IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

Case Number: 2025-126677

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

DATE 7/08/2026 SIGNATURE [redacted]

AMBERVIEW BODY CORPORATE Plaintiff/Respondent

and

ELEKANYANI MUKONDELELI Defendant/Excipient

JUDGMENT

INTRODUCTION

1 This is an exception purportedly brought in terms of rule 23(1) of the Rules of Court.[1]

2 The excipient, who is the defendant in the main action, is defending a claim for payment of R34,036.02 based on an Acknowledgement of Debt ("AOD") signed on 7 May 2025. In the purported exception, the defendant complains that the particulars of claim are vague and embarrassing, alternatively fail to disclose a cause of action.

3 In the Rule 23(1) notice, the defendant *"calls upon the plaintiff, within 10 days of receipt of this notice, to remove the cause of complaint by delivering amended particulars of claim. Failing compliance, the defendant will <u>accept</u> the particulars of claim and apply for an order striking them out, with costs"*.

4 At the commencement of the hearing, I sought clarity from the excipient's counsel, Mr Mekwa on what precisely was meant with the statement in the notice that should the plaintiff fail to remove the cause of complaint, the defendant will accept the particulars of claim and apply for an order striking them out, with costs. The response I received was that the word "accept" is an error and should have been "except". So, before the court was an exception together with an application to strike out.[2]

5 The founding affidavit in the application to strike out lists three "grounds of exception". These grounds are –

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1 CL007-1 to 007-3.

2 CL010-1 to 010-4.

5.1 First a failure to disclose a cause of action (unlawful levying of legal costs).

5.2 Secondly, that the pleaded cause of action relies on an unenforceable and unlawful contract, to wit, the AOD.

5.3 Thirdly, the particulars of claim are vague and embarrassing – inability to plead.[3]

6 However, the defendant filed a Notice of Motion that incorporates the exception and an application to strike out. The approach adopted by the defendant is confused.

7 Rule 23(1) deals with exceptions where the pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, as the case may be. Where the contemplated exception is on the basis that the pleading is vague and embarrassing, the party delivering a pleading is afforded an opportunity to remove the cause of complaint and if it fails to do so, a notice of exception is then delivered against those impugned particulars of claim.

8 Applications to strike out are dealt with under a separate rule, namely, Rule 23(2). In that rule, where any pleading contains averments which are scandalous, vexatious or irrelevant, the opposing party may apply for a striking out of the aforesaid matter, provided that the party delivering the pleading may be afforded an opportunity to remove the cause of compliant within 15 days of delivery of the notice of intention to strike out.

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[3] CL010-6 to 010-8 paras 3 – 11.

9 Rule 23(2) provides for prescribed instances where an application to strike out an averment in a pleading may be brought. These are where pleadings contain averments which are scandalous, vexatious or irrelevant.

10 The Rules do not contemplate an application to strike out pleadings that are contended to be vague and embarrassing or fail to plead averments to sustain a cause of action. For that complaint, a Notice of Exception as contemplated in Rule 23(1) is the prescribed procedure.

11 When I raised the fact that the Court does not have the power to strike out pleadings on the basis that they may be vague and embarrassing and/or may fail to plead sufficient facts to sustain a cause of action, counsel elected to abandon the application to strike out.

12 In any event, there were other problems with the application to strike out.

13 The application to strike out is supported by one paragraph in the founding affidavit,[4] which states as follows:

> "In the alternative, and should the Honourable Court find that any portion of the claim is not excipiable in its entirety, I apply for the offending paragraphs relating to 'legal costs' and the enforcement of the unlawful AOD to be struck out as vexatious and prejudicial."

14 The affidavit does not identify the offending paragraphs. When I considered the grounds of exception in the founding affidavit, the complaint appeared to be against certain provisions of the AOD and not necessarily certain paragraphs in the particulars of claim.

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[4] CL010-8 para 12.

15 It is clear to me, therefore, that the defendant has conflated the application of the Rules relating to exceptions and strike outs. Firstly, there is notice of exception as contemplated in Rule 23(1)(a). Instead, the defendant brought an application for strike out under a notice of motion and a supporting affidavit.

16 Secondly, the grounds on which the particulars of claim are impugned for being vexatious and prejudicial are simply not pleaded in the application to strike out. As highlighted above, the application to strike out contains one paragraph under the header of "Application to strike out" and simply pleads a conclusion without pleading any substantiation. The court is asked to speculate on the precise basis on which the particulars may be vexatious and prejudicial to the defendant.

17 As mentioned above, the application to strike out was abandoned. What was left was the exception. I decided to "accept" the notice of motion at CL010-1 to be a notice of exception as contemplated in Rule 23(1)(b) and proceed to hear the argument on the exception.

GROUNDS OF EXCEPTION

18 The grounds of exception as pleaded in the Rule 23(1) notice and elucidated on by counsel at the hearing are threefold.

18.1 First, the computation of the quantum of the claim has not been specified so that the defendant could know what the components of the amount claimed are.

18.2 The AOD is unenforceable because it was concluded on 7 May 2025, yet it contains a clause 3.1.1[5] which puts an obligation on the debtor to make a once-off payment in the amount of R3 521,43 on or before 1 May 2025.

18.3 Thirdly, the contract on which the claim is based, the AOD, contains a clause 11.2 which states that no variation of the agreement shall be binding unless recorded in writing and signed by the parties.

First ground of exception

19 On the first argued ground of exception, the submission made was that the particulars of claim are excipiable because the plaintiff claims is for "legal costs" and "monitoring fees" which it has unilaterally included under the defendant's levy account.[6] The complaint is that the mixing up of legal costs and monitoring fees under the levies makes it possible for the defendant to know how the amount claimed was arrived at and to plead to the quantum of the claim.

20 In my view, however, the complaint loses sight of the fact that the plaintiff's claim is based on a liquid document.[7] Secondly, in the AOD, the defendant has undertaken to pay the identified and defined indebted amount on the terms set out therein.[8] There is no dispute that the defendant signed the acknowledgement of debt. Even if that was a point of contention, that can never be decided at the exception stage.

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[5] CL004-17 para 3.1.1 of annexure "A" of the particulars of claim.

[6] Notice in terms of Rule 23(1) CL001-7 para 1.

[7] Erasmus Superior Courts Practice 2nd Ed Vol 2 (Service 26, 2025) p D1 Rule 8-5 and cases mentioned in fn 2.

[8] CL004-15 para 2.2 of annexure "A" of the particulars of claim.

21 Thirdly, the AOD is for an ascertained amount of money of R37,326.76.[9] In paragraph 8.2 of the particulars of claim,[10] the plaintiff specifically pleads that *"the following table evidencing the calculation of the claim amount herein is given"* and sets out the indebted amount as per the acknowledgement of debt (R37,326.76), less payments received (R3,290.74) and allocated towards the indebted amount; and the total amount due (R34,036.02).

22 The complaint that the particulars of claim do not set out the specificity on the computation of the quantum is without merit. Whether the amount due is made up of *"legal fees"* and/or *"monitoring fees"* is a matter that can be taken up in the defence to be pleaded in due course and cannot render the particulars of claim excipiable.

Second ground of exception

23 On the second ground of exception that relates to the unlawfulness of the AOD on the basis that it contains an obligation on the debtor to pay the first instalment on a date that precedes the date of the signing of the agreement, counsel made the submission that this obligation was impossible to perform and therefore rendered the whole acknowledgement of debt unenforceable.

24 I disagree with this submission. Quite apart from the fact that the AOD was not formulated in suspensive terms and that there remained further instalments due from the defendant after 1 May 2025, the defendant can plead the defence of impossibility of performance, if so advised. There is no basis for a court, at the

[9] CL004-15 para 1.3.7 of annexure "A" of the particulars of claim. See Also Erasmus, supra, p D1 Rule 8-6.

[10] CL004-10.

stage of an exception, to declare that the entire AOD is unenforceable because of a singular obligation which does not, on the terms of the AOD, collapse the agreement.

Third ground of exception

25 The third ground of exception was based on a complaint that clause 11.2 of the AOD does not permit a variation of the agreement which is not reduced to a written document and signed by the parties. The argument was that the parties should have signed a written variation of the AOD to provide for the date of the first instalment to be after the date of signature of 7 May 2025. Given that there was no such variation, and that there is a clause that creates a performance of an obligation on a date before the signing of the agreement, the entire AOD was "not lawfully executed", counsel submitted.

26 I struggled to understand this submission. I, however, raised with counsel that, if there is any merit to the point, could that point not possibly be a defence raised in a plea to be filed by the defendant in due course. Counsel accepted that in principle a pleading along those lines remained possible.

27 The fundamental problem with this ground of exception is that it is hard to follow because it suggests that the entire AOD is unenforceable because the date of 1 May 2025 was not amended when the parties signed the agreement on 7 May 2025.

28 But, there may very well be a reason why the parties did not amend clause 3.1.1 of the AOD to provide for another date for the payment of the first instalment. In

the absence of that factual evidence, there is no basis for a court to declare that the agreement was "not lawfully executed" or is unenforceable.

CONCLUSION

29 One of the applicable considerations on exception enquires was expressed in _Trope v South African Reserve Bank_[11] to be that it is of course a basic principle that particulars of claim should be so phrased that a defendant may fairly and reasonably be required to plead thereto. This must be seen against the background of the further requirement that the object of pleadings is to enable each side to come to trial prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form: the cause of action or defence must appear clearly from the factual allegations made.

30 The exception that a pleading is vague and embarrassing is intended to cover the case where, although a cause of action appears in the summons there is some defect or incompleteness in the manner in which it is set out, which results in embarrassment to the defendant.[12]

31 An exception that a pleading is vague and embarrassing strikes at the formulation of the cause of action and not its legal validity.[13]

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[11] _Trope v South African Reserve Bank_ 1992 (3) SA 208 (T) at 210H – 211E

[12] _Wapejo Shipping Company Ltd, Liquidators v Lurie Bros_ 1924 AD 69 at 74; _Scheepers v Krog_ 1925 CPD 9 at 11; _Lockhat v Minister of Interior_ 1960 (3) SA 765 (D) at 777E

[13] _Trope and others v South African Reserve Bank (supra)_ at 269I; _Venter and Others NNO v Barrett; Venter and Others NNO v Wolfsberg Arch Investment 2 (Pty) Ltd_ 2008 (4) SA 639 (C) at 643I – 644A

32 There is nothing contradictory or vague about the plaintiff's particulars of claim or the formulation of the cause of action. The defendant is able to plead to the claim.

33 There is no merit to any of the grounds of exception raised by the defendant.

COSTS

34 The excipient sought costs on the attorney and client scale in terms of clause 13.1 of the AOD if she is successful in the exception. She clearly must fail because none of her exceptions can be upheld.

35 The respondent, plaintiff in the action, asks for costs on the attorney and client scale, also relying on clause 13.1 of the AOD. I am inclined to enforce the terms of the AOD and grant costs in favour of the plaintiff, the respondent in the exception.

36 Clause 13.1 of the AOD states that should the creditor be compelled to enforce the terms of the agreement and/or institute legal proceedings against the debtor, the debtor in such event agrees to pay all legal costs incurred by the creditor in respect of such legal proceedings and such costs shall be paid on the scale as between attorney and own client and shall include sheriff's charges, advocates fees, telephone calls, letters, consultations, time spent considering agreements and merits, perusal and consideration of ancillary documents, meetings, collection commission, the preparation of this agreement, valuation costs and the like.

37 The clause provides for a wide range of costs. For this exception, the plaintiff shall be granted costs on the attorney and own client scale, including advocates fees.

38 In the circumstances, the following order is made:

38.1 The defendant's exception is dismissed.

38.2 The defendant is ordered to pay the plaintiff's costs of the exception and the application to strike out on the attorney and own client scale, including the costs of counsel where so employed.

[redacted]

BL MANENTSA
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearance

For the Excipient/Defendant:	Mr Mekwa (Attorney)
Instructed by:	Nkhumeleni Attorneys Inc
	info@nkhumeleniattornys.com
For the Respondent/Plaintiff:	Mr Budenhorst
Instructed by:	Heerschop Pienaar Attorneys
	admin2@shplaw.co.za