

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



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Case No: 2169/2025

In the matter between:

**KABELO MALAO
K MALAO INC.**

1st Excipient/Defendant

2nd Excipient/Defendant

and

CATHY MOTAKE

Respondent/Plaintiff

CORAM: HENDRICKS JP

Heard: 22 May 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are set for 10h00 on 01 July 2026.

Summary: Exception based on the particulars of the claim allegedly being vague and embarrassing and does not disclose any cause of action - whether particulars of claim are excipiable on this basis - principles restated - particulars of claim not excipiable and can be pleaded thereto.

- [1] The parties are referred to as on the summons to avoid any confusion. The plaintiff, Ms. Cathy Motake, issued summons out of this court claiming payment in the amount of R995 990.00 plus interest, for professional services rendered as an Occupational Therapist (OT) to the defendants, in terms of an oral agreement since 2014, on a no-win-no-fee basis. The plaintiff would render professional services to the defendants and assess the clients of the defendants for medico-legal purposes, which entailed consultation assessments; preparation and promotion of written medico-legal reports; the preparation, production and signing of joint minutes; preparation and appearance at courts to testify on the medico-legal reports and joint minutes, if necessary.
- [2] Bulk referrals of clients for assessments which have been involved in motor vehicle road accidents and which sustained related injuries, were made by the defendants to the plaintiff. Payments would be made as and when the Road Accident Fund (RAF) made payments, after disposal of the matters and/or upon payments received, based on invoices submitted. Some payments were indeed made and set-offs were made against invoices rendered. As and when bulk payments were made, the plaintiff would set-off these amounts against the oldest debt, without any specific directive from the defendants, which invoice(s) were paid. The plaintiff alleges that not all the invoices were paid.
- [3] On 14 March 2023 the plaintiff terminated the agreement in writing, alleging that the defendants are indebted to her in the aforementioned amount. She further alleges that the invoices are due and payable after the termination of the agreement. In response

to the termination of the agreement, the defendants made a written commitment to pay the plaintiff's outstanding invoices, which they failed to honour. A spreadsheet of a reconciliation statement is attached to the particulars of claim of the summons, amounting to R995 990.00. A notice was served on the plaintiff by the defendants that her particulars of claim are vague and embarrassing and lack averments necessary to sustain a cause of action and are therefore excipiable. The defendants, as excipients, contend that there is a lack of necessary factual averments to sustain a claim for a liquidated debt; and because of the global, conclusory figures for damages without pleading the material facts of the underlying individual transactions, invoices, and payments, it is excipiable.

- [4] It is trite that an exception is concerned with the legal sufficiency of a pleading, not with the truth of the allegations contained therein. For purposes of exception, a court must accept the pleaded facts as correct and determine whether, on every reasonable interpretation, the pleading fails to disclose a cause of action. The onus rests on the excipient to prove that the pleading (particulars of claim) does not disclose any action.
- [5] In terms of *Trope v South African Reserve Bank and Another*¹, a plaintiff is required to plead the material facts on which the claim rests with sufficient particularity to enable the defendant reasonably to understand the case he/she/it has to meet and to plead thereto. The onus rests on the excipient to show that, on any reasonable reading, no cause of action is disclosed.

¹ 1993 (3) SA 264 (A).

- [6] The purpose of an exception is to weed out pleadings that are bad in law so as to avoid unnecessary evidence and the expense of a trial where no sustainable claim or defence exists. In *Jowell v Bramwell-Jones and Others*² it is stated that the parties are bound by the pleadings. The court may not wander beyond the four corners of the pleaded case or decide issues not raised, lest it descend into speculation and adjudicate on matters not properly placed in dispute. An exception is thus not a vehicle to test the probabilities, to resolve factual disputes, or to re-cast a party's case³.
- [7] Rule 18(4)⁴ requires every pleading to contain "a clear and concise statement of the material facts" upon which the pleader relies, with sufficient particularity to enable the opposite party to reply. It does not demand evidential detail or argument. A cause of action comprises every fact which would be necessary for the plaintiff to prove, if traversed, in order to support the right to judgment; it does not include every piece of evidence required to prove each fact. The distinction is between the essential *facta probanda*, which must be pleaded, and the *facta probantia*, which are matters for proof at trial. Anything less than the former leaves a claim without a legal foundation; anything more tends to obscure the real issues rather than clarify them.
- [8] An exception based on vagueness and embarrassment of a pleading will only be upheld if the excipient shows that the defective pleading causes serious prejudice to the ability to plead. Pleadings

² 1998 (1) SA 836 (W).

³ *Masakhane Mining Supply and Construction CC t/a Mashakhane Megawell Services vs FPM Business Solutions (Pty) Ltd t/a FPM Security Services* [2025] ZANWHC 190.

⁴ Rule 18 (4) of the Uniform Rules of Court.

must state facts rather than bare conclusions, but exceptions are not intended to resolve factual disputes. Only the material or essential facts on which the cause of action is based, need to be pleaded. Supportive evidential detail should ordinarily be left for trial, as its inclusion may burden and confuse the issues. Pleadings must define with precision the issues that fall for adjudication, so that the parties and the court can engage on clearly delineated grounds the issues to be decided. The burden is therefore on an excipient. Unless the pleading is bad in law on every reasonable construction, the exception must fail⁵.

- [9] In *Doyle v Fleet Motors (Pty) Ltd*⁶, the Appellate Division confirmed that for purposes of an exception, the question is not whether the claim is likely to succeed but whether, accepting the allegations as true, they disclose a legally sustainable cause of action. In *Masakhane Mining Supply and Construction CC t/a Mashakhane Megawell Services*⁷, the court upheld the defendant's first ground of exception (failure to annex annexures "A" and "B" to the particulars of claim) and granted the plaintiff leave to amend. The court found that the annexures were "integral and relevant documents that are necessary in establishing a cause of action", and that their absence rendered the particulars of claim "vague and embarrassing".

- [10] For an exception to be upheld, it must be shown that on every reasonable interpretation of the pleading, no cause of action is disclosed. A court must accept the pleaded facts as true and resist

⁵ *Estabiz (Pty) Ltd v Starflash (Pty) Ltd (Appeal)* (CIV APP MG32/24) ZANWHC 108 (26 June 2025).

⁶ 1971 (3) SA 760 (A).

⁷ [2025] ZANWHC 190.

the temptation to dispose of disputes at the threshold where a reasonably arguable, legally sustainable case can be discerned. Minor ambiguities, imperfections of drafting or a lack of evidential detail do not amount to vagueness and embarrassment going to the root of the cause of action or resulting in serious prejudice. Where a party requires greater particularity for purposes of trial preparation, the Uniform Rules of Court make provision for further particulars and discovery.

[11] In conclusion, I am of the view that the defendants have failed to establish that the plaintiff's particulars of claim, when read holistically and construed in a sensible and benevolent manner, do not disclose a cause of action or are so vague and embarrassing as to occasion serious prejudice. The exceptions they advance are aimed not at the legal sufficiency of the pleading, but at the level of factual detail and evidential substantiation, issues which fall to be determined at trial rather than on exception. In substance, the exceptions seem to deploy Rule 23 of the Uniform Rules of Court, as a vehicle to challenge the factual merits and anticipated proof of the plaintiff's case, rather than to demonstrate an absence of a sustainable cause of action or true prejudice arising from vagueness. The exceptions, can therefore not be sustained and must be dismissed.

[12] Insofar as costs are concerned, it should follow the result and be awarded in favour of the successful litigant, the plaintiff, Ms. Cathy Motake. Mr. Hlapolosa, the legal representative acting for and on behalf of Ms. Cathy Motake (the plaintiff), prayed that costs be awarded on a punitive scale as between attorney-and-client, as the

exceptions raised falls within the 'ambits of frivolousness, vexation, malice and delays'. I am holding a different view. I am of the view that it would be just, fair and appropriate to award costs on a party-and-party basis, on Scale B, to be taxed.

Order

[13] Consequently, the following order is made:

- (i) The exceptions are dismissed.
- (ii) The defendants are ordered jointly and severally, the one paying the other to be absolved, to pay the costs of the exception proceedings, on Scale B, to be taxed.
- (iii) The defendants are directed to deliver their plea within ten (10) days from the date of this order.



R D HENDRICKS
JUDGE PRESIDENT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For the Plaintiff:

Instructed by:

Adv. Riley

RS Tau Attorneys, Mahikeng

For the Defendants:

Instructed by:

Mr. Hlapolosa

Lerato Moeketsi Attorneys, Mahikeng