

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 041638/23

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

DATE 18 May 2026

SIGNATURE

In the matter between:

AL MABROOR AGRI (PTY) LTD

APPLICANT

and

BAREND FREDERICK KEET

RESPONDENT

JUDGMENT

MOGALE, AJ

Introduction

[1] This is an opposed application whereby the applicant seeks leave to effect the amendment to its particulars of claims.

Parties

[2] The applicant is Al Mabroor Agri (Pty) Ltd, a private company with limited liability duly incorporated as such, in accordance with the laws of the Republic of South Africa, with registration number 1998/566407/07 and registered address situated at Block [...], Unit A[...], [...] Floor, Octo Place, [...] E[...] Road, Techno Park, Stellenbosch, Western Cape.

[3] The respondent is Barend Keet, a major male businessman and farmer, trading, inter alia, as XL Trust and residing on the farm Koppiesfontein, district Heidelberg, Gauteng.

Background

[4] On 10 November 2020, the parties entered into an agreement. The material express, alternative tacit, and further alternative implied terms are as follows:

- a. *'The plaintiff will pay a deposit of R 1 000 000.00 [one million rand] to the defendant, which deposit shall be used by the defendant to purchase cattle on the plaintiff's behalf.*
- b. *Invoices for the purchase of the cattle are to be provided to the plaintiff by the defendant. The amount as per the invoices received by the plaintiff will be subtracted from the deposit, and further deposits may be made by the plaintiff.*
- c. *The defendant is responsible for all costs in connection with the grazing of the cattle, for any employees of the defendant, and for medication for the cattle.*
- d. *The defendant shall inform the plaintiff of any cattle that do not perform adequately, whereafter the plaintiff will provide the defendant with the necessary consent to sell and/or slaughter and/or cull the cattle.*

- e. Any income generated from the cattle shall be income for the plaintiff.*
- f. The defendant is entitled to 50c/kg [50 cents per kilogram] on the frail cattle which are sold and/or slaughtered in accordance with paragraph 3.4 supra.*
- g. The plaintiff shall pay the defendant a service fee of R17.50 [seventeen rand fifty cents] per day, per animal, from the day that the animals arrive at the defendant's premises until the day the animals leave such premises.*
- h. A mortality rate of 1% shall be the plaintiff's risk. Any mortality rate which exceeds 1% is the defendant's risk and in which event the defendant shall be responsible to compensate the plaintiff for the loss suffered by the plaintiff.*
- i. The agreement would endure until terminated by either party on notice to the other'.*

[5] The parties complied with their obligations under the agreement until the applicant's termination in June 2022 by notice.

[6] The applicant removed the cattle after the agreement was terminated. Subsequently, it was discovered that 634 animals were missing. Additionally, the respondent failed to account for the R 371 134.45 portion of the deposit that the applicant paid to the defendant in accordance with the agreement.

[7] As a result, on 4 May 2023, the applicant issued summons demanding from the defendant an amount of R 7 639 585.88 (comprising 634 cattle multiplied by R 12 049.82 each) and R 371 134.45 representing the unaccounted portion of the deposit paid by the applicant to the respondent, resulting in a total of R 8 010 720.33.

[8] On 29 June 2023, the respondent served a Notice in terms of Rule 30 that the particulars of claim constitute an irregular step.

[9] The applicant issued a Notice of Intention to amend the Particulars of Claim on 20 July 2023. On 31 July 2023, the respondent served a Notice of Objection to the proposed Amendment.

Respondents' Notice in terms of Rule 30

[10] The respondent delineated the reasons indicating that the particulars of claim represent an irregular step pursuant to Rule 30 as follows:

First cause of action

“ (i) *In paragraph 3, the plaintiff relies on an agreement allegedly entered into between the parties but failed to plead whether the agreement is oral or in writing, and if in writing, to annex a copy thereof.*

(ii) In paragraph 5, the plaintiff relies on a termination of the agreement, which was allegedly with notice. The plaintiff failed to plead whether the rumination was oral or in writing, and how, by whom, and when such notice was given.

(iii) In terms of Rule 18 (6) of the Uniform Rules of Court, a party has to state whether the contract was written or oral and if written a true copy of the written agreement should be annexed to the pleading

(iv) The particulars of claim do not comply with Rule 18(6).”

Second cause of action

“(v) In paragraph 10.1, the plaintiff calculates part of its alleged damages as a "cost per animal" of R12 049.82. From this, it is not clear.

(vi) What is meant by cost per animal, and how was that amount arrived at?

(vii) what the basis for the amount is, i.e., whether it is an average of different costs for different animals, whether all cattle in the country are sold at the same price, whether this is an amount that would have been obtained on auction, by an abattoir or by a breeder”.

Applicant's Notice of Intention to Amend Particulars of Claim

[11] The applicant made a notice in terms of Rule 28(1) to amend the following paragraphs:

[11.1] By deleting paragraph 3 and replacing it with the following:

"On or about 17 November 2020 and at Heidelberg, alternatively Stellenbosch, the plaintiff, duly represented by Willem Johannes Smit and/or Theunis Goosen and the defendant in his personal capacity, concluded an oral agreement ("the agreement") of which the material express, alternatively tacit, further alternatively implied terms of the agreement were:"

[11.2] By deleting paragraph 5 and replacing it with the following:

"The agreement was terminated orally by the plaintiff, duly represented by Willem Johannes Smit and/or Theunis Goosen, on or about June 2022. Alternatively, the agreement was terminated by way of a letter dated 13 June 2022, sent by Rufus Dercksen Inc., on behalf of the plaintiff, to the defendant. A copy of the letter is annexed, marked "A".

[11.3] By deleting paragraph 10.1. and replacing it with the following:

"The average and reasonable, necessary and market-related costs to replace the missing or unaccounted animals amount to R12 049.82 (excluding any VAT) per head of animal x the 634 total of animals missing and unaccounted for and amounting to the total of R7 639 585.88. The average amount of R12 049.82 is also arrived at and calculated as the average price received by the plaintiff for animals kept and raised by the defendant in terms of the agreement."

[12] The respondent objected to the applicant's proposed amendment as set out in the Notice in terms of Rule 28(1), as follows:

(a) The proposed new paragraph 10,1 does not comply with the provisions of Rule 18(10) in that the damages are not set out in a manner that enables the defendant to reasonably assess their quantum.

(b) The proposed amendment asserts that the average, reasonable, necessary, and market-related costs to replace missing or unaccounted animals amount to a specific figure. It is implied that the reference to animals

pertains to cattle, as mentioned, inter alia, in paragraphs 6 and 7 of the particulars of claim, although this is not explicitly clear.

(c) The applicant is required to articulate the specific breed of cattle to which reference is made. Additionally, the applicant should specify the quantity of cattle allegedly missing, categorized by bull, cow, and calf. The applicant must also clarify whether the plaintiff contends that all cattle, regardless of breed or gender, possess equal value, and if so, the factual basis supporting such an allegation.

[13] The proposed amendment, which substitutes the cattle with R 12 049.82, is imprecise and questionable because no justification is provided for such a valuation. There is no indication of the methodology employed by the plaintiff to determine this amount, nor whether all cattle nationally are sold at a uniform price, whether this sum reflects a value that would have been realised through auction, at the slaughterhouse, or by a breeder, or if the cost has been computed on a per-kilogram basis.

[14] The proposed amendment is vague because it is unclear where the applicant obtained the average price, and the respondent will be unable to properly plead.

Issue in disputes

[15] The matter for adjudication concerns whether the applicant ought to be permitted to amend its particulars of claim in accordance with Rule 28(1), notwithstanding the respondent's objection. The dispute pertains to whether the proposed amendment to paragraph 10.1, which introduces an average replacement cost of R 12 049.82 per animal, satisfies the pleading requirements of Rule 18(10) by adequately enabling the respondent to reasonably evaluate the quantum of damages claimed.

Legal principles applicable

[16] Rule 30 of the Uniform Rules of Court stipulates that:

“A party to a cause in which an irregular step has been taken by any other party may apply to the court to set it aside.

An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged and may be made only if—

(a) The applicant has not himself taken a further step in the cause with knowledge of the irregularity;

(b) The applicant has, within 10 days of becoming aware of the step, by written notice, afforded his opponent an opportunity of removing the cause of complaint within 10 days;

(c) The application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2).”

[17] An irregular step under Rule 30 encompasses a pleading that fails to comply with the Uniform Rules. The respondent's notice was issued on 29 June 2023, prior to the filing of the amendment application. However, once an applicant serves a notice of intention to amend, the underlying irregular step is frequently rectified if the amendment resolves the identified deficiencies. Nonetheless, this Court will consider the Rule 30 objections as part of the context for the amendment application

[18] Rule 28 of the Uniform Rules of Court provides that:

(1) “Any party desiring to amend a pleading or document other than a sworn statement filed in connection with any proceedings shall notify all other parties of his intentions to amend and shall furnish particulars of the amendment.”

(10) “The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment, grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.”

[19] The court possesses the discretion to approve or deny the application for leave to amend pursuant to Rule 28(1); however, it must adhere to established legal principles, which are as follows:¹

¹ *Trans-Drakensberg Bank Ltd (under Judicial Management) v Combined Engineering (Pty) Ltd and Another* 1967 (3) SA 632 (D) at p642.

- (a) Amendments are permitted unless the application is made in bad faith, would prejudice the other party in a manner irreparable by costs, or is *futile*, meaning the proposed amendment is legally deficient or unenforceable.
- (b) The court adopts a liberal approach to amendments, as the object is to enable the real issues between the parties to be determined.²
- (c) The onus is on the party opposing the amendment to show prejudice. Once a bona fide amendment is submitted at the earliest reasonable opportunity, it will generally be allowed.³
- (d) An amendment that does not adhere to the rules of pleading, particularly Rule 18, may be denied if it is vague, confusing, or fails to disclose a cause of action.⁴

[20] In the case of *Moolman v Estate Moolman*,⁵ the court held that:

“The 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 is sought to amend was filed”

[21] Rule 18(6) and (10) of the Uniform Rules reads as follows:

“(6) A party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written, a true copy thereof or of part relied on in the pleading shall be annexed to the pleading.”

“(10) A plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof.”

² *Moolman v Estate Moolman* 1927 AD 133 at para 27.

³ *Apex Truck & Trailer v PPCF Boerdery CC* (21/37786) [2024] ZAGPJHC 489 at para 9.

⁴ Erasmus, Superior Court Practice at D-345.

⁵ Above n 2 at para 29.

[22] In *Federated Trust Ltd v Botha*,⁶ the court stated as follows:

“The court does not encourage formalism in the application of the rules. The rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts. Where one or other of the parties has failed to comply with the requirements of the rules or an order made in terms of thereof and prejudice has thereby been caused to the opponent, it should be the Court’s endeavor to remedy such prejudice in a manner appropriate to the circumstances, always bearing in mind the object for which the rules were designed.

[23] Rule 18(6) requires that every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies, and that where a contract is alleged, the pleader must state whether the contract is written or oral, and if written, a true copy must be annexed. Rule 18(10) provides that when damages are claimed, the pleadings shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof.

[24] The purpose of Rule 18(10) is to prevent a plaintiff from presenting a claim for damages in vague or general terms that leave the defendant guessing as to how the amount was calculated. The defendant must be placed in a position to meaningfully plead to the quantum, either by admitting, denying, or quantifying any disputed elements. A bald assertion of a final figure, without any breakdown or methodology, does not satisfy this requirement

Applying the law to the facts

[25] The applicant’s proposed amendment seeks to remedy two discrete pleading deficiencies identified in the respondent’s Rule 30 notice:

[26] The first deficiency pertains to the original particulars, which did not specify whether the agreement was written or oral. The proposed amendment to paragraph 3 explicitly states that on 17 November 2020, in Heidelberg or, alternatively, in Stellenbosch, the plaintiff, duly represented by Willem Johannes Smit and/or Theunis

⁶ *Federated Trust Limited v Botha* 1978 (4) All SA 147 (A) at p646.

Goosen, and the defendant in his personal capacity, entered into an oral agreement. Consequently, I conclude that the proposed amended paragraph cured the irregularity.

[27] The second deficiency concerns the fact that the original paragraph 5 did not specify how the termination was effected. The proposed amendment explicitly states that the agreement was terminated orally by the plaintiff, who was duly represented by Willem Johannes Smit and/or Theunis Goosen, approximately in June 2022. Alternatively, it is indicated that the agreement was terminated by a letter dated 13 June 2022, dispatched by Rufus Dercksen Inc., on behalf of the plaintiff, to the defendant. I also find that this proposed amended paragraph has cured the irregularity.

[28] The applicant seeks to replace the original averment in paragraph 10 with a more detailed formulation, including:

“The average and reasonable, necessary and market-related costs to replace the missing or unaccounted animals amount to R 12 049.82 (excluding any VAT) per head of animal. The average amount of R 12 049.82 is also calculated as the average price the plaintiff received for animals kept and raised by the defendant under the agreement.”

[29] The respondent contends that this proposed amendment still does not comply with Rule 18(10) because it fails to disclose the breed, gender, or age categories of the 634 animals. It also does not elucidate the methodology used to calculate the sum of R 12 049.82 (e.g., auction prices, abattoir values, breeder prices, or per-kilogram rates). Furthermore, it depends on the average price received by the plaintiff without specifying the timing, location, or the specific animals to which this price pertains. Consequently, the respondent still maintains that they cannot reasonably assess the quantum without such essential information.

Evaluation

[30] The Court concludes that the respondent’s objection is well-founded. While the amendment incorporates the concept of the average price obtained by the plaintiff

for animals maintained and bred by the defendant in accordance with the agreement, it does not provide the supporting data.

[31] The agreement spanned a period from November 2020 to June 2022. I agree with the respondent's arguments that cattle prices fluctuate over time, by breed, for example (Bonsmara vs Brahman), by class (weaners, feedlot-ready, breeding cows), and by market (auction, direct sale, abattoir).

[32] The applicant does not state how many of the 634 animals were of each class or weight category, nor does it provide the specific prices received on past sales that yield the asserted average.

[33] It is evident that a defendant presented with such a pleading cannot reasonably determine whether the claimed amount of R 12 049.82 per individual is accurate, exaggerated, or understated. The defendant would be compelled either to admit to a lump sum or to deny it, without the capacity to respond meaningfully to its constituent components.

[34] The applicant contended that the amendment supplies adequate particularity for the pleading stage, and that additional details are obtainable through discovery or a request for further particulars. I disagree with this contention because Rule 18(10) establishes a minimum requirement for the pleading itself. A plaintiff may not delay in providing essential factual information that would enable the defendant to assess the quantum. If the applicant indeed relies on an average of previous prices received, the pleading should, at a minimum, specify the transactions from which that average is derived, including dates, quantities of animals, and prices per animal or per kilogram.

[35] The amendments to paragraphs 3 and 5 are clear, specific, and compliant with Rule 18(6). No valid objection was raised to those amendments, save for the respondent's general opposition. Therefore, those two amendments should be allowed.

[36] The respondent has demonstrated prejudice if the amendment to paragraph 10.1 were permitted in its current form; the respondent would then be compelled to respond to a damages claim that remains vague, which could potentially result in a trial ambush or necessitate extensive additional interlocutory proceedings. I agree that this prejudice cannot be sufficiently remedied through a costs order, as it directly affects the respondent's ability to plead.

[37] Conversely, the applicant is not without remedy. The applicant may serve a further amended notice under Rule 28(1) that provides a proper breakdown under Rule 18(10).

[38] Therefore, this Court will grant leave to amend paragraphs 3 and 5 of the particulars of claim as they comply with the Uniform Rules. Leave to amend those paragraphs is granted.

[39] I find the proposed amendment to paragraph 10.1 to have failed to comply with Rule 18(10) in that it does not set out the damages in a manner enabling the respondent reasonably to assess the quantum thereof. I find that the amendment is vague and embarrassing. Leave to amend paragraph 10.1 as presently formulated is refused.

Order

[40] Accordingly, the following order is made:

[40.1] The applicant is granted leave to amend its particulars of claim by deleting paragraph 3 and substituting it with the wording set out in the Notice of Intention to Amend dated 20 July 2023, and by deleting paragraph 5 and substituting it with the wording set out in the aforementioned Notice.

[40.2] The applicant's application for leave to amend paragraph 10.1 of the particulars of claim is refused.

[40.3] The costs of this application shall be costs in the cause of the main action.

K MOGALE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 20 April 2026
Date of judgment: 18 May 2026

Appearances

Applicants' council: Adv GJ Lotter
Instructed by: Vesi De Beer Attorneys

Respondents' council: Mr A S Marais
Instructed by: Lautenbach Attorneys