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

Case No: 2025-003038

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE:27/05/2026

SIGNATURE

In the matter between:

J[...] M[...] P[...] (previously B[...])

Applicant

ID: 7[...]

and

F[...] P[...] P[...]

Respondent

ID: 4[...]

JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

Summary; Application to amend particulars of claim in divorce action by inserting claim that there is a double exclusion in the antenuptial contract which renders antenuptial contract void or rectifiable. No facts pleaded to sustain averment of double exclusion and no essential averments to sustain claim for rectification pleaded, save for reference to double exclusion. Held that pleading will be rendered vague and/or embarrassing and excipiable if application to amend granted, Application dismissed.

INTRODUCTION:

- [1] Applicant is the Plaintiff in a divorce action instituted against the Respondent on 24 January 2025. Pleadings in the divorce action has closed and the parties have exchanged discovery affidavits. During March 2025 this Court also disposed of an opposed Rule 43 application which was launched by the Applicant and an order for maintenance *pendente lite* was ordered in favour of the Applicant.
- [2] On 18 February 2026 the Applicant served a Rule 28(1) notice of intention to amend her particulars of claim in the divorce action. The Respondent (Defendant in the main action) thereafter filed a notice of objection to the Applicant's notice of intention to amend. Notwithstanding the notice of objection, Applicant persists in the intended amendment and has set the matter down in the Family Court of this division for an order granting leave to amend the Plaintiff's particulars of claim in the divorce action in terms of the Rule 28(1) notice.
- [3] The Rule 28(1) notice essentially aims to amend the particulars of claim by inserting a claim that the antenuptial contract entered into between the parties, which makes provisions for the inclusion of the accrual system, be amended to include a prayer that the antenuptial contract be rectified by removing certain clauses which regulates the exclusion of assets and determination of the accrual quantum, and in the alternative declaring the antenuptial contract void.
- [4] The Respondent's objection to the intended amendment is, in summary, based thereon that the Respondent avers that the intended amendment will render that part of the Plaintiff's particulars of claim which purports to support the relief which Plaintiff intends to seek in relation to the antenuptial contract and determination of the accrual quantum as vague and embarrassing, and further that the intended

amendment will render the particulars of claim to be excipiable, as the intended amendment does not disclose a proper cause of action.

- [5] For purposes of the application it is therefore necessary to analyse the intended amendment and consider whether such intended amendment will render the Plaintiff's particulars of claim as vague and/or embarrassing and/or excipiable. For sake of convenience the parties will be referred to as in the divorce action.

THE INTENDED AMENDMENT

- [6] The Plaintiff's notice in terms of Rule 28(1) reads:

"TAKE NOTICE THAT the Plaintiff intends on amending her Particulars of Claim by adding the following clauses to her Particulars of Claim as follows:

1. *By adding paragraphs 7.8, 7.9 and 7.10 as follows:*

*'7.8 Alternatively to what is soug for by the Plaintiff in terms of clauses 7.6 and 7.7 of her Particulars of Claim, the Plaintiff will seek for the rectification of the antenuptial contract, which is attached as **Annexure "B"** in that there is evidently a double exclusion in respect of the Defendant's nett value of his estate in that the Defendant has excluded an amount of to R2,270,000 (Two Million, Two Hundred and Seventy Thousand Rand) and in respect of clause 5.1; 5.1.1; 5.1.2; 5.1.3; 5.1.4 and 5.1.5 excluded certain motor vehicles, policies and immovable property, his income distributions and benefits in respect of his trust and his shareholding in a company.*

7.9 Considering the aforementioned, the antenuptial contract contains an evidential mistake and ought to be rectified to delete clauses 5.1; 5.1.1; 5.1.2; 5.1.3; 5.1.4 and 5.1.5 of the antenuptial contract to rectify the apparent and evidential double exclusion of the antenuptial contract as far as it pertains to the estate of the Defendant.

7.10 Alternatively, the antenuptial contract should be declared as being void for vagueness, due to the apparent double exclusion, should the Honourable Court not deem it possible for the antenuptial contract to be rectified as referred to hereinabove as the clauses are contradictory and incoherent that it vitiate the contract as a whole".

2. *By adding the following paragraphs to the Plaintiff's prayers as follows:*

- “4. *Alternatively to prayer 2 and 3 that the antenuptial contract be rectified in that clauses 5.1; 5.1.1; 5.1.2; 5.1.4 and 5.1.5 of the antenuptial contract be deleted.*
5. *Alternatively that the antenuptial contract be declared null and void should the Honourable Court not deem the antenuptial contract rectifiable”.*

[7] The Plaintiff’s particulars of claim presently contain averments to the effect that the antenuptial contract entered into between the parties on 6 December 2012 is *void ab initio* based on a fraudulent misrepresentation. In support thereof it is pleaded that the neither the Defendant nor the notary who drafted the antenuptial contract explained the contents of the antenuptial contract to the Plaintiff, that the Plaintiff did not understand what “*the documents she undersigned entailed*” (sic) and this allegation leads to the conclusion in the particulars of claim that the Defendant made a misrepresentation to the Plaintiff.

[8] In the particulars of claim the Plaintiff presently prays for an order declaring the antenuptial contract concluded between the parties to be void *ab initio* and that the matrimonial regime between the parties be declared to be a marriage in community of property and in the alternative that there be a division of the accrual of the estates of the parties, based on the alleged misrepresentation.

THE DEFENDANT’S OBJECTION TO THE INTENDED AMENDMENT

[9] In support of the Defendant’s objection to the Plaintiff’s intended amendment, the following grounds are *inter alia* stated in the Defendant’s notice in terms of Rule 28(3) namely:

[9.1] The proposed averments are contradictory, incoherent, and incapable of clear meaning and the Defendant would be unable to plead thereto.

[9.2] The paragraphs to be amended fail to disclose complete and intelligible averments to sustain a cause of action, alternatively remains to be vague and embarrassing, rendering it impossible for the Defendant to plead thereto.

[9.3] The allegations regarding ‘double exclusion’ in the antenuptial contract are legally misconceived and not supported by factual or legal foundation.

[9.4] The Plaintiff’s intended amendment does not contain averments setting out the grounds as to how the amount identified as the commencement value of the Defendant’s estate was completed,/or and how it results in a double exclusion.

[9.5] To successfully plead rectification of a contract, certain essential averments are required and if these are not included, the pleading will be excipiable.

WILL THE INTENDED AMENDMENT RENDER THE PLEADING TO BE VAGUE AND/OR EMBARRASSING AND/OR EXCIPIABLE?

- [10] A perusal of the Plaintiff's notice in terms of Rule 28(1) creates the impression that the draftsman of that notice acquired superficial knowledge of authorities dealing with antenuptial contracts which were declared void because it contained clauses which were labelled in those authorities as a "double exclusion", without clearly understanding the *ratio decidendi* of those decisions.
- [11] The reference to "*double exclusion*" in the notice in terms of Rule 28(1) is confusing and embarrassing, because there is no universal legal term known as "*double exclusion*" which gives rise to a cause of action or is generally accepted to describe a certain factual state of affairs. If it was the intention of the draftsman to convey that the antenuptial contract is void because assets are excluded both for purposes of the calculation of the commencement value as well as for purposes of calculation of the end value of any of the respective estates, then that intention is not pleaded. The allegation of a "double exclusion" does not, as a legal *sequitur*, result in a conclusion which conveys such intention, nor does such allegation pleaded in isolation support a conclusion that an antenuptial contract is void.
- [12] The intended amendment will require the Defendant to plead on a material new cause of action in respect of which no facts are pleaded to support the vague allegation of the existence of an alleged "double exclusion". Absent factual allegations to illustrate the meaning of a "double exclusion" in the particulars of claim, no reasonable reader of the intended amendment will be able to identify the real issues or be able to plead thereto. The intended amended will therefore render the particulars of claim to be vague and/or embarrassing.
- [13] Insofar as the intended amendment refers to rectification, the required elements for a claim for rectification are evidently not pleaded. These requirements are trite law and need not be repeated herein. Suffice it to remark that the mere fact that there is a "*double exclusion*" (whatever that may mean) in the antenuptial contract does not imply that the antenuptial contract therefore stands to be rectified by the court. Rectification, a distinct cause of action, requires specific *facta probanda* to disclose the elements of that cause of action, none of which are contained in the intended amendment. The intended amendment will thus render that part of the pleading which purports to support a claim for rectification to be excipiable.

[14] Considering the aforesaid, the impugned notice in terms of Rule 28(1) as quoted *supra* will render the Plaintiff's particulars of claim to be not only vague and embarrassing, but also excipiable and as a result of which the application stands to be dismissed.

COSTS

[15] There is no reason why costs should not be paid by the unsuccessful party. Considering the fact that the legal principles involved are mostly trite law, but notwithstanding the Applicant's legal representative proceeded with the application after being provided with the comprehensive heads of argument filed on behalf of the Respondent, I am of the view that it will be justified to disallow the Applicant's legal representative any fees for the application.

In the result, the following order is made:

1. The application for leave to amend the Plaintiff's particulars of claim in terms of the notice in terms of Rule 28(1) served on 18 February 2026 is refused.
2. Applicant is ordered to pay the cost of the application, to be taxed on Scale C.
3. Applicant's legal representative is disallowed any fees in relation to the application.

P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA

APPEARANCES

FOR APPLICANT

INSTRUCTED BY

Mr H HANSEN
HANSEN INC. ATTORNEYS

RESPONDENT

INTSTRUCTED BY

Adv R FERREIRA
CILLIERS & REYNDERS ATTORNEYS

