



**IN THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)**

**CASE NO: 1192/2024**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: YES

\_\_\_\_\_  
SIGNATURE

11/06/2025  
\_\_\_\_\_  
DATE

In the matter between:

**CIRCLE FITMENT CENTRE CC**

**PLAINTIFF**

And

**SIBANYE GOLD EASTERN OPERATIONS (PTY) LTD**

**DEFENDANT**

*Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be at 10:00 on 11 June 2026.*

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**JUDGMENT**

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**Phahlamohlaka J**

## **Introduction**

[1] This is an exception application brought by the defendant against the plaintiff's amended particulars of claim. The basis of the defendant's exception is that the plaintiff's particulars of claim lack averments necessary to sustain a cause of action in terms of the contract, or otherwise.

[2] The defendant takes issue with the portion based on unjust enrichment for services and goods rendered without valid purchase orders, in the amount of R766 207.09.

## **Summary of the Facts**

[3] The parties entered into a written contract on 13 December 2021 for tyre maintenance and supply at Burnstone. Clause 6.2 of the contract required that no work would be enforceable unless a valid purchase order was issued by the defendant.

[4] The plaintiff rendered services and supplied goods, invoicing the defendant for two portions, namely, Portion A for R689 048.18 (with valid purchase orders, acknowledged by the defendant), and Portion B for R766 207.09 (without valid purchase orders).

[5] The defendant paid or tendered payment for Portion A but refused payment for Portion B, leading to the present dispute.

[6] The plaintiff amended its claim for Portion B to rely solely on unjust enrichment, alleging a *bona fide* and reasonable belief that purchase orders had been issued. The defendant excepted to this claim, arguing that the contract precludes any claim for enrichment in these circumstances.

## **Issues**

[7] This Court must therefore determine whether the plaintiff's particulars of claim for unjust enrichment (Portion B) disclose a cause of action in law, secondly, whether clause 6.2 of the contract excludes the possibility of an enrichment claim for services

rendered without a purchase order and lastly, whether the plaintiff's belief regarding the existence of purchase orders is sufficient to found a claim for unjust enrichment.

## **The Legal Position**

[8] The requirements for an unjust enrichment claim (*condictio indebiti*) are that the defendant must be enriched, and that the plaintiff must be impoverished. The enrichment must therefore be at the expense of the plaintiff, and it must be without legal cause.

[9] The law regarding contracts is settled. Where a valid contract governs the relationship, enrichment claims are generally excluded unless the contract is void, cancelled, or does not cover the situation.<sup>1</sup>

[10] A party who acts in the mistaken belief that payment or delivery is due may claim restitution if the mistake is excusable. The legal remedy of *condictio indebiti* is therefore available to such a party. However, gross negligence or culpable mistake bars recovery.

## **Evaluation**

[11] The defendant's exception is based on clause 6.2, which requires a valid purchase order for enforceability and expressly excludes liability for work done without such an order. The defendant argues, with reference to *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk*,<sup>2</sup> that the existence of a valid contract precludes an enrichment claim, as the contract regulates the parties' rights and obligations.

[12] The plaintiff contends that the particulars of claim meet the requirements for an enrichment claim, as they allege enrichment, impoverishment, and lack of legal cause due to the absence of purchase orders.

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<sup>1</sup> *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 (1) SA 391 (A).

<sup>2</sup> *Ibid.*

[13] The plaintiff further argues that the exception procedure is not the forum to determine the merits of the enrichment claim, but only whether the pleadings are excipiable.

[14] In *Mhlari N.O and Others v Nedbank Limited*,<sup>3</sup> the court stated as follows:

“A person who pays money (or delivers a thing) to another because of a reasonable error of fact or law in the belief that the money is owing, whereas it is not, has a claim for repayment in terms of the *condictio indebiti*, to the extent that the person who receives the payment has been enriched at his or her expense. The *conditio sine causa specialis* lies where the money is in the hands of the defendant without cause, whether due to the plaintiff's mistake or not. Therefore, a defendant may raise as a defence to the *condictio indebiti* that the mistake was unreasonable and negligent, but in a claim based on the *conditio sine causa specialis* that consideration is irrelevant.”

[15] The defendant's heads of argument emphasise that the contract's clause 6.2 is a complete bar to any enrichment claim, as it was specifically designed to prevent liability for work done without a purchase order.

[16] The plaintiff's heads of argument maintain that clause 6.2 may be a defence on the merits but does not render the particulars of claim excipiable at the pleading stage.

## **Conclusion**

[17] Having considered the pleadings, the contract, and the arguments, it is my considered view that the plaintiff's particulars of claim for unjust enrichment allege all the essential elements required for such a claim.

[18] Clause 6.2 of the contract may ultimately provide a substantive defence to the enrichment claim, but does not, at the exception stage, render the particulars of claim excipiable.

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<sup>3</sup> *Mhlari N.O and Others v Nedbank Limited* [2024] ZASCA 39 para 18.

[19] The exception, therefore, falls to be dismissed.

**Order**

[20] In the result, I make the following order:

1. The defendant's exception to paragraphs 8 to 11 of the plaintiff's amended particulars of claim is dismissed.
2. The defendant is ordered to pay the costs of the exception.

  
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**K F PHAHLAMOHLAKA**  
JUDGE OF THE HIGH COURT  
MPUMALANGA DIVISION, MIDDELBURG

## Appearances

For the applicant: Adv Du Plessis  
Instructed by: Du Plessis Mundt Attorneys

For the respondent: Adv West  
Instructed by: Chris Liebenberg Attorneys

Date judgment reserved: 20 February 2026