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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 2025-065277

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHERS JUDGES: YES/NO

(3) REVISED

DATE....26 May 2026

SIGNATURE

In the matter between:

S[...] B[...]

First Plaintiff

P[...] B[...]

Second Plaintiff

and

MATRIX CAR TRACKER

First Defendant

PAUL FITCHET

Second Defendant / Excipient

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 26 May 2026.

JUDGMENT

DU PLESSIS, AJ

INTRODUCTION

1.

- 1.1. This is an exception brought by the second defendant, Mr Paul Fitchet, against the particulars of claim of the first and second plaintiffs, Mr S[...] B[...] and Mrs P[...] B[...]. The exception is taken on three grounds, all directed at the contention that the particulars of claim disclose no cause of action.
- 1.2. The matter was heard virtually. The second plaintiff, Mrs Baloyi, appeared in person. I was informed that the attorney and counsel previously on record for the plaintiffs no longer practise and are no longer on record, and that Mrs Baloyi would represent herself at the hearing of the exception but intends to obtain the services of a new attorney as and when the matter proceeds. The excipient was represented by Adv Carolissen.
- 1.3. The plaintiffs filed neither a practice note nor heads of argument. In the absence of any such filing, and the matter having been argued before me, the exception was disposed of on the papers and the submissions of the excipient's counsel, together with such submissions as Mrs Baloyi was able to advance in person.
- 1.4. For the reasons that follow, I am of the view that the exception must be upheld, but that the plaintiffs ought to be afforded an opportunity to amend their particulars of claim.

BACKGROUND

2.

- 2.1. The plaintiffs are a married couple residing in Soshanguve, Pretoria. They are the registered owners of a Haval GWM H6 1.5T Luxury SUV. On 10 December 2024, an entity which the plaintiffs describe as "*Matrix Car Tracker*" installed a vehicle tracking device in their motor vehicle.
- 2.2. On 22 December 2024, while the plaintiffs were travelling at night, the vehicle is alleged to have suddenly locked all four wheels, rendering it immobile. The plaintiffs say they were stranded in a remote and unsafe location near Hammanskraal. While the first plaintiff went in search of assistance, the second plaintiff was, on the pleadings, sexually assaulted by three armed males who came upon her where she had concealed herself. The vehicle was eventually towed away and the plaintiffs spent two nights at Madileng Lodge before being transported to a GWM workshop in Gezina.
- 2.3. The plaintiffs were subsequently informed by the workshop

manager that the cause of the vehicle's immobilisation was, in their words, the "*irregular connections of the tracking device done by Matrix*". They allege ongoing psychological trauma, marital strain, and out-of-pocket expenses arising from the incident.

- 2.4. A letter of demand was addressed to the first and second defendants on 3 March 2025. The response, dated 27 March 2025, came from one Hylton Petersen, described as "*Head of Legal Africa*", and bears the letterhead of "*Powerfleet*". Liability was rejected, save for an offer to pay (on proof) the cost of the two nights' accommodation.
- 2.5. On 19 May 2025 combined summons was issued and served. The first defendant is cited as "*Matrix Car Tracker, a private company registered in terms of the Companies Act*". The second defendant is cited as Mr Paul Fichet, said to be the managing director of the first defendant. The plaintiffs seek payment of R5 001 832.00, made up principally of two amounts of R2 500 000.00 each, claimed in respect of the trauma allegedly suffered by each plaintiff, together with the cost of accommodation and Uber transport.
- 2.6. The second defendant filed notice of intention to defend on 30 May 2025 and, on 27 June 2025, served the present exception.

THE GROUNDS OF EXCEPTION

3.

Three grounds of exception are advanced:

- 3.1. First, that the first defendant — "*Matrix Car Tracker*" — is a non-existent entity, not registered as a juristic person under the Companies Act, 71 of 2008, and that the particulars of claim, properly read with their annexures, themselves disclose that the entity which responded to the letter of demand was Mix Telematics Africa (Pty) Limited t/a Powerfleet, and not the entity cited.
- 3.2. Secondly, that no cause of action is disclosed against the second defendant in his personal capacity. There is no allegation of a contract concluded between the plaintiffs and the second defendant; no allegation that the second defendant performed the installation; no allegation that he was employed by the first defendant or acted within the scope of any such employment; and no factual basis pleaded for any vicarious or personal delictual liability on his part.
- 3.3. Thirdly, that the plaintiffs have failed to plead the grounds of

negligence and have failed to establish a legal duty of care owed by the second defendant to the plaintiffs.

THE APPLICABLE LEGAL PRINCIPLES

4.

- 4.1. The principles governing an exception that a pleading discloses no cause of action are well-settled and need no extensive elaboration.
- 4.2. As the excipient's counsel reminded me, a cause of action is the factual basis, the set of material facts, that begets the plaintiff's legal right of action (see Evins v Shield Insurance Co Ltd 1980 (2) SA 814 (A)). The enquiry on exception is directed not at the merits but at whether, on every reasonable interpretation of the facts pleaded, a cause of action is made out.
- 4.3. In Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006 (1) SA 461 (SCA) at para 3, Harms JA reminded that exceptions provide a useful mechanism to weed out cases without legal merit, but that an over-technical approach is to be avoided. The court must take the facts pleaded as correct and ask whether, on those facts, the claim is bad in law.
- 4.4. More recently, the principles were collected and restated in Hlumisa Investment Holdings RF Ltd v Kirkinis 2020 (5) SA 419 (SCA) at para 22, and in Nat Industries (Pty) Ltd (in Liquidation) v Grindrod Ltd 2024 (2) SA 506 (KZD). The pleading is to be read as a whole, including the annexures attached to it. Where the conclusions of law set out in the particulars of claim cannot be supported on any reasonable interpretation of the pleaded facts, the exception must succeed.
- 4.5. I have those principles in mind throughout what follows.

FIRST GROUND: NON-EXISTENT FIRST DEFENDANT

5.

- 5.1. The first ground is, on its face, narrow but, on closer examination, of considerable consequence. The plaintiffs allege that "*Matrix Car Tracker*" is a private company registered under the Companies Act, 2008. They allege further that the second defendant is its managing director.
- 5.2. The difficulty is twofold. First, no registration particulars are pleaded. Secondly, and decisively for present purposes, Annexure F to the particulars of claim — the response to the letter of demand

on which the plaintiffs themselves rely — is on the letterhead of "Powerfleet" and is signed by a legal advisor who refers to "our client". The chronology and practice note before me identify that client as Mix Telematics Africa (Pty) Limited t/a Powerfleet. "Matrix Car Tracker" is not, on the documents annexed by the plaintiffs themselves, the legal entity which transacted with them.

- 5.3. A pleading must be read with its annexures. Where the annexures contradict the body of the pleading, the contradiction enures to the excipient's benefit at exception stage. The plaintiffs have, by their own annexures, exposed the difficulty: the entity cited as first defendant is not the entity which appears to have rendered the services and which responded to the demand.
- 5.4. It does not avail the plaintiffs to say that the citation can be inferred. A defendant must be identified with sufficient precision to enable the court to enter judgment against it, and to enable that defendant to know the case it must meet. A citation that does not correspond to any juristic person in existence is, at best, ambiguous and, at worst, fatal.
- 5.5. It must, however, be observed that this difficulty is in principle capable of being cured by amendment. The misnomer or mis-citation of a defendant is not, of itself, the death of a claim where the true intended defendant is readily identifiable, has been afforded notice, and has not suffered prejudice. That is a matter for any application to amend that the plaintiffs may bring, and not for the present exception.
- 5.6. On the pleading as it stands, however, the first ground of exception must be upheld.

SECOND GROUND: NO CAUSE OF ACTION AGAINST THE SECOND DEFENDANT

6.

- 6.1. The second ground attacks the joinder of Mr Fitchet in his personal capacity. The plaintiffs' case against him is contained in paragraphs 4, 7, 14 and 18 of the particulars of claim. He is said to be the managing director of the first defendant, to have (together with the first defendant) installed the tracking device, and is claimed against jointly for R5 001 832.00.
- 6.2. It is a fundamental rule of South African company law that a company is a legal person distinct from its directors and shareholders. A director is not, without more, liable for the

contractual or delictual obligations of the company. To found a personal claim against a director, a plaintiff must plead facts establishing one of the recognised bases of personal liability: a contract concluded with the director personally; a delict committed personally by the director (with all elements pleaded); statutory liability (for example, under section 218(2) of the Companies Act); or a basis for piercing the corporate veil.

- 6.3. The particulars of claim contain none of these averments. There is no allegation that Mr Fitchet was a party to any contract with the plaintiffs. There is no allegation that he physically installed the tracking device or supervised the installation. There is no allegation that he owed the plaintiffs a personal legal duty distinct from that of the company he is said to direct. There is no allegation that he acted unlawfully or that he committed a wrongful act in his personal capacity.
- 6.4. Counsel for the excipient correctly invoked the dictum in Moosa NO v Hassam 2010:
- "In the present case, the respondents base their cause of action against the applicants, upon the written agreement. The written agreement is a vital link in the chain of the respondents' cause of action against the applicants. In order for the respondents' cause of action to be properly pleaded, it is necessary for the written agreement relied upon to be annexed to the particulars of claim."*
- 6.5. (See Moosa NO v Hassam 2010 (2) SA 410 (KZP) at para 10.) The point is that the "vital link" between the plaintiffs and the second defendant is simply absent. The plaintiffs do not plead a contract with him, a delict by him, or any vicarious basis on which he can be held liable.
- 6.6. Nor have the plaintiffs invoked any of the doctrines under which a director may be held personally liable — section 218(2) of the Companies Act, the principles in respect of personal delictual liability of directors, or the requirements for piercing the corporate veil. None of these is hinted at in the pleading.
- 6.7. It follows that, even on the most generous reading of the particulars of claim, no cause of action is disclosed against the second defendant. The second ground of exception must be upheld.

THIRD GROUND: NEGLIGENCE AND DUTY OF CARE

7.

- 7.1. The third ground overlaps to some extent with the second but is properly treated as a discrete complaint. The plaintiffs' claim sounds, ultimately, in delict. To succeed, the plaintiffs must establish conduct, wrongfulness, fault, causation and damage.
- 7.2. The classic formulation of negligence remains that of Holmes JA in Kruger v Coetzee 1966 (2) SA 428 (A) at 430E–F. Wrongfulness, where the alleged conduct consists of an omission or causes pure economic loss, must be specifically pleaded by reference to a legal duty not to act negligently, and to facts which engage public and legal policy considerations of the kind described in Country Cloud Trading CC v MEC, Department of Infrastructure Development 2015 (1) SA 1 (CC) at para 22.
- 7.3. The particulars of claim allege, in paragraph 14, that "*Matrix*" was "*negligent when installing the tracking device*". That is the high-water mark of the negligence pleading. There is no identification of:
 - 7.3.1. the legal duty alleged to have rested on the second defendant (as opposed to the first defendant);
 - 7.3.2. the conduct said to constitute a breach of that duty by the second defendant personally;
 - 7.3.3. the respects in which the second defendant is alleged to have fallen short of the standard of the reasonable person;
 - 7.3.4. the foreseeability of the kind of harm that is alleged to have eventuated, having regard to the particular and tragic chain of events; or
 - 7.3.5. the basis on which wrongfulness is alleged in the constitutional sense — that is, why it would be reasonable to impose delictual liability on the second defendant for the conduct of criminal third parties.
- 7.4. In M.B.M obo M.M v Elevator Maintenance Company (26267/21) [2022] ZAGPPHC 256, the court upheld an exception on materially similar grounds, observing that a plaintiff cannot simply aver negligence; the basis for the alleged negligence and the legal duty must be pleaded. The same difficulty arises here.
- 7.5. I make one further observation. The chain of causation pleaded by the plaintiffs is, on any reading, an extended one. The alleged negligent installation is said to have caused the vehicle to lock; the locked vehicle is said to have caused the plaintiffs to be stranded; the stranding is said to have caused them to be exposed to

criminal attack. The question of legal causation in such a case — whether the harm is too remote, and whether public and legal policy permits its imputation to a tracking device installer — is a question of substantial difficulty. It cannot be decided on the present pleadings because the necessary factual averments have not been made. That, too, is a matter the plaintiffs would do well to address in any amended pleading.

- 7.6. I do not, at this stage, express any view on whether such a claim is sustainable in principle. I hold only that, as pleaded, the third ground of exception must succeed.

APPROPRIATE RELIEF

8.

- 8.1. The excipient seeks, as primary relief, that the exception be upheld and that the particulars of claim be struck out or dismissed. In the alternative, leave is sought for the plaintiffs to amend, failing which the claim is to be dismissed.
- 8.2. The general approach of our courts is, where a pleading is excipiable but the defects appear curable, to grant leave to amend rather than to dismiss the claim outright. That accords with the principle that a litigant should not be shut out of court on a technicality where a properly pleaded case may yet be put up. This consideration carries particular weight in the present matter, where the second plaintiff appears in person and intends to instruct an attorney as the matter proceeds.
- 8.3. The defects identified above are, in my view, capable of being cured. The plaintiffs may be able to identify the correct juristic person and substitute it as first defendant; they may be able to plead a proper basis for joining Mr Fitchet (if there is one); and they may be able to plead the grounds of negligence, the legal duty, wrongfulness and causation with the necessary particularity. Whether they will succeed in doing so is not for me to predict.
- 8.4. I shall accordingly afford the plaintiffs an opportunity to amend, failing which the claim against the second defendant shall stand to be dismissed.

COSTS

9.

- 9.1. The excipient sought costs on the attorney and client scale, with counsel's fees on scale C.
- 9.2. The successful party in an opposed exception is ordinarily entitled to its costs, and I see no reason to deprive the excipient of them. I bear in mind that the second plaintiff appeared in person and that the underlying grievance is a serious one. I am not, however, persuaded that any consideration warrants depriving the successful excipient of the costs occasioned by an exception which has succeeded on all three grounds. The costs will follow the result, with counsel's fees on scale C as sought.

ORDER

10.

In the result, I make the following order:

- 10.1. The exception is upheld.
- 10.2. The plaintiffs are afforded leave, within thirty (30) days of the date of this order, to deliver amended particulars of claim that address the deficiencies identified in this judgment.
- 10.3. Failing such delivery within the period prescribed in paragraph 42.2 above, the plaintiffs' claim against the second defendant shall stand dismissed without further order.
- 10.4. The plaintiffs are ordered to pay the second defendant's costs of the exception, such costs to include the fees of counsel on scale C.

DU PLESSIS, AJ

Acting Judge of the High Court of South Africa

Gauteng Division, Pretoria

APPEARANCES

Date heard: 26 May 2026 (virtual hearing)

Date of order: 26 May 2026

For the Plaintiffs: The Second Plaintiff, Mrs P Baloyi, in person
(Counsel and attorney previously on record no longer on record)

For the Second Defendant: Adv C Carolissen

Instructed by: Norton Rose Fulbright South Africa Inc, Johannesburg