




IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

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|-------|--|
| 1.    | REPORTABLE: <del>YES</del> /NO   |
| 2.    | OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO                                    |
| 3.    | REVISED: <del>YES</del> /NO  |
|       | 2 June 2026  |
| ..... |  |
| DATE  | SIGNATURE  |

CASE NO.: 2025/053607

In the matter between:

**OCKERT CORNELIUS CORDIER**

Plaintiff

And

**ABSA LIFE LIMITED**

Defendant / Excipient

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**JUDGMENT**

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MAZIBUKO J

Introduction

- [1] The defendant raised an exception to paragraphs 4 to 10 of the plaintiff's amended particulars of claim and sought an order directing the plaintiff to

amend his particulars of claim within 10 days, failing which the plaintiff's action be dismissed with costs. The exception to the particulars of claim is opposed.

### Common cause background facts

[2] It is common cause between the parties that the action was instituted in April 2025 against the defendant for payment of R2 861 413.00, within the 180-day period. After the defendant objected to the summons and raised exception to the particulars of claim, the plaintiff rectified same, and filed amended particulars of claim. The defendant raised an exception to the amended particulars of claim.

### Grounds for exception

[3] The defendant contended that the plaintiff's particulars of claim were vague and embarrassing, and that they lacked the necessary averments to sustain a cause of action.

[4] The exception is based on three grounds:

[4.1] Failure to plead the material terms of the underlying insurance policy in accordance with Rule 18 of the Uniform Rules of Court.

[4.2] Absence of averments establishing *locus standi* in that the plaintiff failed to plead the essential terms of the out-and-out cession agreement necessary to establish his right to sue.

[4.3] Deficient pleading of breach or repudiation of the contract. The complaint is that the pleading is vague and a legally inadequate characterisation of the defendant's refusal to pay as a 'repudiation'.

[5] The application is opposed on the basis that, on a holistic reading of the particulars of claim, the pleading satisfies the requirements of the Uniform Rules. The pleading contains a clear and concise statement of the material

facts upon which the plaintiff relies, with sufficient particularity to enable the defendant to plead. Further, the defendant can plead to the particulars of claim as they stand and demonstrate whether it is liable to pay the claim.

### Issue

- [6] The issue for determination is whether any of the grounds of exception have merit.

### Law

- [7] The provisions of Rule 18 of the Uniform Rules are:

*'(4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.*

*(5) ...*

*(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 the part relied on in the pleading shall be annexed to the pleading.*

- [8] *'An exception is a legal objection to the opponent's pleading. It complains of a defect inherent in the pleading: admitting for the moment that all the allegations in a summons or plea are true, it asserts that even with such admission, the pleading does not disclose either a cause of action or a defence, as the case may be. It follows that where an exception is taken, the Court must look at the pleading excepted to as it stands: no facts outside those stated in the pleading can be brought into issue – except in the case of inconsistency – and no reference may be made to any other document. In order to succeed, an*

*excipient has the duty to persuade the Court that upon every interpretation which the pleading in question, and in particular, the document on which it is based, can reasonably bear, no cause of action or defence is disclosed; failing this, the exception ought not to be upheld.’<sup>1</sup>*

[9] Rule 23(1) of the Uniform Rules of Court reads:

*(1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that—*

*(a) where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and*

*(b) the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception.*

[10] In the matter of *Jowell v Bramwell-Jones and Others*,<sup>2</sup> the Court laid out the following general principles regarding exceptions:

*"(a) Minor blemishes are irrelevant;*

*(b) Pleadings must be read as a whole; no paragraph can be read in isolation;*

*(c) A distinction must be drawn between the facta probanda, or primary factual allegations which every plaintiff must make, and the facta probantia, which are the secondary allegations upon which the plaintiff will rely in support of his primary factual allegations. Generally speaking, the latter are matters for particulars for trial and, even then, are limited. For the rest, they are matters for evidence;*

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<sup>1</sup> Erasmus, Superior Court Practice Volume 2 D1-293-294 (Service 13, 2020).

<sup>2</sup> *Jowell v Bramwell-Jones and Others* (543/97) (2000) ZASCA;(2000)2 ALL SA 161(A)(28 March 2000) at 899F-G.

*(d) Only facts need be pleaded; conclusions of law need not be pleaded;*  
*(e) Bound up with the last-mentioned consideration is that certain allegations expressly made may carry with them implied allegations, and the pleading must be so read.*

*An exception on the ground that a pleading is vague and embarrassing cannot properly be directed at an individual paragraph. The exception must go to the cause of action as a whole, and it must be shown that the pleading is so vague and embarrassing that the defendant is unable to determine the case he is required to meet.”*

- [11] Exceptions should be dealt with sensibly and not treated in an overly technical manner.<sup>3</sup> The defendant bears the onus to demonstrate that on all possible readings of the facts, no cause of action is made out. It is for the defendant to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported upon every interpretation that can be put upon the facts.<sup>4</sup>
- [12] It must be shown that the other party will be seriously prejudiced if the allegations remain.<sup>5</sup>

#### Ground 1. Alleged failure to plead the material terms of the underlying insurance policy

- [13] The defendant’s complaint is that the plaintiff failed to plead the material terms of the underlying insurance policy in paragraph 4 of the particulars of claim, which states:

‘4. On or about 1 January 2011, and at Kroonstad, alternatively Johannesburg, the late Johanna Elizabeth Fouche (“the deceased”) entered into a written contract of life insurance with the defendant in terms of which the defendant undertook to pay to the nominated

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<sup>3</sup> *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority* SA 2006(1) SA 461 (SCA) at 465 (H).

<sup>4</sup> *Children’s Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* 2013(2) SA 213 (SCA) at para 36.

<sup>5</sup> *Levitan v Newhaven Holiday Enterprises* CC 1991(2) SA 297 (C) at 298A-C.

beneficiary or the deceased or her deceased estate, the sum of R2, 861 413.00 upon her death. A copy of the agreement of Insurance is attached hereto marked "POC1".

- [14] I agree with the defendant that the plaintiff has not pleaded the material terms of the underlying insurance contract, as he did not specify the material terms of the alleged contract on which his claim is based. It is also not pleaded how the deceased or the plaintiff fulfilled their relevant obligations in terms of the contract, and how the defendant has breached the material terms of this contract.
- [15] The plaintiff has not pleaded the defendant's contractual obligation relevant to the claim. The pleading did not aver what the parties' roles or duties were under the insurance contract. For instance, he did not state whether any insurance premiums were paid towards the life policy. In my view, despite annexing the insurance contract, the particulars of claim do not enable the defendant to identify which specific terms it is required to admit, deny, or explain its reliance upon for its defence. Accordingly, the exception ought to be upheld.

#### Ground 2. Alleged inadequate pleading of cession

- [16] With regard to paragraphs 5 to 8 of the particulars of claim, the defendant contended that the plaintiff relied on a cession of the contract from the deceased to him. However, he did not allege the terms of the cession agreement that gave rise to his claim against the defendant. The impugned paragraphs read:

- '5. On or about 6 May 2022, the deceased ceded all her rights, title and interest in and to the policy to the plaintiff, by way of an out-and-out cession. A copy of the written cession as annexed hereto, marked "POC2".
6. The deceased passed away in February 2024.
7. At all material times until her death, the deceased complied with all obligations under the policy, and at the time of her death, the policy was operative and effective.

8. Pursuant to the death of the deceased and as cessionary of the rights under the policy, the plaintiff duly lodged a claim with the defendant, in terms of the provisions of the policy, for payment of the insured sum of R2,861,413.00.’

[17] Cession may be express, tacit, or inferred from conduct. In order to establish a claim based on a cession, a party must allege and prove a contract in terms of which a personal right against a debtor is transferred from the creditor (cedent) to a new creditor (cessionary).<sup>6</sup> It is required of the plaintiff to plead the material terms of the cession agreement, demonstrating the clear intention of the deceased to relinquish her right to him. See *Johnson v Incorporated General Insurance Ltd.*<sup>7</sup>

[18] Although the plaintiff has annexed the written cession agreement to the particulars of claim, he has failed to plead the essential terms of the out-and-out cession agreement necessary to establish his *locus standi* in relation to the claim. The exception is therefore upheld.

### Ground 3. Alleged deficient pleading of breach or repudiation

[19] Concerning the alleged deficient pleading of breach or repudiation of the contract, the paragraphs complained about read:

- ‘9. As per “POC3” annexed hereto, the defendant has refused to make any payments to the plaintiff under the insurance contract in respect of the death of the deceased.

10. The plaintiff does not accept the repudiation of the claim.’

[20] The plaintiff argued that paragraph 9 is to be read in conjunction with paragraph 8, after which it would be clear that repudiation denotes the defendant’s rejection of the claim.

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<sup>6</sup> Amlers Precedents of Pleadings, 10<sup>th</sup> edition, page 65.

<sup>7</sup> *Johnson v Incorporated General Insurance* 1983(1) SA 318(A).

- [21] Repudiation is defined as the situation in which one party, without lawful grounds, expresses in words or by conduct a deliberate and unequivocal intention to no longer be bound by the contract.<sup>8</sup>
- [22] In order for the plaintiff to succeed in a claim based on repudiation, he must allege and prove that the repudiating party has communicated its election to terminate to the plaintiff and that there was unequivocal repudiation of a fundamental term of the contract.
- [23] Gleaning from the defendant's letter of refusal to pay dated 21 October 2024. In summary, it stated that "the claim cannot be accepted" because the legislative requirements of "the Financial Advisory and Intermediary Services Act, 2002," (sic) were not met and there was non-compliance with the General Code of Conduct for Authorised Financial Services Providers and Representatives.
- [24] "The object of the pleadings is to enable each side to come to trial prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form, and the cause of action or defence must clearly appear from the factual allegations made."<sup>9</sup> The object of pleading is to ascertain definitely what is the question at issue between the parties, and this object can only be achieved when each party states his case with precision. See *Odgers, Principles of Pleading and Practice in Civil Actions*.<sup>10</sup>
- [25] It may be that the letter is read as conveying repudiation to the plaintiff. However, the plaintiff is still required to plead on what basis he avers that the defendant's specific conduct or statement in the letter constitutes a repudiatory breach. Failure by the plaintiff to do so may make it difficult or impossible for

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<sup>8</sup> *Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd* 2001(2) SA 284 (SCA)

<sup>9</sup> *Absa Bank Limited v Macke* (1324/2016) (2017) ZAFSHC 97 (15 June 2017) at paragraph 2.

<sup>10</sup> *Odgers, Principles of Pleading and Practice in Civil Actions in the High Court of Justice* 22<sup>nd</sup> Edition, page 113.

the defendant to plead accurately the contract's legal status or the nature of the alleged breach.<sup>11</sup>

[26] I find that the averments in the plaintiff's particulars of claim do not comply with the provisions of Rules 18(4), 18(6) and 23(1). For the reasons already advanced, the averments in paragraphs 4 to 10 are insufficient to enable the defendant to answer the plaintiff's claim. In the circumstances, a formal amendment to the plaintiff's particulars of claim is required. Accordingly, the exception is upheld.

[27] In the premises, the following order is made:

[27.1] The exception is upheld with costs.

[27.2] The plaintiff is to amend his particulars of claim within 15 days upon service of the judgment.

  
NGM Mazibuko

Judge of the High Court

*This judgment is digitally submitted by uploading it onto Caselines and emailing it to the parties.*

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<sup>11</sup> *Infovest Consulting (Pty) Ltd and Another v Libra Partners LLC* [2023] ZAWCHC 85 para 9.

Date of hearing: 3 March 2026

Judgment delivered on: 2 June 2026

Appearances:

Counsel for the defendant / excipient: Mr S Mahlangu

Instructed by: TIM Sukazi Incorporated

Counsel for Second Respondent: Mr M Ryneveld

Instructed by: Day & Schilling Attorneys