



**IN THE HIGH COURT OF SOUTH AFRICA
(MPUMALANGA DIVISION, MBOMBELA MAIN SEAT)**

CASE NUMBER: 36/2025

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|-----|---------------------------------|
| (1) | REPORTABLE:NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: YES |

03/08/2026

SIGNATURE DATE

In the matter between:

NEOFRESH (PTY) LTD

APPLICANT

and

LEBOMBO AGRI PETROLEUM (PTY) LTD

RESPONDENT

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This Order is further placed on the Court

file of this matter by the Judge or her/his Secretary. The date of this order is deemed to be 3 August 2026.

JUDGMENT

GUMEDE AJ

1. This is an exception taken by the defendant to the plaintiff's particulars of claim, on the stated basis that the particulars "lack the necessary averments which are necessary to sustain a cause of action." Eight grounds of exception were raised.

BACKGROUND

2. The plaintiff instituted action against the defendant for payment of R13 623 504.24, pleaded on three alternative bases: a claim in contract; failing that, a claim in delict; and failing that, a claim founded on the Consumer Protection Act 68 of 2008 ("the CPA").
3. The plaintiff's case is that, pursuant to a partly written, partly oral agreement concluded on or about 4 February 2020, it purchased diesel from the defendant from time to time between the period February 2020 and October 2023. It

alleges that the defendant supplied diesel contaminated with a substance that ought not to have been present therein. The plaintiff further alleges that the contaminated diesel was used in its machinery, and that the engines of that machinery were damaged as a result. The plaintiff claims direct damages of R4 383 287.24 and consequential damages in the amount of R9 240 217.00.

4. The defendant delivered a notice in terms of Rule 35(14), which it contends that the plaintiff did not respond, and thereafter delivered its notice of exception on 5 March 2025.

THE LEGAL FRAMEWORK

5. The test on exception is whether on all reasonable readings of the facts pleaded, no cause of action may be made out.
6. The *onus* rests upon the excipient who alleges that a summons discloses no cause of action to persuade the court that the pleading is excipiable on every interpretation that can reasonably be attached to it.
7. Rule 23(1) of the Uniform Rules provides for an exception where a pleading is vague and embarrassing, or where it lacks averments necessary to sustain an action or defence.

8. These are two distinct grounds of exception with different procedural requirements.
9. Where an excipient contends that a pleading is vague and embarrassing, Rule 23(1)(a) requires it first to afford the opposing party notice and an opportunity to remove the cause of complaint.
10. It is common cause that no such notice was given; the Rule 35(14) notice on which the defendant relies is not a substitute for it.
11. The parties agree that a benevolent, rather than an unduly strict or over-technical, approach is adopted. In its argument, the defendant agrees that the court should not look at the pleading with a magnifying glass of too high power. As such, the pleading is read as a whole rather than paragraph by paragraph in isolation.
12. Where the real complaint is a want of particularity, the appropriate remedy is a request for further particulars, not an exception.

THE GROUNDS OF EXCEPTION

First ground of exception

13. The defendant complains that the plaintiff has not pleaded the exact dates and quantities of diesel purchased, nor identified which consignment(s) contained the contaminating substance, with the result that the defendant cannot tell which consignment is complained of and cannot assess whether the claim, or part of it, has prescribed.

14. The plaintiff pleads that the agreement was concluded on 4 February 2020 by the persons stated at paragraph 4 of the particulars of claim.

15. The plaintiff proceeds to plead performance under the agreement from February 2020 to October 2023. The breach is said to be the contaminated diesel and the damages flowing from that breach are quantified as per annexures "B" and "C".

16. In my view, the elements of a breach of contract are properly pleaded, namely conclusion of a contract, breach, causation and quantum.

17. The absence of the precise date of each purchase, or identification of the specific consignment said to have been contaminated, goes to particularity

rather than to the existence of a cause of action and could easily be remedied by a request for further particulars.

18. In the premises, the first ground of exception is dismissed.

Second ground of exception

19. Under this ground, the defendant contends that the plaintiff failed to plead when and in what manner the alleged agreement was accepted by the plaintiff and conveyed to the defendant as well as when performance occurred.

20. This loses sight of the fact that on exception, the allegations in the particulars are assumed to be true; the question is not whether the plaintiff has proved its case, but whether, assuming the truth of what is pleaded, a cause of action is disclosed. The particulars set out when, where and by whom the written portion of the agreement was concluded, and the terms relied upon are set out in paragraph 7. Nothing more is required at the level of pleading.

21. In the premises, the second ground of exception is also dismissed.

Third ground of exception

22. The defendant contends that the plaintiff has not pleaded the day, place and manner in which the oral portion of the agreement was concluded, nor which of the pleaded terms are express, tacit or implied.

23. Paragraph 4 pleads that the agreement was partly written and partly oral, concluded on or about 4 February 2020 by the identified persons; paragraph 6 pleads the place of conclusion. Paragraph 7 pleads the relevant terms as express, alternatively tacit, further alternatively implied. Rule 18(6) requires a party relying on a contract to plead whether it is written or oral and when, where and by whom it was concluded — the plaintiff has done so, albeit that the terms are pleaded in the alternative.

24. The third ground of exception is likewise dismissed.

Fourth ground of exception

25. This ground again concerns the absence of precise dates, paragraph 8 pleads a period February 2020 to October 2023 during which the parties dealt with each other, which suffices for the purpose of pleading the cause of action.

26. The fourth ground of exception is also dismissed.

Fifth ground of exception

27. The defendant contends that the plaintiff has failed to aver that the plaintiff is the owner of the goods which sustained damage. Paragraph 10 of the particulars refers to the plaintiff's machines into which the contaminated diesel was poured and which suffered the pleaded damage.

28. On a reasonable and benevolent reading, this constitutes an averment sufficient at the pleading stage to found a claim for damage to those machines. Proof of ownership is a matter for trial.

29. The fifth ground of exception is dismissed.

Sixth ground of exception

30. The defendant complains that the particulars and/or Annexure "C" do not identify the counterparty to whom services would be rendered.

31. These are complaints in respect of the detail underlying the quantification of consequential damages which can be properly addressed by further particulars and by evidence at trial.

32. Paragraph 12 states that consequential damages were suffered as a result of the breach and is quantified in Annexure "C". The identity of any third party to whom the plaintiff might have rendered services is not an averment necessary to sustain a claim for damages arising from the defendant's own breach of its contract with the plaintiff.

33. This ground of exception is likewise dismissed.

Seventh ground of exception

34. The defendant contends that the plaintiff has failed to plead when, how and by whom demand was made.

35. A claim for damages for breach of contract does not require a prior demand as a jurisdictional fact; the summons itself operates as a demand. The averment in paragraph 13 to the effect that notwithstanding lawful demand, payment was not made is, at worst, unnecessary.

36. The seventh ground of exception is also dismissed.

Eighth ground of exception

37. This ground is a repetition of the complaint that the particulars lack the precise dates of purchase and adds that the plaintiff has failed to plead that the defendant was its sole supplier of diesel or to plead how the diesel was unsuitable.

38. The plaintiff is not required to plead that the defendant was its exclusive supplier; that is not an element of either the delictual or the statutory claim under the Consumer Protection Act.

39. The manner in which the diesel was unsuitable and the manner in which the defendant's holding-out to the public are matters for trial and not of pleading.

40. I am of the view that read benevolently, the particulars set out the elements of a delictual claim

41. The eighth ground of exception is dismissed.

CONCLUSION

42. I am not persuaded that any of the eight grounds relied upon by the defendant establishes that the particulars of claim, on any of the three causes of action pleaded, lack an averment necessary to sustain that cause of action.

43. As already stated, where the defendant's real complaint is a want of particularity, a request for further particulars should suffice and should the defendant wish to contend that the particulars are vague and embarrassing, its remedy would have been a delivery of a notice in terms of Rule 23(1)(a).

COSTS

44. The plaintiff has asked for costs on the attorney and client scale, on the basis that the exception was frivolous and raised only to delay the matter. While the exception fails on every ground, I am not persuaded that a punitive costs order is warranted.

45. The grounds raised, although unsuccessful and conflates vagueness with an absence of a cause of action, cannot fairly be characterised as vexatious or advanced in bad faith.

In the premises, the following order is made:

1. The exception is dismissed.
2. The defendant is to pay the plaintiff's costs of the exception



Zodwa Gumede
Acting Judge of the High Court

For the Plaintiff: Adv MP van der Merwe SC

Instructed by: Du Toit-Smuts Attorneys

For the Defendant: Adv DD Swart

Instructed by: Cronje de Waal – Skhosana Incorporated

Date of Hearing: 10 February 2026

Date of Judgment: 3 August 2026