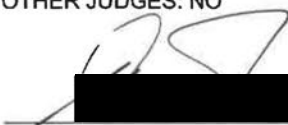


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-052955

1. REPORTABLE: NO	
2. OF INTEREST TO OTHER JUDGES: NO	
3. REVISED: NO	
<u>19 June 2026</u>	
DATE	SIGNATURE

In the matter between:

**GAUTENG DEPARTMENT OF INFRASTRUCTURE
AND DEVELOPMENT**

First Excipient

**THE HEAD OF DEPARTMENT: GAUTENG DIRECTOR
GENERAL: DEPARTMENT OF INFRASTRUCTURE
GAUTENG**

Second Excipient

**THE MEC: GAUTENG DEPARTMENT
OF INFRASTRUCTURE**

Third Excipient

and

ROYAL HASKONINGDHV (PTY) LTD

Respondent

In re:

ROYAL HASKONINGDHV (PTY) LTD

Plaintiff

and

**GAUTENG DEPARTMENT OF INFRASTRUCTURE
AND DEVELOPMENT**

First Defendant

**THE HEAD OF DEPARTMENT: GAUTENG DEPARTMENT
INFRASTRUCTURE**

Second Defendant

**THE MEC: GAUTENG DEPARTMENT
OF INFRASTRUCTURE**

Third Defendant

Neutral Citation: *Royal Haskoningdhv (Pty) Ltd v Gauteng Department of Infrastructure and Development & The Head of Department Gauteng Department of Infrastructure and The MEC: Gauteng Department of Infrastructure (052955-2023) [2026] ZAGPJHC ----- (19 June 2026)*

Coram: Khaba AJ

Heard: 28 April 2026

Delivered: 19 June 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date for hand-down is deemed to be 19 June 2026.

Summary: Practice – Pleadings – Exceptions – Rule 23(1)(a) – Peremptory requirement of notice before exception on vague and embarrassing grounds – failure to deliver notice renders exception on that ground fatally defective – court has no discretion to condone non-observance – no valid exception - exceptions dismissed.

ORDER

1. The exceptions are dismissed.
 2. The excipients are ordered to pay the respondent's costs on the attorney and client scale.
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JUDGMENT

KHABA, AJ:

Introduction:

- [1] The three defendants ("the excipients") have delivered an exception to the plaintiff's ("the respondent") amended particulars of claim. The excipients

contend that the particulars of claim are bad in law, lack averments necessary to sustain a cause of action, and are vague and embarrassing. The respondent opposes the exception and seeks its dismissal with costs on the attorney and client scale, alternatively on scale C. The excipients seek the upholding of the exception, the striking out of the particulars of claim and the dismissal of the action, with costs on scale B.

The factual background:

- [2] On 19 October 2010, the respondent received a letter of appointment from the first defendant, whereby it was engaged to render professional mechanical engineering services at three laundry sites, located at Dunswart, Masakhane, and Johannesburg. The letter provided that fees would be charged in accordance with the guideline scope and tariff of fees prescribed for persons registered with the Engineering Council of South Africa. The respondent accepted the appointment on 01 November 2010. Thereafter, on 03 February 2011, the parties concluded a written agreement styled "additional conditions of appointment engineers". The respondent's pleaded case is that the agreement between the parties is constituted by the letter of appointment, the acceptance thereof, and the subsequent written agreement, read together as a single composite document.
- [3] The respondent duly performed the contracted services over an extended period, from 2010 to 2021, and in so doing completed stages 1 to 6 of the project in their entirety. The fees for stages 1 to 5 were paid in full by the first defendant and are not in issue in these proceedings. On 13 April 2021, the respondent rendered a final invoice to the first defendant for the stage 6 close-out fees, in the sum of R1,968,350.70. The first defendant did not settle the invoice. Although demand was duly made, the amount remains unpaid. The respondent subsequently launched the present action against the defendants.

The procedural history:

- [4] The combined summons was issued on 2 June 2023 and served on all three defendants by the Sheriff of this court on 9 June 2023. On 18 August 2023, the excipients delivered an exception to the original particulars of claim. The respondent gave notice of its intention to amend and filed its amended particulars of claim on 22 November 2023. Notwithstanding the amendment, the excipients delivered a further exception on 06 March 2024, raising no fewer than seven grounds challenging the sufficiency of the amended particulars of claim.

The legal framework for exceptions:

- [5] The principles governing exceptions are well established. An exception is a valuable procedural tool, but its purpose is to raise and obtain a speedy decision on questions of law apparent on the face of the pleadings. An excipient must make out a very clear and strong case before being allowed to succeed. Overly technical exceptions are to be deprecated. The court does not look at a pleading with a magnifying glass of too high power. Prejudice to a litigant lies ultimately in an inability to prepare properly to meet an opponent's case.

The fatal procedural defect: absence of a Rule 23(1) notice:

- [6] Before considering the merits, I must address a fundamental procedural defect that is dispositive of this matter. The excipients alleged as an alternative in respect of each ground that the particulars of claim are vague and embarrassing. However, they failed to file a peremptory notice in terms of Rule 23(1)(a).
- [7] Rule 23(1) provides that:

“(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.”

[8] The proviso to Rule 23(1) is couched in peremptory terms. Its effect is clear, it is a condition precedent to the taking of an exception on the ground that a pleading is vague and embarrassing that the would-be excipient shall, by notice, afford the opponent an opportunity to remove the cause of complaint within the prescribed period. Where no such opportunity is afforded, no such exception can be taken.

[9] In *Alexia Kobusch and Others v Wendy Whitehead*¹, the Supreme Court of Appeal held that:

“...A notice in terms of Rule 23(1)(a) is not a pleading; it is merely a precursor to an exception”.

[10] The failure to deliver such a notice renders the exception on that ground procedurally irregular. It is common cause that the excipients did not afford the respondent any opportunity to remove the cause of complaint before delivering

¹ [2025] ZASCA 24 (27 March 2025) at para 14.

their exception. The excipients delivered no Rule 23(1)(a) notice. The excipients proceeded directly to deliver an exception that included, as an alternative ground in respect of each of the seven grounds, that the particulars of claim are vague and embarrassing.

- [11] This failure is fatal to the excipients' case. It is a well-established principle, rooted in the peremptory language of Rule 23(1)(a), that a court is precluded from entertaining an exception based on vagueness and embarrassment where no prior notice has been given to afford the opposing party an opportunity to remove the cause of complaint. The rule admits of no exception, and this court has no discretion to condone its non-observance in the context of an exception properly taken. Consequently, even if any of the seven grounds of exception possessed marginal merit, a proposition which this judgment does not endorse. This Court would nonetheless be compelled to dismiss the exception on this procedural ground alone. The excipients' failure to deliver the requisite notice under Rule 23(1)(a) renders that portion of their exception premised upon vagueness and embarrassment irredeemably defective, and it is accordingly dismissed without further consideration of its substantive content.

The merits of the exceptions:

- [12] In the event that this court's procedural disposition of the exception is found to be erroneous, a contingency this court does not envisage. I have nonetheless considered the substantive merits of each of the seven grounds advanced by the excipients. Having done so, I am firmly persuaded that all seven grounds are devoid of merit. Whether considered individually or in their cumulative effect, none of the seven grounds discloses a defect in the respondent's amended particulars of claim sufficient to sustain the exception. In the premises, even on the merits, the exception cannot succeed.

The first ground: capacity of the second defendant:

- [13] The excipients contend that the particulars of claim are ambiguous and embarrassing, as they cannot discern whether the second defendant is cited under the State Liability Act 20 of 1957 or as a representative of the first defendant. This contention is without merit.
- [14] The amended particulars of claim are drafted with unmistakable clarity. They identify the first to third defendants collectively as "THE DEPARTMENT", and make it clear that the second and third defendants are joined as nominal defendants by virtue of the mandatory provisions of the State Liability Act 20 of 1957, in their capacities as the executive authority of the first defendant and thus a component part thereof, whilst the first defendant was the contracting party.
- [15] The plain language of this paragraph leaves no room for confusion. The second defendant is cited exclusively in a nominal capacity, as the State Liability Act compels. The first defendant is identified as the contracting party. The former head of department who signed the agreement is not a party to these proceedings; no relief is sought against that person. A party who signs a contract on behalf of a principal acts merely as an agent and is not personally liable on the contract unless a separate cause of action is pleaded, which it is not.
- [16] Section 2 of the State Liability Act 20 of 1957 (*"the Act"*), provides that in any action instituted against a department, the executive authority of that department must be cited as a nominal defendant. The respondent has done precisely what the statute requires. An exception could be taken for a failure to cite the second defendant. To take an exception because the second defendant *has* been cited is, with respect, without any legal foundation whatsoever.

- [17] Even if the excipients' contentions were to be generously construed as allegations of ambiguity a characterisation this court does not accept. An exception founded thereon cannot succeed unless, upon every reasonable interpretation of the pleading, no cause of action is disclosed. The threshold is plainly not met. The cause of action is directed solely against the first defendant. The second and third defendants are nominal parties against whom no relief is claimed. In these circumstances, the excipients can demonstrate no prejudice in being called upon to plead to the respondent's claim.
- [18] Accordingly, the first ground of exception is without merit and is accordingly dismissed.

The second ground: deficiencies in annexure RP3:

- [19] The excipients' second ground of exception challenges the sufficiency of the written agreement that forms part of the particulars of claim. The excipients contend that the agreement does not disclose, on its face, a number of material features: firstly, the identity of the counterparty; secondly, whether the first defendant was duly represented at the time of its conclusion; thirdly, the identity of the representative who acted on behalf of the first defendant; fourthly, the place where the agreement was concluded; and fifthly, the signature of the first defendant's representative. These contentions are, with respect, fundamentally misplaced.
- [20] Rule 18(6) of the Uniform Rules of Court prescribes the requirements for pleading a written contract. It provides that a party who relies upon a contract shall state whether the contract is written or oral and when, where, and by whom it was concluded, and that if the contract is written, a true copy thereof shall be annexed to the pleading. The rule does not require that every feature of the contract be evident from the annexed copy itself. It requires, firstly, that the

pleading contain the prescribed particulars, and secondly, that a copy of the written contract be annexed.

- [21] The respondent has complied fully with Rule 18(6). The particulars of claim articulate, with sufficient clarity and concision, that the contract was written; that it was concluded on 03 February 2011 at Johannesburg, and that the plaintiff acted through its representative, DS Boshoff; and that the first defendant was duly represented by its head of department at the time.
- [22] The excipients' contention is that the identity of the first defendant's representative is not disclosed in the annexure itself is answered by paragraph 7 of the particulars of claim, which pleads that the first defendant was "duly represented by its head of department at the time whose name is not known to the plaintiff". The respondent cannot plead what it does not know. If the excipients are in possession of the name of the representative, that information is within their own knowledge. They are not prejudiced in pleading to the claim by the absence of a name that they themselves could supply.
- [23] The contention that the agreement bears no signature of the first defendant's representative is a matter going to the proof of the agreement, not to the sufficiency of the pleading. Whether the first defendant is bound by the agreement or whether it was duly signed on its behalf, or whether it is otherwise bound by its conduct or by ratification, is a question of fact to be determined at trial upon evidence, not a ground for exception.
- [24] Accordingly, the second ground of exception is without merit and is accordingly dismissed.

The third ground: relationship between RP2.1 and RP3:

- [25] The excipients' third ground challenges the relationship between the letter of appointment and the written agreement styled "additional conditions of appointment – engineers". The excipients contend that the pleadings do not disclose how the latter agreement constitutes the necessary contract contemplated in the letter of appointment. In advancing this contention, the excipients rely on the word 'additional' in the title of the written agreement, submitting that this term denotes something supplementary to an existing agreement rather than the agreement itself. The excipients further argue that this interpretational dispute should be resolved in their favour on exception
- [26] This contention is fundamentally without merit and falls to be rejected on either of two independent grounds, each of which is dispositive of the excipients' argument.
- [27] Firstly, exception proceedings are not the appropriate forum for interpretational disputes of this kind. It is trite that an exception founded on the interpretation of a written document can succeed only if the excipient establishes that, upon every reasonable interpretation of the document, no cause of action is disclosed. Stated otherwise, if any reasonable construction of the relevant documents supports the plaintiff's case, the exception must fail. The excipients have not discharged that burden. The excipients have failed to show that the written agreement cannot, on any reasonable interpretation, constitute the "necessary contract" contemplated in the letter of appointment. Instead, they have advanced only their preferred construction and invite this court to adopt it. That is not a proper use of exception proceedings.
- [28] Secondly, the excipients' interpretational argument conflates the existence of an agreement with its content. The word "additional" does not, as a matter of language or law, preclude the written agreement from constituting the primary contractual document. A document styled 'additional conditions' may well be the sole embodiment of the parties' contractual terms, the word 'additional'

signifying no more than that these conditions supplement the standard terms of the guideline scope and tariff of fees. Alternatively, the agreement may consist of both the letter of appointment and the additional conditions read together, as the respondent has pleaded. These are questions of interpretation to be determined at trial upon a full appreciation of the surrounding circumstances and are not amenable to resolution on exception.

- [29] In the present matter, the possibility that admissible evidence, including evidence of the circumstances surrounding the conclusion of the agreement, the course of dealing between the parties over the eleven-year period of performance, and the objective factual matrix may inform the interpretation of the documents is not merely notional or remote. It is substantial. The respondent is entitled to lead such evidence at trial.
- [30] Accordingly, the third ground of exception is without merit and is accordingly dismissed.

The fourth ground: quantum inconsistency:

- [31] The excipients' fourth ground challenges the quantum of the respondent's claim. They rely on what they characterise as an inconsistency between two figures: R11,711,609.38, which they derive from paragraph 11a.1 of the amended particulars of claim, and R1,968,350.70, the amount claimed in the prayer for relief. This contention is based on a misreading of the particulars of claim and is entirely devoid of merit.
- [32] Paragraph 11a.1 of the amended particulars of claim reads: "professional fees of R 1 1710 582.86". Properly construed, this is a single figure: R1,710,582.86. The errant space between the numeral "1" and the following "1710" is nothing more than a typographical spacing error. It does not denote two separate amounts, nor does it inflate the claim to R11,710,582.86. The excipients' contention that the pleading should be read as claiming R11,710,582.86, is not

a reasonable or tenable interpretation. It is a strained and opportunistic reading that no fair-minded reader would adopt, and it falls to be rejected.

- [33] The arithmetic bears out the pleaded amount. The professional fees of R1,710,582.86, together with the reimbursable expenses of R1,026.52, produce a subtotal of R1,711,609.38. Applying value-added tax at the rate of 15% yields VAT of R256,741.41, bringing the total to R1,968,350.79. The amount actually claimed in the prayer for relief is R1,968,350.70. The marginal discrepancy of nine cents is plainly *de minimis* and, in the circumstances, does not vitiate the adequacy of the pleading.
- [34] The excipients further contend that the respondent has failed to plead the circumstances in which it would be remunerated for "other costs" (the reimbursable expenses of R1,026.52) and the manner in which such costs are computed. This contention is also without merit. The respondent has pleaded that the fees are charged in accordance with the applicable tariffs as published in the Government Gazette. If the excipients require further particularity as to the composition of the reimbursable expenses, they are entitled to seek further particulars in terms of Rule 21 of the Uniform Rules of Court. They are not entitled to take exception on this ground. The purpose of an exception is to challenge the legal sufficiency of a pleading, not to demand evidentiary detail.
- [35] Accordingly, the fourth ground of exception is without merit and is accordingly dismissed.

The fifth ground: alleged lack of particularity regarding stage 6 compliance:

- [36] The excipients' fifth ground takes issue with the respondent's alleged failure to plead sufficient particularity regarding compliance with the stage 6 requirements of the agreement. The excipients contend that the respondent should have pleaded, when it received written approval for the completion of stage 5; when

and to whom the applicable requirements of stage 6 were submitted; when and by whom those requirements were accepted; whether the final account was accompanied by the requisite supporting documents; and whether the guidelines for final account were complied with. This ground is fundamentally misplaced and conflates the distinct functions of a particulars of claim and a request for further particulars.

- [37] The distinction between *facta probanda* and *facta probantia* is foundational to our pleading system. The respondent is obliged to plead the material facts on which its cause of action is founded. The respondent is not obliged to plead the evidence by which those facts will be established. The particulars of claim must articulate the *facta probanda* with sufficient clarity to enable the defendant to plead. The *facta probantia* are appropriately addressed through discovery, further particulars in terms of Rule 21, and at trial.
- [38] The respondent has pleaded the material facts with sufficient clarity to sustain a cause of action. Paragraph 9 of the amended particulars of claim provides that the respondent duly rendered services on the sites for which it was appointed, completing the scope of works from stage 1 to stage 6 over the period 2010 to 2021, which was signed off and accepted by the first defendant. Paragraph 10 records that the fees for stages 1 to 5 were paid in full by the first defendant and are not in issue. Paragraph 11 records that the respondent submitted a final invoice for fees due after finalisation of the final account in respect of work done on stage 6.
- [39] These allegations, if proved, establish that the respondent performed its obligations under the agreement, that the first defendant accepted the completed works, that stages 1 to 5 were paid in full leaving only stage 6 outstanding, and that a final invoice was submitted. This is sufficient to plead a cause of action. The precise dates of written approvals, the identity of the

recipient of submissions, the date of acceptance, and the specific documents accompanying the final account are matters of evidence.

[40] If the excipients require further particularity regarding the dates, identities, or documents referred to in their complaint, they are entitled to seek further particulars in terms of Rule 21 of the Uniform Rules of Court. That rule exists precisely for this purpose, to enable a party to obtain from its opponent such further information as is reasonably necessary to prepare for trial. The exception procedure is not a substitute for a request for further particulars. A party may not circumvent the requirements of Rule 21 of the Uniform Rules of Court by raising, under the guise of an exception.

[41] Accordingly, the fifth ground of exception is without merit and is accordingly dismissed.

The sixth ground: alleged insufficiency in pleading breach:

[42] The excipients' sixth ground of exception contends that the respondent has impermissibly alleged a breach of the agreement in the absence of material allegations with sufficient particularity to support such an averment, and in the absence of material allegations evidencing the existence of a valid and enforceable agreement. This ground of exception is, with respect, a repetition of previously rejected contentions and adds nothing new to the excipients' case.

[43] The respondent has pleaded the existence of a valid and enforceable agreement. In paragraphs 6 and 7 of the amended particulars of claim set out the appointment, the acceptance, and the conclusion of the written agreement, which is attached to the pleadings. The material terms are pleaded in paragraph 7.1. Performance is pleaded in paragraphs 8, 9, and 10. The final invoice is pleaded in paragraph 11, and non-payment and breach in paragraph 12.

- [44] If the excipients dispute the existence of the agreement, they are entitled to plead that defence. If they dispute that the respondent performed its obligations, they are entitled to plead that defence. If the excipients dispute that the final invoice is due and payable, they are entitled to plead that defence. What the excipients may not do, however, is demand by way of exception that the respondent plead its case to the standard of particularity required at trial. That is not the function of exception proceedings.
- [45] Accordingly, the sixth ground of exception without merit and is accordingly dismissed.

The seventh ground: alleged failure to plead facts justifying attorney and client costs:

- [46] The excipients' seventh and final ground takes issue with the respondent's alleged failure to plead material facts with sufficient particularity to sustain a claim for costs on the attorney and client scale. The prayer for relief in the particulars of claim includes a prayer for "costs of suit on the scale as between attorney and own client." The excipients contend that this prayer cannot stand in the absence of pleaded facts justifying such an award. This contention is without legal foundation.
- [47] An order for costs on the attorney and client scale is a discretionary order that the court may make at the conclusion of the trial. It is a prayer for relief, not an averment of fact. A plaintiff is not required to plead the facts that might justify an attorney and client costs order in the particulars of claim. Such facts, if they exist, emerge from the conduct of the defendant during the litigation or from the circumstances of the case. They are matters for the trial court's discretion, not for pleading.

[48] In any event, Rule 18 of the Uniform Rules of Court, which prescribes the requirements for particulars of claim, contains no provision requiring a plaintiff to plead facts justifying a particular costs scale. The prayer for relief is precisely that, a prayer. It invites the court to exercise its discretion in a particular manner. The court may grant that prayer or decline it, in whole or in part, having regard to the evidence and the conduct of the parties. A defendant suffers no prejudice in pleading to the claim by the inclusion of a prayer for attorney and client costs.

[49] It bears noting that the excipients themselves seek costs on scale B. They have not pleaded any facts justifying that scale. They have merely prayed for it. The inconsistency in their position is self-evident. If the excipients are entitled to pray for a particular costs scale without pleading supporting facts, then so is the respondent.

[50] Accordingly, the seventh ground of exception is without merit and is accordingly dismissed.

The summary of the merits:

[51] Having considered each of the seven grounds of exception, both individually and cumulatively, none of them discloses a valid basis for exception. The amended particulars of claim are not bad in law. They contain the averments necessary to sustain a cause of action. They are not vague and embarrassing to the contrary, they set out the material facts with sufficient clarity to enable the excipients to plead.

Conclusion:

[52] The excipients have not made out a clear and strong case for the relief they seek. The respondent's amended particulars of claim disclose a proper cause of

action, and the excipients suffer no embarrassment in pleading thereto. Should the excipients require further particularity, their remedy lies in a request for further particulars in terms of Rule 21, and not in the pursuit of an exception that is devoid of merit.

Costs:

[53] The respondent seeks costs on the attorney and client scale, alternatively on scale C. The excipients seek costs on scale B.

[54] The excipients raised seven grounds of exception, many of which were plainly without merit. They failed to comply with the mandatory provisions of Rule 23(1)(a) before raising vague and embarrassing grounds. They persisted with their exceptions even after the respondent amended its particulars of claim.

[55] The exceptions are vexatious, if not in intent, then certainly in effect. An attorney and client cost order is warranted, given the procedural complexity unnecessarily introduced by the excipients.

Order:

[56] Accordingly, the following order is made:

1. The exceptions are dismissed.
2. The excipients are ordered to pay the respondent's costs on the attorney and client scale.



KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the Excipients':

Instructed by:

Adv. O Tommy

The Office of the Attorney, Johannesburg

For the Respondent:

Instructed by:

Adv. Y Alli

Mortimer Govender Attorneys

Date of Hearing:

28 April 2026

Date of Judgment:

19 June 2026