THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG

CASE NO:1260/2024

(1) Reportable: No (2) Of interest to other Judges: No (3) Revised: No
[redacted] 04 August 2026
SIGNATURE DATE

In the matter between:

KEGO MINING (PTY) LTD DEFENDANT/EXCIPIENT

and

LIBERTY COAL (PTY) LTD PLAINTIFF/RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 04 August 2026..

JUDGMENT

Leso AJ

INTRODUCTION

[1] Kego Mining (Pty) Ltd filed an exception against Liberty Coal Ltd's amended particulars of claim. Liberty Coal's cause of action is based on the cession agreement dated 21 March 2024, wherein Optimum Coal Mine (Pty) Ltd ceded its rights to claim against Kego. Liberty Coal's claim is structured as follows:

1.1 Claim 1: Vindication (return of coal or payment).

1.2 Claim 2: Damages (payment for wrongful conduct).

1.3 Claim 3: Enrichment (payment for unjust enrichment).

[2] Liberty Coal claims compensation for damages as a result of the alleged unjust enrichment resulting from wrongful conduct by Kego Mining and seeks an order for payment of R168 146 557. Liberty Coal further seeks indemnification for all losses in the form of the return of all coal mined, processed, and/or removed, as well as interest at the prescribed rate from the date of demand to the date of payment and the legal costs.

[3] Liberty Coal is opposing the exception on the basis to be discussed henceforth.

Parties

[4] Liberty Coal (Pty) Ltd is a private company with limited liability, duly registered and incorporated in accordance with the Companies Act 71 of 2008 (Companies Act) and the laws of the Republic of South Africa, the plaintiff in the main action and the respondent in this application.

[5] Kego Mining (Pty) Ltd is a private company with limited liability, duly registered and incorporated in accordance with the Companies Act and the laws of the Republic of South Africa, the defendant in the main application and the excipient in this action.

[6] Optimum Coal Mine (Pty) Ltd is a private company with limited liability, duly registered and incorporated in accordance with the Companies Act and the laws of the Republic of South Africa, in business rescue, the holder of the converted mining rights in terms of the Minerals and Petroleum Resources Development Act which were initially granted to Glencore Billiton Energy Coal South Africa Limited (Glencore).

[7] For convenience, Kego Mining (Pty) Ltd will be referred to as the excipient and Liberty Coal will be referred to as the respondent. The acronym "OCM" will be used to refer to Optimum Coal Mine (Pty) Ltd.

FACTUAL BACKGROUND

[8] Glencore was granted two converted mining rights in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (the Act/MPRDA) held under file reference numbers MP30/5/1/2/2/264MR and MP30/5/1/2/2/267MR in respect of coal in the areas in Witbank as follows:

8.1 Klipbank 467 JS portion 3;

8.2 Klipbank 467 JS remaining extent of portion 2; and

8.3 Klipbank 467 JS portion of mineral area 1.

[9] The mining rights commenced on 5 June 2005 and remain in force for 20 years, ending on 4 June 2028. The rights consist of the right to mine portions of various farms totalling 37 719.4 hectares in the Magisterial/Administrative District of Middleburg, including the Klipbank Portions.

[10] On 19 June 2008, Glencore ceded its mining rights to OCM mining right (as amended/varied). The mining rights continue to be in force for a period of 20 years, ending on 4 June 2028, and consist of the portions of various farms measuring 37 719.4 hectares in the Magisterial/Administrative District of Middleburg, including the Klipbank Portions.

[11] It is common cause that OCM is vested with the sole and exclusive right to mine and to recover coal in/on and under the Klipbank Portions for its own benefit and account, as well as to deal with, remove, and sell, or otherwise dispose of the coal, subject to the terms and conditions of the mining right (as amended/varied), the provisions of the Act and any other relevant law in force for the duration thereof.

[12] In claim 1 (vindication), the respondent pleaded that, during the period from 1 April 2023 to 21 June 2023, the excipient mined, processed and/or removed 232 864 tons of coal from the Klipbank Portions (the coal) and OCM became the owner of the coal immediately upon its severance from the earth in the Klipbank Portions. The respondent pleaded that the excipient is in possession of the coal; alternatively, if the excipient is no longer in possession of the coal, it disposed of the coal knowing that OCM was the owner thereof.

[13] The respondent pleaded that the value of the coal is R168 146 557, calculated as the difference between the market price of the coal and the costs of mining the coal and/or producing the coal in saleable form. And that despite demand, the defendant has failed, refused and/or neglected to deliver the coal, alternatively make payment to OCM in the aforesaid amount.

[14] Alternative to Claim 1, the respondent claims damages (Claim 2) due to the defendant's conduct in mining, processing and/or removing the coal as aforesaid. The respondent claimed that the excipient's action was intentional and wrongful in that it infringed and interfered with OCM's mining right (as amended/varied) read with the aforesaid provisions of the Act. The defendant's unlawful conduct caused OCM to suffer damage in the amount of R168 146 557.

[15] Alternative to claim 1 and claim 2, the respondent claims that the excipient has been unjustly enriched (Claim 3) at the expense of OCM in the amount of R168 146 557 after the excipient misappropriated the coal from OCM.

SUMMARY OF SUBMISSIONS

The ground on which the exception is founded

[16] Without repeating the common cause issues as the excipient did in the ground on which the exception is founded, the grounds are summarised as follows:

16.1 Section 11 of the MPRDA prohibits, amongst other things, the cession, transfer, assignment, alienation, or other form of disposal of a mining right or an interest in any such right without written Ministerial consent.

16.2 Clause 9 of the mining rights similarly prohibits *inter alia* the cession, transfer, assignment, alienation, or other form of disposal of the mining rights or an interest or participation in the right without written Ministerial consent.

16.3 The validity of the alleged cession by OCM to the respondent, on 21 March 2024, of OCM's alleged right to each of the respondent's claims against the excipient is accordingly dependent on the written Ministerial consent in terms of section 11 of the MPRDA.

16.4 In the absence of Ministerial consent in terms of section 11 of the MPRDA. The cession of the mining rights and/or the consolidated mining rights or an interest in such rights is void alternatively unenforceable for want of compliance with the peremptory provisions of section 11 of the MPRDA; and the respondent has no right to claim the relief in any one or more of the alternative causes of action pleaded in paragraphs 6 to 17 of the amended Particulars of Claim.

16.5 In order for the amended Particulars of Claim to sustain the alternative causes of action pleaded in paragraphs 6 to 17 thereof, it was accordingly necessary to aver that the Minister's written consent, as required by section 11 of the MPRDA, had been granted in respect of the alleged cession by OCM to the respondent, on 21 March 2024, of OCM's alleged right to each of the respondent's alternative claims against the excipient.

16.6 In the result, the respondent has failed to make the necessary allegations in its amended Particulars of Claim to disclose a cause of action.

Respondent submissions

[17] In the amended Particulars of Claim, the respondent alleges that, during the period from 1 April 2023 to 21 June 2023, the excipient mined, processed, and/or removed 232 864 tonnes of coal from the Klipbank portions and that OCM became the owner of the coal immediately upon its severance from the earth in the Klipbank portions.

[18] The respondent's counsel commenced his submission by attacking the excipient's counsel's oral submissions that the cession is invalid because the cedent did not derive any value for ceding the claim for coal or the value from it by pointing out that the issue of deriving benefit from the transaction was not raised in the exception. The exception counsel referred to paragraphs 1.1.1; 2.1; 2.1.13 and 2.1.15 of the cession agreement, which demonstrate that OCM was in a business rescue and, in terms of the cession agreement, a sale agreement was concluded on 11 June 2021 to show that there was value derived as a result of the sale.

[19] The exception is framed as an attack on the plaintiff's *locus standi* arising from the cession by OCM. Properly analysed, the exception is confused in its formulation and incorrect in its premise. It moves between alleging:

(i) a cession of the mining right itself,

(ii) a cession of an "interest in" that right; and

(iii) a cession of the plaintiff's claims.

[20] The exception does not identify with precision what juridical transaction is said to have occurred to trigger the requirement of the Ministerial consent under section 11 of the MPRDA.

[21] On a plain reading of the plaintiff's claim, the pleaded transaction is clear: it is the written cession by OCM of "its right to each of the aforesaid claims against the defendant". The plaintiff's standing is expressly founded on the cession of those accrued personal rights of the action. The plaintiff's cause of action and *locus standi* are founded on the cession of the accrued personal claims arising from that unlawful conduct.

[22] The plaintiff's cause of action does not plead or rely on; any transfer or cession of the mining right itself; any transfer of an undivided share in the mining right; any lease, sublease, encumbrance or other registrable disposition of the mining right; any transfer of a controlling interest in OCM; or any entitlement on the part of the plaintiff to exercise any of the incidents of the mining right. The mining right is pleaded solely as the juridical source of OCM's exclusivity and the wrongfulness of the defendant's conduct.

[23] The exception never identifies with clarity whether it complains of a cession of a mining right, a cession of an "interest in" that right, or a cession of personal claims derived from it. It does not identify, with precision, what is said to have been transferred to trigger the section 11 Ministerial consent, nor what essential allegation is missing from the particulars of claim. On that basis alone the exception is conceptually confused, internally inconsistent and procedurally defective, and it should fail.

Excipient submissions

[24] The excipient contends that, on the plaintiff's own pleaded case, the cession of claims representing the value of coal allegedly extracted pursuant to a mining right constitutes the disposal of an "interest in a mining right" as contemplated in section 11 of the MPRDA. On a purposive interpretation of section 11, such a transaction being a transfer of the economic benefit derived from the mining right required prior written Ministerial consent. In the absence of any allegation that such consent was obtained, the plaintiff's particulars of claim fail to disclose a cause of action and are excepiable.

[25] The excipient's case is that, properly interpreted, section 11 of the MPRDA and clause 9 of the mining rights prohibit not only the formal disposal of the mining right

itself, but also the disposal of an interest or participation in that right, without prior written Ministerial consent. The phrase "interest" in section 11 is not to be given a narrow, formal or purely technical meaning. It must be interpreted purposively.

[26] It was further argued that, on that interpretation, the wholesale transfer of the economic fruits of a mining right, or of a claim representing the value of minerals allegedly won pursuant to that right, constitutes the disposal of an "interest" in the mining right. An interpretation which excludes such transfers from the ambit of section 11 would permit a holder to retain nominal title to a mining right while divesting itself entirely of the value derived from that right, whether through the cession of proceeds, revenue streams or claims. Such an interpretation would undermine the statutory scheme, defeat the objects of the MPRDA, and render section 11 susceptible to circumvention by form.

[27] It is argued that the plaintiff has pleaded not merely a procedural entitlement to sue, but a substantive transfer of the entire economic benefit of a claim deriving directly from the exercise, and alleged infringement, of the mining right

Issues for determination

[28] The issue for determination by this court is whether, on the plaintiff's pleaded case, the cession of claims arising from the alleged unlawful extraction of coal constitutes the disposal of an "interest in a mining right" as contemplated in section 11 of the MPRDA, thereby requiring prior Ministerial consent, and, if so, whether the absence of any pleaded consent renders the particulars of claim expiable.

Analysis and application of the law

[29] The arguments by counsel in this matter move between the merits of the cession agreement, the interpretation of section 11 of the MPRDA, contractual interpretation, and the law relating to exceptions. In an exception, the court is not required to decide whether the cession is valid. The court is only required to determine whether Rule 23 permits the amended particulars of claim to disclose a cause of action assuming the pleaded facts are true.

[30] Rule 18(4) and (5) provide as follows:

> (4) " *Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.*
>
> *(5) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively but shall answer the point of substance".*

[31] A pleading must allege the facts that are required in order to disclose a cause of action or defence. A pleading that states conclusions and opinions instead of material facts, or that draws a conclusion without alleging the material facts which, if proved, would warrant that conclusion, is defective[1]. An exception may be raised where a pleading is vague and embarrassing or lacks averments necessary to sustain a cause of action. An exception is directed at the legal sufficiency of the pleading and not the correctness of the allegations contained therein. For purposes of determining the exception, every factual allegation contained in the particulars of claim must be accepted as correct[2].

[32] The excipient bears the onus of satisfying the court that upon every reasonable interpretation which the pleading can bear, no cause of action is disclosed. If evidence may be required to determine the dispute, or if the pleading is capable of sustaining a

---

[1] *Buchner v Johannesburg Consolidated Investment Co Ltd 1995 (1) SA 215 (T) at 216I–J*, where the court was dealing with a simple summons, but referred to rule 18(4), which applies to pleadings

[2] See *Colonial Industries Ltd v Provincial Insurance Co Ltd 1920 CPD 627 at 630*, the the court said the following: *'...the form of pleading known as an exception is a valuable part of our system of procedure if legitimately employed: its principal use is to raise and obtain a speedy and economical decision of questions of law which are apparent on the face of the pleadings: it also serves as a means of taking objection to pleadings which are not sufficiently detailed or otherwise lack lucidity and are thus embarrassing.'* Also in *Kahn v Stuart 1942 CPD 386* at 391: Where the court stated that ' *the exception is used, apparently, once to be thought that the object of an exception was to embarrass your opponent. That is not the true object of an exception at all. The true object of an exception is either, if possible, to settle the case, or at least part of it, in a cheap and easy fashion, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception. In my opinion, the court should not look at a pleading with a magnifying glass of too high power. If it does so, it will be almost bound to find flaws in most pleadings — except formal replications, but certainly including the present exception itself. It is so very easy, especially for busy counsel, to make mistakes here or there, to say too much or too little, or to express something imperfectly.'*

cause of action on any reasonable interpretation, the exception must fail. This is a trite principle in our law.

[33] In *Trope v South African Reserve Bank*,[3] the court considered the meaning and scope of the basis for an exception on the ground that a pleading is vague and embarrassing. The court stated that:

> "...An exception to a pleading on the ground that it is vague and embarrassing involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. *The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced.*" (My emphasis.)

The respondent's pleaded case

[34] The respondent alleges that it is entitled to institute an action based on *rei vindicatio*, undue enrichment, and payment on the basis of the cession agreement concluded on 21 March 2024, in which OCM ceded its right to claim the above. The cession agreement and its terms and conditions are common cause between the parties.

[35] The respondent does not allege that OCM transferred or ceded its mining right. It pleads that OCM ceded to it the personal rights of action arising from the alleged unlawful extraction of coal by the excipient. The pleaded cession is therefore one of accrued claims sounding in vindication, damages and enrichment.

[36] The mining right is pleaded merely as the source of OCM's entitlement, the basis upon which the alleged unlawfulness is established, not the subject matter of the cession. This is an important distinction.

Whether the exception correctly identifies the pleaded cause of action

---

[3] *Trope v South African Reserve Bank and Another and Two Other Cases* 1992 (3) SA 208 (T) at 211A-B.

[37] The excipient's argument proceeds on the premise that the respondent pleads a cession of a mining right or an interest in a mining right. However, the particulars of claim do not expressly plead either. Rather, they plead a cession of personal claims.

Whether section 11 of the MPRDA is capable of determination on exception

[38] The excipient contends that the cession falls within section 11 of the MPRDA because it constitutes the disposal of an "interest" in a mining right. Deciding that question requires considerably more than simply reading the pleadings. The court would have to determine:

38.1 What constitutes an "interest";

38.2 Whether accrued claims constitute such an interest;

38.3 Whether economic value is synonymous with an interest in a mining right;

38.4 The legal effect of clause 9;

38.5 The purpose of section 11; and

38.6 Whether ministerial consent was legally required.

[39] Enquiry into each of these issues involves statutory interpretation, potentially interpretation of the cession agreement and potentially evidence. These are matters ordinarily determined at trial.

[40] The present exception necessarily assumes that the cession agreement amounted to a disposal contemplated in section 11. Whether that assumption is correct depends upon the proper interpretation of the cession agreement read together with the MPRDA. Courts are generally reluctant to determine contractual interpretation upon exception unless the document is unambiguous.[4]

---

[4] Cilliers *et al* "Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa" 5th Ed, 2009, ch22-p639.

[41] The question is not whether consent was obtained. The question is whether the respondent is required to plead the Minister's written consent in order for its particulars of claim to disclose a cause of action? This is really the decisive issue.

[42] If the pleaded cession is merely a cession of accrued personal claims, then ministerial consent is not self-evidently a jurisdictional fact. Only after deciding that section 11 applies could the court conclude that consent became a necessary allegation. Since that first issue cannot be determined on exception, the second cannot succeed.

[43] The excipient's submissions ultimately invite the Court to pronounce upon the validity and enforceability of the cession agreement. Those are issues falling to be determined upon the evidence at trial. The present enquiry is considerably narrower. It is confined to whether the amended particulars of claim disclose a recognisable cause of action.

[44] Claim 1 (Vindication), Claim 2 (Damages), and Claim 3 (Enrichment) are each recognised in law. Each is pleaded through the cession. Whether the respondent ultimately proves its entitlement is another matter.

[45] The exception therefore proceeds from a premise different from the pleaded cause of action.

Conclusion

[46] The excipient has not demonstrated that upon every reasonable interpretation of the amended particulars of claim the respondent has failed to disclose a cause of action. The exception depends upon accepting, as a matter of law, that the cession of accrued personal claims necessarily constitutes the disposal of an interest in a mining right requiring Ministerial consent under section 11 of the MPRDA. That conclusion is neither self-evident from the pleadings nor capable of determination without interpreting both the cession agreement and the statutory framework. Those are matters more appropriately determined at trial.

[47] None of the narrative on interpretation fills the void of what the applicant must prove under the application exception. Their argument should mirror the principles of the exception. The exception must accordingly fail.

[49] WHEREFORE THE FOLLOWING ORDER IS MADE

Order

1. The exception should be dismissed with costs including the costs of two counsel, one being senior counsel.

[redacted]

JT LESO

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MIDDELBURG

Appearances

For the Defendant/Excipient:	Adv. P.G. Cilliers SC with Adv. J.L. Mÿburgh
Instructed by:	JW Botes Incorporated
For the Respondents:	Adv G. Wickins SC with Adv L. VR. Van Tonder
Instructed by:	Smit Sewgoolam Incorporated
Heard:	3 March 2026
Delivered:	04 August 2026