05-2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

In the matter between

10 DISCOVERY INSURE LTD

Applicant

and

MANDISA CHARLENE THEKO-KHITSANE

Respondent

J U D G M E N T

GREYLING, J:

20 In the matter of Discovery as plaintiff and Ms Khitsane as the defendant, I have heard an application based on Rule 23(1) concerning an exception that was raised against the Particulars of Claim. The exception is framed as follows, paragraph 1 of the exception under the heading:

"Lack of averments necessary to sustain
action."

It is stated as follows:

“1. Lack of Averments Necessary to Sustain Action

1.1 The plaintiff's Particulars of Claim purport to found a cause of action based on an alleged breach of an agreement (being the maternity agreement 'D2' read with the acknowledgement of debt, 'D3') between the Plaintiff and the Defendant:

1.2 The Plaintiff has failed to plead any specific averments identifying:

a) the material terms of the agreement allegedly breached;

b) the nature and extent of the alleged breach by the Defendant; and

c) how such the alleged breach caused the Plaintiff's claim to damages or entitlement to relief.”

1.3 In the absence of such averments, the Plaintiff's Particulars of Claim fail to disclose a cause of action, as the Plaintiff has not established a legally cognisable basis for the relief sought.

2."Too vague and embarrassing:

2.1 The Plaintiff's Particulars of Claim are vague and embarrassing in that they

fail to provide sufficient particularity to enable the Defendant to reasonably understand the case it is required to meet.

2.2 The lack or specific allegations regarding the terms of the agreement and the alleged breach thereof prejudices the Defendant in preparing a proper defence."

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3. "The conclusion:

3.1 By reason of the aforementioned the Plaintiff's Particulars of Claim are defective in that they:

a) failed to disclose a cause of action and/or vague and embarrassing thereby prejudicing the Defendant."

WHEREFORE the Defendant prays for an order:

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1. Upholding the exception and striking out the Plaintiff's Particulars of Claim."

2. Ordering the Plaintiff to pay the costs of this exception including the costs of counsel.

3. Granting such further and/or
alternative relief as the court may
deem fit."

There is a marked difference between striking out the Particulars of Claim and dismissing of an action.

Striking out a claim always means that the plaintiff is entitled to file a further Particulars of Claim whilst dismissing the action means that the list between the parties has been
10 finalised.

Be that as it may, the court, through reading of the Plaintiff's Particulars of Claim, understands same and can by no reason be vague and embarrassing.

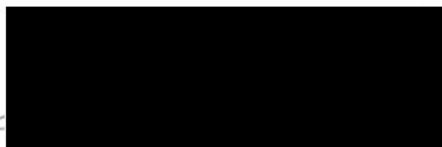
I referred counsel for the excipient to ***Rademeyer v Ferreira 2025 (2) SA 2 (CC) 25 October 2024***, paragraph 68, where the Constitutional Court stated:

20 "It is necessary to restate some well-established legal principles. First, it bears emphasis that a debt is the correlative of a right of action, when one is extinguished, so, too, is the other. It is important to draw a clear distinction between the contractual remedies of specific performance and cancellation and concomitant damages. In the case of the

former, the claim is based on the contract itself and breach of the contract is not a prerequisite for the claim. It is the primary remedy for breach of contract and simply seeks to ensure that the other contracting party performs as she undertook to do.”

The submission made by the excipient that this quotation and finding by the Constitutional Court is obviously wrong
10 and should be reargued or contested is so absurd that I did not take any judicial notice of the submission.

Order: As a result there is no merit in the exception as a whole and, it is dismissed with costs on an attorney and client scale.



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20 **GREYLING, AJ**

ACTING JUDGE OF THE HIGH COURT

DATE: 20 May 2026

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that **so far as it is audible to me**,
the foregoing is a true and correct transcript of the proceedings
recorded by means of a digital recorder in the matter between:
DISCOVERY INSURE // THEKO-KHITSNE, M

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