



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

Case Number: 2024-061823

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/ NO
(3)	REVISED: YES/ NO
<u>15 JUNE 2026</u>	
DATE	SIGNATURE

In the matter between:

HONGBO HUANG First Plaintiff

CHINA HUANG CC Second Plaintiff

HONGBO TRADING CC Third Plaintiff

and

THE MINISTER OF POLICE First Defendant

GHOST GUARD SECURITY Second Defendant

MARIUS VAN DER MERWE Third Defendant

HEINEKEN BEVERAGES Fourth Defendant

TITAN CARGO Fifth Defendant

Summary: A declaration founded on the *rei vindicatio* and the *actio ad exhibendum* must plead ownership with sufficient clarity to enable the defendant to know whose ownership is asserted and on what juridical basis, a bare conclusory allegation of joint ownership is insufficient. A declaration is further vague and embarrassing where its body and prayer cannot be reconciled as to the scope of goods claimed, and where the identity of a party on whose behalf possession was allegedly taken is left unpleaded. All three grounds of exception upheld. Application to strike out dismissed, the impugned allegations may bear on the claim against other defendants. On costs: what matters under Rule 67A is the complexity of the argument actually advanced; the plaintiffs' partial success in resisting the strike-out is a further reason to decline the elevated scale. Scale B is awarded.

JUDGMENT

Sekwakweng AJ

Introduction

- [1] On 4 June 2026, I granted an order upholding the fourth defendant's first, second and third grounds of exception to the plaintiffs' declaration. I dismissed the fourth defendant's application to strike out. I further ordered the plaintiffs to pay the fourth defendant's costs of the exception, including the costs of two junior counsel. These are the reasons for that order.
- [2] The proceedings had their origins in motion proceedings. In those proceedings, the first to third applicants, who are now the plaintiffs, sought relief arising from the alleged seizure of goods by members of the South African Police Service. The goods included alcoholic beverages. The proceedings were initially directed against the Minister of Police. Thereafter, other parties were joined on the basis that they were alleged to have been involved in the removal, receipt, transport or disposal of the goods.
- [3] The proceedings were referred to trial. The applicants became plaintiffs and the respondents became defendants. The notice of motion and founding affidavit stood as simple summons. The plaintiffs were required to deliver a declaration,

and the subsequent conduct of the matter was to be governed by the Rules applicable to trial proceedings.

- [4] On 29 May 2025, the plaintiffs delivered their declaration. The fourth defendant, Heineken Beverages, thereafter, delivered a notice in terms of Rule 23, calling upon the plaintiffs to remove certain causes of complaint. The complaints raised by the fourth defendant may be summarised as follows. First, the declaration did not clearly plead the basis upon which the first to third plaintiffs alleged ownership of the goods. Secondly, the declaration did not clearly identify the scope of the goods claimed from the fourth defendant. Thirdly, the declaration referred to the second defendant's "client" without identifying that client. The plaintiffs did not remove the causes of complaint. The fourth defendant then delivered an exception to the declaration, together with an application to strike out certain paragraphs of the declaration.

The legal principles

- [5] The exception was taken on the ground that the declaration is vague and embarrassing. The purpose of pleadings is to define the issues between the parties with reasonable clarity. A party must know the case it is required to meet. A pleading must therefore contain the material facts upon which the pleader relies, pleaded with sufficient particularity to enable the opposing party to answer. As Heher J observed in *Jowell v Bramwell-Jones and Others*¹, it is the function of a pleading to enable the opposite party to know with reasonable precision the case that must be met, so as to be prepared for trial. That principle was affirmed on appeal at the SCA in *Jowell v Bramwell Jones and Others*.²
- [6] Rule 18(4) requires every pleading to contain a clear and concise statement of the material facts upon which the pleader relies for the claim, defence or answer, with sufficient particularity to enable the opposite party to reply thereto. The requirement is not a matter of form only. It gives content to fairness in a pleading. A party should not be required to guess the case it has to meet. The object of

¹ *Jowell v Bramwell-Jones and Others* 1998 (1) SA 836 (W) at 899E–F, 902F–G and 902I–903A.

² *Jowell v Bramwell-Jones and Others* (543/97) [2000] ZASCA 16; 2000 (3) SA 274 (SCA); [2000] 2 All SA 161 (A) (28 March 2000).

pleadings is to enable the parties to come to trial prepared to meet each other's case and not to be taken by surprise.³

- [7] In *McKenzie v Farmers' Co-operative Meat Industries Ltd*⁴, the Appellate Division described the cause of action as:

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.”

- [8] In *Venter and Others NNO v Barritt; Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd*⁵, the Court stated that the basic requirement is that the defendant must have a clear enough exposition of the plaintiff's case to enable it to take instructions from the client and file an adequate response to the claim in the form of a plea.

- [9] In *Lockhat v Minister of the Interior*⁶, the Court explained the nature of vagueness and embarrassment in the following terms:

“The object of all pleadings is that a succinct statement of the grounds upon which a claim is made or resisted shall be set forth shortly and concisely; and where such statement is vague, it is either meaningless or capable of more than one meaning. It is embarrassing in that it cannot be gathered from it what ground is relied on by the pleader.”

- [10] The approach in *Trope v South African Reserve Bank*⁷ remains apposite. An exception on the ground of vagueness and embarrassment involves a two-fold consideration: first, whether the pleading lacks particularity to the extent that it is vague; and second, whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced. As to prejudice, the ability of the excipient to produce an exception-proof plea is not the only, nor indeed the most important,

³ Jowell 1998 (W) at 902B and 902I–903A.

⁴ *McKenzie v Farmers' Co-operative Meat Industries Ltd* 1922 AD 16 at 23.

⁵ *Venter and Others NNO v Barritt; Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd* 2008 (4) SA 639 (C).

⁶ *Lockhat v Minister of the Interior* 1960 (3) SA 765 (D) at 777.

⁷ *Trope v South African Reserve Bank* 1992 (3) SA 208 (T) at 210G–211E.

test: *Levitan v Newhaven Holiday Enterprises*⁸. The object of pleadings is to enable the parties to come to trial prepared to meet each other's case and not to be taken by surprise. It is therefore possible to be prejudiced even where a bare plea of denial could technically be formulated, if the defendant is left uncertain which of several possible cases it is required to answer.

[11] An exception is not there to determine the truth of the plaintiffs' allegations. When considering an exception, the court accepts as true the allegations pleaded by the plaintiff.⁹ The complaints raised by the fourth defendant were directed at the manner in which the plaintiffs had pleaded their claim against it. The enquiry here is therefore whether the declaration states the plaintiffs' case against the fourth defendant with sufficient clarity to allow the fourth defendant to plead.

[12] The claims pleaded against the fourth defendant appear to be founded principally on the *rei vindicatio* and, in the alternative, the *actio ad exhibendum*. For the *rei vindicatio* to succeed, the plaintiff must allege and prove ownership and that the defendant is in possession of the property; the defendant then bears the onus of establishing any right to continue to hold against the owner.¹⁰

[13] The *actio ad exhibendum* is a personal delictual remedy, available where the defendant has wrongfully and deliberately disposed of the plaintiff's property so that vindication has become impossible.¹¹ For present purposes, it is sufficient to note that ownership of the property, the identification of the property, and the defendant's alleged possession, control or wrongful disposal of the property are therefore material elements which the plaintiffs must ultimately establish.

The first ground of exception: ownership

[14] The first ground of exception concerns ownership. The plaintiffs allege that the first plaintiff purchased the goods on behalf of the second and third plaintiffs. The declaration then alleges that the goods were stored at premises associated with

⁸ *Levitan v Newhaven Holiday Enterprises* CC 1991 (2) SA 297 (C) at 298G–H.

⁹ *Living Hands (Pty) Ltd v Ditz and Others* 2013 (2) SA 368 (GSJ) at 374G.

¹⁰ *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20A–D.

¹¹ *Mlombo v Fourie* 1964 (3) SA 350 (T).

the second plaintiff. It thereafter concludes that the first to third plaintiffs are the lawful owners of the goods.

- [15] I accept the fourth defendant's complaint that this pleading is materially unclear. If the first plaintiff purchased the goods on behalf of the second and third plaintiffs, the natural implication may be that the first plaintiff acted as representative for the second and third plaintiffs. If that is the intended case, the declaration does not explain why the first plaintiff also claims ownership of the goods. If the intended case is that all three plaintiffs are co-owners, then the facts giving rise to such co-ownership must be pleaded. If the second and third plaintiffs alone acquired ownership because the first plaintiff purchased the goods on their behalf, then that must also be made clear.
- [16] The declaration does not plead to a partnership, a co-ownership agreement, a transfer of ownership, a cession or any other juridical basis from which ownership by all three plaintiffs can be understood. The allegation that the goods were stored at premises associated with the second plaintiff does not cure the defect. Storage may be relevant to possession or control. It does not, without more, establish ownership.
- [17] Ownership is central to a vindicatory claim. It is also material to the alternative claim for payment of the value of the goods, because that alternative claim is premised upon the plaintiffs' proprietary entitlement to the goods. The fourth defendant is entitled to know whether the first plaintiff claims as owner, whether the second and third plaintiffs claim as owners, or whether all three plaintiffs claim as co-owners. It is also entitled to know the legal basis on which that ownership is alleged.
- [18] In the absence of that clarity, the fourth defendant cannot properly plead. It cannot decide whether to place ownership in issue, whether to raise a locus standi defence against one or more plaintiffs, or whether to meet a case based on co-ownership, separate ownership or some other proprietary basis.

[19] The first ground of exception was accordingly upheld.

The second ground of exception: the scope of the goods claimed

[20] The second ground of exception concerns the scope of the claim against the fourth defendant. The body of the declaration refers broadly to the seized Savanna Ciders. Those allegations appear to include both pallets of cases of 500ml bottles of Savanna Dry Cider and pallets of cases of 330ml bottles of Savanna Dry Cider. The prayer against the fourth defendant, however, appears to be confined to 1750 cases of 330ml bottles of Savanna Dry Cider, alternatively payment of R 523 250.

[21] The fourth defendant is entitled to know whether the case against it is confined to the 1750 cases of 330ml Savanna Dry Cider, or whether the plaintiffs seek to hold it liable in relation to the broader category of seized Savanna Ciders referred to in the body of the declaration. That uncertainty is material. It affects the subject matter of the claim, the number and type of goods claimed, the alternative monetary claim, and the facts relating to possession, control, disposal and value of the goods.

[22] The body of a pleading and the prayer need not always use identical language, but they must be reconcilable. Where the body of the pleading suggests one case and the prayer suggests another, the defendant is placed in the position of having to speculate about the case it must answer. That is precisely the prejudice which the rules of pleading are designed to avoid.¹²

[23] The uncertainty in this matter concerns the identity and value of the goods claimed from the fourth defendant. It is therefore both material and prejudicial.

[24] The second ground of exception is accordingly upheld.

The third ground of exception: the unidentified client

¹² *Jowell v Bramwell-Jones and Others*.

[25] The third ground of exception concerns the allegation that the third defendant took possession of the goods on behalf of the second defendant and the second defendant's "client". The "client" is not identified in the declaration.

[26] If the client is intended to be the fourth defendant, the pleading should say so. If the client is another party, that party's identity and role should be pleaded. The point is material because possession and control of the goods are central to the claims advanced. The plaintiffs' case concerns the removal, release, receipt, possession, control and alleged disposal of goods. In that setting, the identity of a person on whose behalf possession was allegedly taken is not peripheral.

[27] The fourth defendant cannot properly plead to allegations of receipt, possession, control, disposal, wrongfulness or negligence while the party on whose behalf possession was allegedly taken remains unidentified. The omission is also related to the broader difficulty in the declaration: the pleading does not clearly identify who owned the goods, which goods are claimed from the fourth defendant, and the precise route by which the goods allegedly came into the fourth defendant's possession or control.

[28] I therefore upheld the third ground of exception.

The application to strike out

[29] The fourth defendant also sought to strike out certain paragraphs of the declaration. The application was directed at allegations said to be irrelevant to the claim against the fourth defendant, including allegations concerning the absence of a warrant and alleged unlawful police conduct, and at allegations said to be repetitive.

[30] The principles governing striking out are different from those governing an exception. A court may strike out matter that is scandalous, vexatious or irrelevant, provided that prejudice is shown. The remedy is directed at removing objectionable matter from the pleading. It is not a general licence to rewrite a

pleading or to excise material merely because it may ultimately prove unnecessary.¹³ Courts approach the remedy with caution.

[31] In *Lotzoff v Connel*¹⁴, the Court approached the matter on the basis that the party seeking to strike out must show that the matter objected to is of a kind which justifies striking out and that prejudice will result if it remains. The court must be cautious, particularly where the impugned allegations may still bear on the pleaded case against another party.

[32] In the present matter, the allegations concerning the absence of a warrant and the alleged unlawfulness of the search and seizure may not advance the claim against the fourth defendant in a direct way. However, those allegations may be relevant to the claim against the first defendant, the Minister of Police. They may also form part of the factual narrative explaining how the goods left the plaintiffs' possession and came to be in the hands of other parties.

Costs

[33] The fourth defendant succeeded on each of the three grounds of exception. The grounds were not peripheral. They went to the heart of the fourth defendant's ability to understand the case it was required to meet. The fact that the application to strike out was dismissed does not alter that result. The fourth defendant is entitled to costs.

[34] The fourth defendant delivered a Rule 23 notice identifying the defects in the declaration with precision. The plaintiffs did not remove the causes of complaint. By the time the exception was argued, the plaintiffs had been on notice of the specific deficiencies for some months. The exception was a proper and necessary procedural step. The fourth defendant is entitled to its costs.

[35] The fourth defendant sought costs on Scale C. The plaintiffs sought dismissal of the exception with costs on Scale B. Under Rule 67A, a higher scale requires

¹³ *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 734E–F.

¹⁴ *Lotzoff v Connel* 1968 (2) SA 127 (W).

justification by reference to clearly identified features that mark the matter out as unusually complex, important or valuable¹⁵. What matters under the Rule is the complexity of the argument that was actually required, not the potential complexity of the underlying dispute.¹⁶

[36] The exception was resolved on identifiable deficiencies in the declaration concerning ownership, the scope of goods claimed, and the identity of an unidentified party. Those are not features that mark it out as unusually complex. Scale C is not warranted. The matter did, however, involve several parties and arose from a referral to trial, and the result was not entirely one-sided, the plaintiffs succeeded in resisting the application to strike out, which is a proper factor in the exercise of the costs discretion.¹⁷ Weighing those considerations together, Scale B is appropriate.

[37] As to two counsels, I am moved by the scope of the litigation. The engagement of two counsel in a matter involving more than one defendant is not unreasonable. The award of costs inclusive of the costs of two counsel is merited.

[38] The costs order therefore follows the substantial result in the exception.

Order

The following order was granted:

1. The fourth defendant's first, second and third grounds of exception are upheld. The fourth defendant's application to strike out is dismissed.
2. The plaintiffs are afforded 20 days from the date of service of this order upon their attorneys of record to deliver an amended declaration.
3. Should the plaintiffs fail to deliver an amended declaration within the period referred to in paragraph 2, the plaintiffs' claims against the fourth

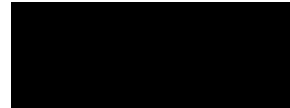
¹⁵ *Mashava v Enaex Africa (Pty) Ltd and Others* 2025 (1) SA 466 (GJ) at paras 16–17.

¹⁶ *Mashava* at para 21.

¹⁷ *Fripp v Gibbon & Co* 1913 AD 354 at 363.

defendant shall be dismissed with costs, including the costs of two counsel, on Scale B.

4. The plaintiffs shall pay the fourth defendant's costs, including the costs of two counsel, on Scale B.



M D SEKWAKWENG
Acting Judge of the High Court
Pretoria

Delivered: This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be the date reflected above.

Heard: 4 June 2026
Delivered: June 2026

Appearances:

Counsel for the fourth defendant / excipient:

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