

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



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No: **2522/2024**

In the matter between:

BRIGHT IDEA PROJECTS 860 CC

Plaintiff

and

MATSAPA TRADING 647 CC

First Defendant

ADRIANUS PETRUS VAN DER COLFF

Second Defendant

Neutral citation: *Bright Idea Projects 860 CC v Matsapa Trading 647 CC and Another* (Case No: 2522/2024)
Coram: Coetzee AJ
Date of Judgment: 13 March 2026

ORDER

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1. The Second Defendant's exception is dismissed.
 2. The Second Defendant shall pay the costs of the exception.
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JUDGMENT

- [1] On 19 September 2024 the Plaintiff issued a summons against the First, alternatively the Second Defendant, claiming the following relief:

“1.1 *That the cash money in total R 4 083 848.60 be returned to Plaintiff by First and Second Defendants.*

1.2. *In the alternative to prayer 1 above, that judgment be granted against First Defendant, alternatively Second Defendant, for payment to Plaintiff of the capital amount of 4 083 848.60.*

1.3 *Interest on the above mentioned amount a tempore mora.*

1.4. *Costs of suit.”*

- [2] First Defendant opposed the claim and filed a plea whilst the Second Defendant opposed the claim and filed an exception against Plaintiff's claim on the basis that the claim is vague and embarrassing and alternatively lacks the necessary averments to sustain a cause of action (my underlining) against the Second Defendant.

- [3] This is an action in which the Plaintiff seeks the return of cash in the amount of R4 083 848.60, alternatively payment of that amount, together with interest and costs.

- [4] The Plaintiff's claim is founded on ownership of the aforesaid cash and the alleged possession thereof by the First Defendant, alternatively the Second Defendant, following the termination of the Second Defendant's employment with the Plaintiff.

- [5] On 01 March 2024, the Second Defendant was employed by the Plaintiff. In the course and scope of his employment, he held cash on behalf of the Plaintiff in the total amount of R4 083 848.60.

- [6] The Plaintiff pleads and relies, *inter alia*, on a WhatsApp message and screenshot sent by the Second Defendant on 01 March 2024 to a representative of the Plaintiff, reflecting the aforesaid amounts and confirming that the funds were to be remitted to the Plaintiff.
- [7] On 06 March 2024, the Second Defendant informed the Plaintiff that he had entered into employment with the First Defendant and terminated his employment with the Plaintiff.
- [8] The Plaintiff pleads that from 06 March 2024 the Second Defendant, acting within the course and scope of his employment with the First Defendant, held the cash for and on behalf of the First Defendant, alternatively for his own benefit.
- [9] Despite demand, the cash has not been returned to the Plaintiff.
- [10] The issues for determination are:
- (a) Whether the Plaintiff has established ownership of the cash amount of R4 083 848.60;
 - (b) Whether the Defendants, or either of them, are in possession of such cash;
 - (c) In the alternative, whether the Plaintiff is entitled to payment of the equivalent amount on the basis that the cash was intentionally disposed of or lost in circumstances giving rise to liability.
- [11] An owner is entitled to reclaim its property from any person who possesses it without lawful cause (*rei vindicatio*). To succeed, the Plaintiff must plead:

- (a) ownership of the property; and
- (b) possession thereof by the Defendant at the time the action is instituted.

- [12] Where the property is no longer in existence or in the possession of the Defendant, and it is alleged that the Defendant intentionally disposed of or lost it, with knowledge of the Plaintiff's ownership, a delictual or enrichment claim may arise entitling the Plaintiff to the value thereof.
- [13] A person who holds property on behalf of another in a fiduciary or employment capacity is under a legal duty to account for and return such property upon demand.
- [14] In the particulars of claim before Court, the Plaintiff has alleged that the Second Defendant held the cash in question on 01 March 2024 in his capacity as employee of the Plaintiff.
- [15] The documentary evidence, including the WhatsApp communication and screenshot, corroborates the existence of the quantum of the funds.
- [16] The Second Defendant's resignation on 06 March 2024 and subsequent employment with the First Defendant, coupled with the failure to return the funds, supports the inference that the funds were retained either by the Second Defendant personally, or by the First Defendant through the agency of the Second Defendant.
- [17] No lawful basis has been advanced to justify the retention of the Plaintiff's funds. In the circumstances, the Plaintiff has alleged its

ownership of the funds and the Defendants' unlawful failure to restore same.

[18] If the cash is no longer in the possession of the Defendants, the evidence might support the conclusion that such loss occurred intentionally, and with knowledge of the Plaintiff's ownership, rendering the responsible Defendant liable for payment of the equivalent amount.

[19] Second Defendant contends that no allegations are made as to the following:

19.1 Why it is alleged that the Second Defendant was holding money on behalf of the Plaintiff.

19.2 How the amount comprising the cash money is being quantified and why such amounts would be due and payable to the Plaintiff.

19.3 How the Plaintiff acquired ownership of the money which, *ex facie* the particulars of claim, belongs to the First Defendant as it concerns its business operations.

19.4 How the cash money was allegedly lost (which allegation in itself is vague and embarrassing).

[20] Where an exception is based on vagueness and embarrassment, the excipient must establish that:

20.1 The pleading is vague;

20.2 The vagueness causes embarrassment; and

20.3 Such embarrassment results in prejudice.¹

[21] An exception is not directed at the evidential strength of a claim, but at its legal sustainability. The question before this Court is therefore whether, accepting the pleaded facts as correct, the particulars of claim disclose a recognisable cause of action.²

[22] Upon a proper reading of the particulars of claim, the Plaintiff pleads:

- The existence right, being ownership;
- The obligations resting upon the Defendant being the return thereof.
- Conduct allegedly constituting breach or wrongful conduct being the non-return of the money.

[23] These allegations, if proved at trial, are capable of sustaining the relief claimed. The Defendant's complaint is directed largely at a perceived lack of detail rather than the absence of essential averments.

[24] Our Courts have repeatedly cautioned that exceptions should not be upheld merely because a pleading could have been more precisely formulated. An exception is concerned with the legal validity of a claim and not its ultimate prospects of success.

[25] In the present matter, the Defendant is able to meaningfully plead to the allegations made. Any further particularity required may properly be obtained by way of a request for trial particulars and does not justify the striking down of the pleading.

¹ *Jowell v Bramwell-Jones* (1998 (1) SA 836 (W))

² *Lewis v Oneanate (Pty) Ltd and Another* 1992 (4) SA 811 (A)

[26] The alleged vagueness does not go to the root of the Plaintiff's cause of action, nor has material prejudice been demonstrated.

[27] The Defendant has failed to establish that the particulars of claim disclose no cause of action or that they are vague and embarrassing to the extent required by law.

[28] The exception accordingly falls to be dismissed.

ORDER:

1. **THE SECOND DEFENDANT'S EXCEPTION IS DISMISSED.**
2. **THE SECOND DEFENDANT SHALL PAY THE COSTS OF THE EXCEPTION.**


COETZEE AJ
HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION,
KIMBERLEY

For the Plaintiff:	ADV MP VAN DER MERWE SC
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For the Defendant:	ADV D BLOCK
Instructed By:	Van Zyl Johnson Inc. Johannesburg c/o Engelsman Magabane Inc. Kimberley