REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG.

Consolidated Case Nos: 009661/2022 & 132503/2023

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

[redacted]

SIGNATURE DATE: 30 July 2026

In the matter between:

GERT LOURENS DE WET NO	First Applicant (Fourth Defendant)
MARYNA ESTELLE SYMES	Second Applicant (Firth Defendant)
MARCC BRADLEY BEGINSEL	Third Applicant (Sixth Defendant)
KAAP VAAL TRUST PTY LTD	Fourth Applicant (Eighth Defendant)
ZEBRA LIQUIDATORS PTY LTD	Fifth Applicant (Ninth Defendant)
BEGINSEL TRUSTEES	Sixth Applicant (Tenth Defendant)

And

K2012020306 PTY LTD	First Respondent
STUART ALAN JOHN SAUNDERS	Second Respondent

In re:

K2012020306 (Pty) Ltd	First Plaintiff
STUART ALAN JOHN SAUNDERS	Second Plaintiff

And

GERT LOURENS DEWET N.O.	First Defendant
MARYNA ESTELLE SYMES N.O.	Second Defendant
MARC BRADLEY BEGINSEL N.O.	Third Defendant
GERT LOURENS DE WET	Fourth Defendant
MARYNA ESTELLE SYMES	Fifth Defendant
MARCC BRADLEY BEGINSEL	Sixth Defendant
SENEKAL SIMMONS INCORPORATED ATTORNEYS	Seventh Defendant
KAAP VAAL TRUST PTY LTD	Eighth Defendant
ZEBRA LIQUIDATORS PTY LTD	Ninth Defendant
BEGINSEL TRUSTEES	Tenth Defendant
MASTER OF THE HIGH COURT	Eleventh Defendant

Coram: Noko J

Heard on: 8 April 2026

Delivered on: 30 July 2026

Summary: Application for leave to amend – Respondents' contentions that the amendment is a nullity and that the proposed amendment is susceptible to exception - objections are unsustainable.

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ORDER

The following order is made:

1. Leave to amend is granted;
2. The Respondents are ordered to pay costs, including costs of counsel on scale B.

JUDGMENT

NOKO J

Introduction

[1] The applicants instituted an application on 3 March 2025 seeking leave to amend their plea (including the special plea) dated 22 August 2024 ("*the August plea*"). The respondents oppose the application on two grounds. First, they contend that the August 2024 plea is a nullity because it was not filed in accordance with the Uniform Rules of the Courts ("*Rules*"). Second, they contend that the proposed amendments are, *inter alia*, potentially excipiable.

Background

[2] The applicants served notice of intention to amend their August 2024 plea by:

> *"1. Deleting paragraphs 1 to 7,*
>
> *2. By adding the following paragraph between paragraph 11 and 12:*
>
> *"11A alternatively, the plaintiffs plead that success in the arbitration was achieved on 10 October 2019 when a declaratory order was granted in the Johannesburg High Court under case number 30239/2019. The claim was available to the plaintiff on 10 October 2019"*
>
> *3. By deleting the full stop at the end of paragraph 12 and adding the following at the end of paragraph 12:*
>
> *"alternatively, 10 October 2022."*

[3] Given the respondents' contention that the August 2024 plea does not exist, it is necessary to first set out the background to the August 2024 amendment. On 19 June 2024, the applicants served their notice of intention to amend their plea, dated 11 March 2024. Subsequently, the respondents' legal representative wrote to the applicants requesting that they serve their amended plea, failing which a notice of bar calling for the amended plea would be served. The respondents then served a notice of bar on 19 August 2024,

demanding the amended plea within five days of its service. The applicants served their amended plea on 22 August 2024.

[4] The respondents contend that the August 2024 plea should be construed as a notice to amend under Rule 28(1) of the Rules, rather than as the amended pages contemplated under Rule 28(7). However, as set out below, the applicants contend that the respondents' contentions are unsustainable.

Contentions and submissions.

[5] The amendment seeks first to delete the special plea of *lis pendens*, which was raised before the two respondents' actions were consolidated under the above case numbers. The suggested deletion is not opposed, and the application for the amendment is therefore granted.

[6] Regarding the challenge to the August 2024 amendment, Mr Saunders, representing himself and the first respondent, contends that the notice of bar served demanding the amended plea was served in error, and that the document served by the applicants on 22 August 2024 is a notice of intention to amend, not the amended pages. Accordingly, the applicants should have afforded the respondents a 10-day period, as contemplated in Rule 28(3), within which to decide whether to oppose the proposed amendments. The filing of the amended pages would then have followed. To this end, Mr Saunders argued that the applicants failed to comply with the Rules and that the Court must afford them a 10-day period to file their amended pages.

[7] Mr Saunders further argued that if the impugned August 2024 amendment is found compliant, the respondents would suffer prejudice by being denied their right to consequential amendment under Rule 28(8) of the Rules.

[8] The applicants retorted that correspondence *inter se* and the notice of bar clearly required them to serve amended pages, and they duly complied. Furthermore, the respondents have informed the applicants that they do not object to the proposed amendment. Consistent with the knowledge that the document served was an amended plea, the respondents referred to it in their application for summary judgment. This is also

consistent with the requirement that applications for summary judgment can only be launched after a plea has been filed, and this was done after the delivery of the August 2024 plea and special plea.

[9] Finally, the applicants contended that the respondents' right to file a consequential amendment is not trampled upon, as they may amend their pleadings at any time before judgment. To this end, the argument continued, there is no prejudice or compromise of the respondents' right to file a consequential plea, as alleged by the respondents, and the objection to the amendment should be dismissed.

[10] I have considered submissions from both parties. Noting that the August 2024 plea is clearly titled an amended plea and that it is also referred to in the correspondence exchanged between the parties and in the application for summary judgment, I find that it was indeed delivered in accordance with Rule 28(7). Accordingly, the averments that the notice of bar was issued in error and not rectified in terms of the rule are inconsequential. The respondents' contention that the August 2024 plea is non-compliant and that the notice to amend it dated 11 February 2025 is a nullity is therefore unsustainable and bound to fail.

[11] The respondents contended that, if the Court finds the August 2024 plea compliant, the proposed amendment to add an alternative special plea of prescription is excipiable. This is based on the applicants' contention that success in the arbitration was never achieved, as the declaratory order granted on 10 October 2019 was rescinded and success would never be achieved, respondents argued.

[12] The applicants contend that the respondent's cause of action relates to consulting services provided between 9 December 2013 and 15 January 2018. Payment for such services would have been claimable by 30 January 2018, the date on which the debt is due under section 12(1) of the Prescription Act.[1] Under section 11(d) of the Prescription Act, the debt would prescribe after 3 years, by the end of January 2021 at the latest. The respondents' summons was served only on 13 December 2023 and has therefore prescribed.

[1] 68 of 1969.

[13] The applicants contend that, in the alternative, the debt arose on 10 October 2019, when a declaratory order was made, the date on which the success was achieved. Accordingly, the respondents' claim prescribed 3 years from that date.

[14] The applicants sought the Court's permission to amend, contending that the sole purpose of the amendment is to add a date. Further, the legal position is axiomatic that unless an amendment is mala fide, it will prejudice the other party, and that prejudice cannot be cured by an order of costs or a postponement.

[15] The respondents contend that the proposed amendment would be susceptible to an exception on the ground that it is vague and embarrassing and fails to set out a cause of action. The respondents' contention rests on the applicants' having categorically asserted that success was not achieved and would never be achieved, since the declaratory order of 10 October 2019 was rescinded and attempts to appeal it were unsuccessful, and that they may not at the same time contend that success was achieved, as this would be contradictory. Mr Saunders further argued that no evidence can be presented to prove the applicants' averments. To this end, he argued that the legal position, as set out in *McKelvey v Cowan NO*[2], is that "[a] pleading is only excipiable on the basis that no possible evidence led on the pleadings can disclose a cause of action".[3] In the absence of such averments, Mr Saunders argued, the plea would be vague, embarrassing and difficult for the respondents to plead.

[16] Mr Saunders further contended that the right to payments under the Additional Disbursement Agreement arose either from the success achieved through arbitration, or, upon the receipt of payment by the first to third respondents. A further condition is that the Liquidation and Distribution account has not been approved. To the extent that none of these can be shown by any evidence, the plea becomes irrelevant, as the success was rescinded on 28 July 2021.

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[2] 1980 (4) SA 525 (Z).
[3] Id at 526D-E.

[17] In reply, the applicants contend that the allegations set out in the proposed amendment have already been stated in the previous plea and that the sole purpose is to add the date. If they were excipiable, the respondents would already have excepted that previous plea. In any event, the averments regarding the achievement of success are predicated on the respondents' averments that success has been achieved. And adding or inserting an alternative date cannot attract excipiability. The contention that the applicants are approbating and reprobating is unsustainable, since the amendment is couched in the alternative, applicants argued.

[18] In addition, the applicants continued, this Court cannot be invited to determine the veracity of any proposed special plea, if any, or the alleged shortcomings and should therefore defer to the trial court. The applicants referred to *Marsh*[4] at para 11, where the Court held that adjudication of the dispute about prescription is better left to the trial court.

Issue for determination

[19] Whether the amendment was effected and whether the special plea is excipiable.

Legal principles and analysis

[20] It is settled in our jurisprudence that a court adjudicating on an application to amend has discretion, which must be exercised within the bounds of the law.[5] It was stated in *Taraway Empire*[6] that

> "[I]n respect of amendments to pleadings generally, it must be emphasized that the object of the court is to do justice between the parties, and where a mistake as to the true facts are made on the pleadings, the court will look at what circumstances actually occurred between the parties. Furthermore, the court hearing an application for leave to amend, or faced with a proposed amendment to a pleading, retains an unfettered discretion, which must be exercised judicially in view of the facts and circumstances of a matter.[7]

[21] Correcting an error in the pleading or withdrawing a notice is governed by the rules, and the respondents should have availed themselves of them in a timely manner. However,

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[4] *East and West Investments P/L and Others v Marsh (Pty) Ltd* [2025] ZAGPPHC 147.
[5] See *Robinson v Randfontein Estates Gold Mining Co Ltd* 1921 AD 168 at 243.
[6] *Taraway Empire Pty Ltd v Total South Africa (Pty) Ltd* (6639/2021) [2026] ZAWCHC (28 July 2026)
[7] Id at para 26 where the following cases were quoted with approval: *Morant v Roos* 1911 TPD 1092 at 1102 and *Ciba-Geigy (Pty) Ltd v Lushoff Farms (Pty) Ltd* 2002 (SA) 447 SCA at 462

leaving the matter for more than seven months and having pleadings exchanged pursuant thereto may make it tedious to reverse all. The horse has bolted. In any event, as the applicants have submitted, the respondents have a recourse of amending their papers if necessary. It was held in *Zarug*[8] that "[n]o matter how negligent or careless the mistake or omission may have been and no matter how late the application for amendment may be made, the application can be granted if the necessity for the amendment has arisen through some reasonable cause, even though it be only a *bona fide* mistake".[9] In the end, no prejudice would visit the respondents, and any such prejudice is not capable of redress through an order of costs or a postponement.

[22] On the facts as alleged/pleaded by the respondents that the success has been achieved, then the claim may be found to have prescribed. The special plea is in the alternative, and to this end, the contention that there is a contradiction is unsustainable. It was stated that contradictions would fall foul of regular pleadings in *Trope*[10], where the court says that: "[i]t follows that averments in the pleading which are contradictory <u>and which are not pleaded in the alternative</u> are patently vague and embarrassing; one can be left guessing as to the actual meaning (if any) conveyed by the pleading."[11] *("*underlining added"*).*

[23] The applicants referred to *Marsh* [12] where the court held that the dispute relating to prescription is better left to the trial court. It was also held in *Compass Insurance*[13] that as long as a triable issue is raised in the pleadings, an amendment would be granted even where a party may raise an exception. The prejudice alleged by the respondents can be cured by an order of costs and may still be amended at any time, as submitted by the applicants.

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[8] *Zarug v Parvathie NO* 1962 (3) SA 872 (D).
[9] Id at 876B-D. See also para 876A-B where the court held that "… the Court will allow an amendment, even though it may be a drastic one, if it raises no new question that the other party should not be prepared to meet."
[10] *Trope v South African Reserve Bank* 1992 (3) SA 208 (T).
[11] Id at 209D-F.
[12] Above fn 5.
[13] *Compass Insurance Company Ltd v Cobus Smit Projekbestuur CC and Another*2019 (1) SA 413 (WCC).

Conclusion

[24] I find that the contention that the August 2024 plea is a nullity lacks legal basis and should be dismissed. I further conclude that the issue of potential excipiability should be deferred to the trial court and need not derail the exchange of pleadings at this stage. In addition, there is no evidence of *mala fides* on the applicants' part, and the respondents will not suffer any prejudice from the amendment.

Costs

[25] The applicants contend that the respondents' pleadings are replete with unnecessary averments and that this Court should express opprobrium by awarding the respondents' costs on a punitive scale. Further, the second respondent, a seasoned legal practitioner, should know better.

[26] This Court has previously expressed reservations about the respondents' draft papers and has made orders on a punitive scale. It is concerning that this alarm has not received the respondents' attention. That notwithstanding, I resist the invitation to order costs on a higher scale and hope that the message will be given serious consideration in future. I am further not persuaded that the application was sufficiently complex to warrant the engagement of two counsel.

Order

[27] In the end, I make the following order

1. Leave to amend is granted;
2. The Respondents are ordered to pay costs, including the costs of counsel on scale B.

[redacted]

M V NOKO
Judge of the High Court

DISCLAIMER: This judgment was prepared and is handed down electronically by circulation to the Parties /their legal representatives via email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 30 July 2026.

Appearances:

For the Applicants:	L Choate with C Hammick instructed by Webber Wentzel Inc.
For the Respondents:	SAJ Saunders, Trust Account Advocate in terms of section 34(2)(b) of the Legal Practice Act 28 of 2014.