



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Not Reportable**

**Case No: 15671/2022**

In the matter between:

**VUMATEL (PTY) LTD**

**Excipient**

and

**CITY OF CAPE TOWN**

**Respondent**

In re:

**SHANTAL THERESA COZETT**

**Plaintiff**

and

**CITY OF CAPE TOWN**

**First Defendant**

**VUMA IT (PTY) LTD**

**Second Defendant**

**KWCE TELECOMS CC**

**Third Defendant**

**LAST MILE TELECOMMUNICATION (PTY) LTD**

**Fourth Defendant**

and

**VUMATEL (PTY) LTD**

**First Third Party**

**KWCE TELECOMS CC**

**Second Third Party**

**LAST MILE TELECOMMUNICATION (PTY) LTD**

**Third Third Party**

**Neutral citation:** *Vumatel (Pty) Ltd v City of Cape Town* Case No 15671/2022  
[2025] ZAWCHC (29-07-2026)

**Coram** : **MAPOMA, AJ**

**Heard** : 23 April 2026

**Judgment** : 30 July 2026

**Summary** : ***Exception** – third party taking exception on the defendant’s particulars of claim as vague and embarrassing and disclose no cause of action- whether the defendant’s pleadings are contradictory - whether excipient is embarrassed from pleading and prejudiced thereby – interpretation of contract - when extrinsic evidence can be invoked.*

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## ORDER

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1. The exception in respect of the first defendant’s particulars of claim against the third parties is allowed.
2. Leave is granted to the first defendant to amend its particulars of claim against the third parties.
3. The first defendant is ordered to pay costs of the first third-party, such cost to include counsel’s costs on High Court scale B

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## JUDGMENT

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## **MAPOMA, AJ**

[1] This is an exception taken by the first third-party, Vumatel (Pty) Ltd (“Vumatel”, or “the excipient”) against the particulars of claim of City of Cape Town (“the City”) who is the first defendant in the main action. The exception is based on two grounds, *firstly* that same is vague and embarrassing in the context of the provisions of rule 23(1) of the Uniform Rules of Court, and *secondly* that it fails to disclose a valid course of action.

[2] The exception is resisted by the City, primarily on the basis that the cause of complaint is misconceived in that the excipient’s contention is founded on a question of fact, and that as such, the correctness of the contention falls to be determined by evidence at trial. In short, the City contends that this is not an issue to be resolved by exception.

### **The Facts**

[3] This matter originates from the main civil action that was instituted on 19 September 2022 by Ms Cozett (“the Plaintiff”) against the City and other defendants, claiming damages for bodily injuries she allegedly sustained as a result of tripping on a pavement at Mitchells Plain. In the main action the City is the first defendant.

[4] The incident that triggered the cause of action allegedly occurred during the construction project that was implemented by the third parties, the City’s service providers who were conducting fibre installation for municipal telecommunications services.

[5] Upon receipt of summons, the City in turn instituted the third-party proceedings in terms of Rule 13 of the Uniform Rules of Court, seeking to be indemnified by the third parties, including Vumatel. The City's third-party indemnification claim is premised on the wayleave permit that the City issued to the third parties on 24 June 2002, before the execution of the project. The City claims that in terms of the wayleave permit, the third parties agreed to indemnify it against any claims arising from the works that were conducted by the third parties.

[6] According to the wayleave permit, which is attached to the City's plea, the construction in question is reflected as the "Installation of VUMA ducts". The permit identifies VUMA as the service owner and KWCE Telecoms cc as the appointed engineers. In the relevant excerpts of Clause 4 of the permit, on which the City relies in seeking indemnification by the third parties, the general conditions of the permit state as follows"

"4. General

- a) .....
- b) .....
- c) On acceptance of this, the Permit Holder or its workers indemnifies Council for any third-party claim which may result directly or indirectly from the construction related activities of this works.
- d) The Permit Holder / Service Owner will be responsible for the maintenance of his infrastructure in the public road reserve and any third-party claim that may result from the presence of such infrastructure."

[7] In the plaintiff's particulars of claim, where the City is cited as the first defendant, the second defendant is Vuma IT (Pty) Ltd ("Vuma IT"). The third and fourth defendants, who are not in contention for the purposes of these proceedings, are KWCE Telecoms cc and Last Mile Telecommunication (Pty) Ltd respectively. Notably, in its third-party claim, the City cited Vumatel

instead of Vuma IT as the first third party. Nowhere is Vuma IT cited as the third party.

[8] Aggrieved by the third-party notice seeking indemnification against it, Vumatel took exception in terms of Rule 23(1) against the City's particulars of claim on two grounds.

### **Exception**

[9] The first ground of exception by Vumatel is that the City's third party particulars of claim are vague and embarrassing, in that in its plea to the plaintiff's particular claim, the City admitted that the second defendant, that is Vuma IT (Pty) Ltd, with the third and fourth defendants were the parties that were conducting the installation work in terms of the wayleave permit that was granted by the City at the project in question, yet in its third-party particulars of claim, the City claimed that Vumatel, (and not Vuma IT), and the third and fourth defendants in the main action, were the parties that were conducting the installation in terms of the City's wayleave permit, whereas Vumatel is not listed in the wayleave permit, but Vuma IT is.

[10] On this basis, Vumatel contends that the City's allegations as pleaded in its particulars of claim is contradictory to what is contained in the wayleave permit that the City relies on. Vumatel contends that it is vague and embarrassing for the City to plead that Vumatel conducted the fibre installation work in question in terms of the permit, when Vumatel is not listed as a party who conducted the installation work. In the wayleave permit, the listed service owner is VUMA.

[11] The second ground of exception is that the City's particulars of claim disclose no cause of action, in that the contract of indemnification in the form of

wayleave permit, upon which the City relies is remised on clause 4(c) and 4(d) of the permit conditions, *ex facie* excludes Vumatel as a party to the contractual indemnification. The permit only refers to VUMA and KWCE Telecoms cc as service owner and appointed engineer respectively. As such, so goes the contention, the pleadings lack the necessary averments to sustain the action against Vumatel.

### **City's contentions**

[12] In resisting the exception, the City contends that its claim against Vumatel rests on the allegation that Vumatel is the entity referred to in the wayleave approval permit as VUMA, the service owner and as such, is bound by the indemnifications. This contention is buttressed with the submission that the question of whether VUMA mentioned in the wayleave permit refers to Vumatel is a question of fact that requires evidence and cannot be determined on exception.

[13] The City's further contention is that the pleading is not contradictory in that the City's factual allegation is that VUMA is Vumatel, It is argued that the dispute of factual allegations should be traversed in the plea and is not a matter to be dealt with by exception.

### **Issues**

[14] In light of the above two issues for determination by the Court are:

- a) whether the City's particulars of claim are vague and embarrassing on the contended basis, so much so that the defendant is prejudiced from pleading; and,
- b) whether the pleadings as they are, disclose no cause of action.

[15] As things are, it seems to me that both grounds of exception turn on one and the same issue by the excipient, namely, that Vumatel is not VUMA that is in the permit. Thus, if the answer to any of the above two grounds is in the affirmative, it follows that the exception should succeed.

### **Applicable legal principles**

[16] The object of an exception is to dispose of the case or portion thereof in an expeditious manner or to protect a party against an embarrassment which is so serious as to merit costs even of an exception.<sup>1</sup>

[17] Rule 23(1) of the Uniform Rules of Court provides as follows:

**“23 Exceptions and applications to strike out**

- (1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception.....” (Own emphasis)

[18] In *Luke M Tembani and Others v President of the Republic of South Africa and Another*,<sup>2</sup> the Supreme Court of Appeal set out with the relevant legal authorities the general principles applicable to the adjudication of exceptions. These are summarized below:

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<sup>1</sup>Herald Gie v & Broadhead Inc v Harris NO 2025(2) SA 144 SCA at paragraph 3

<sup>2</sup> [2022] ZASCA 70 (20 May 2022 at paragraph 14

- a) Exception provides a useful mechanism to weed out cases without legal merit. While it is so, it is nonetheless necessary that they be dealt with sensibly.<sup>3</sup>
- b) It is where pleadings are so vague that it is impossible to determine the nature of the claim, or where pleadings are bad in law that their contents do not support a discernible and legally recognised cause of action, that exception is competent.<sup>4</sup>
- c) The onus rests on an excipient, who must establish that on every interpretation that can reasonably be attached to it, the pleading is excipiable.<sup>5</sup>
- d) The test for exception is whether on all possible readings of the fact no cause of action may be made out; it being for the excipient to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put upon the facts.<sup>6</sup>

### **Are the pleadings vague and embarrassing?**

[19] The basic requirement for the particulars of claim is that the defendant must have a clear exposition of the plaintiff's case to enable it to appreciate the case it has to meet and file adequate response in its plea.<sup>7</sup>

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<sup>3</sup>Telematrix (Pty) Ltd v Advertising Standards Authority SA [ 2005] ZASCA 73; 2006 (1) SA 461 (SCA) para 3).

<sup>4</sup> Cilliers et al Hebshtein and Van Wisen the Practice of the High Courts of South Africa 5ed Vol 1 at 631; Jowel v Bramwell-Jones and Others 1998 (1) SA 386 (W) at 899E-F)

<sup>5</sup> Ocean Echo Properties 327 CC and Another v Old Mutual Life Insurance Company (South Africa) Ltd [2018] ZASCA 9; 2018 (3) SA 405 (SCA) para 9.

<sup>6</sup> Trustees for the Time Being of the Children's Resources Centre Trust and Others v Pioneer Food (Pty) Ltd and Others [2012] ZASCA 182; 2013 (2) SA 213 (SCA); 2013 (3) BCLR 279 (SCA); [2013] 1 All SA 648 (SCA) para 36 ( Children's Resource Centre Trust)

<sup>7</sup> Venter and Others NNO v Barritt; Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd 2008 (4) SA 639 (C) at paragraph 15

[20] The summons is vague and embarrassing if there is inconsistency amounting to contradiction between the summons and the documents relied upon as the basis of the claim.<sup>8</sup> In its particulars of claim, the City claims indemnification against Vumatel, placing reliance on the wayleave permit, yet the same document exculpates Vumatel, because the latter is not listed as one of the service providers that performed the works.

[21] In this case, the question turns on whether the City is contradicting itself when it states in its plea to the plaintiff's case, which is incorporated in the third-party notice to Vumatel, that Vuma IT was the service owner who was conducting the installation, yet on its third-party particulars of claim it states that Vumatel was the party that provided the same service.

[22] The City contends that there is no contradiction, in that the City's pleaded case is that Vumatel was conducting fibre installation work at Beacon Valley in terms of the wayleave permit. In my view, on the pleadings as they are, this contention cannot be sustained. The City pleaded that the second defendant (Vuma IT) was the party who was conducting the fibre installation, and in so pleading, it relied on the wayleave permit that lists Vuma IT as the service owner. Nowhere does the name of Vumatel come into play.

[23] It is hardly disputable that Vuma IT (Pty) Ltd and Vumatel (Pty) Ltd are objectively speaking, two distinct incorporated entities or persons. In my view, if in its admission in one set of pleadings the City avers that Vuma IT is the party who performed the service that attracts indemnity, yet in the third party the City claims against a different party in the person of Vumatel relying on the

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<sup>8</sup> Computer Users Council of South Africa Property Holdings CC v City of Johannesburg and Others (3603/2013) 2023 ZAGP JHC824 (20 July 2023)

same cause of action, there is inconsistency amounting to contradiction. These contradictions are irreconcilable.

[24] Further, the fact that it has not been pleaded that it is Vuma IT, alternatively Vumatel or vice versa, who rendered the service fortifies the contradiction and has an effect of destroying the cause of action against one party if the other is identified as the responsible party. On the pleadings as they are, it is inconceivable that both parties rendered the same service. In circumstance, my view is that the inconsistency and contradiction referred to above renders City's pleadings vague and embarrassing.

[25] The above is not enough for the exception to succeed. An exception that is grounded on the averment that summons is vague and embarrassing requires a two-fold consideration. The first enquiry is whether the pleadings are vague, and the second is whether the vagueness leads to embarrassment that causes prejudice to the other party.<sup>9</sup> Prejudice arises where the excipient cannot plead or properly prepare for trial.<sup>10</sup>

[26] In this case, the excipient contends that it is prejudiced in that it cannot plead on the face of contradiction that leaves it with a dilemma to guess which meaning to ascribe to the two contradictions and which to remove. To be practical in this case, one can imagine that the question is which whether to plead assuming that it is VUMA IT who indemnified the City or it is Vumatel who appears nowhere in the list of the service providers that the City admitted were installing the duct.

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<sup>9</sup> Shoprite Checkers (Pty) Ltd v Premier of the Western Cape (unreported WCC Case No 17351/2022 dated 1 December 2023 at paragraphs [8] and [9];

<sup>10</sup> Leviton v Newhaven Holiday Enterprise CC 1991(2) SA 297 (C) 298I-J

[27] It has been argued on behalf of the City that the entirety of the exception turns on a single narrow factual contention advanced by Vumatel that VUMA in the permit does not refer to and cannot be identified as Vumatel. That being the case, so goes the argument, any uncertainty would be cleared by evidence at trial and therefore this is not an issue that should be dealt with by exception.

[28] It is indeed correct that courts are reluctant decide exceptions in respect of fact bound issues.<sup>11</sup> However, in my view, the exception is not based on a fact bound issue but rather based on who correct the party to sue. This is discernible from the pleading themselves. One cannot argue that one will clear such contradiction by evidence on trial. Importantly, by the time the matter goes on trial, the excipient must have pleaded to clear and uncontradictory pleadings.

[29] In light of the above, I am of the view that the City's particulars of claim in their current form, are vague and embarrassing, so much so that Vumatel is prejudiced, in that it is unable to plead as the City's particulars of claim are founded on contradictory summons vis-à-vis the wayleave permit that the claim is based on.

[30] The second ground of exception that the particulars of claim disclose no cause action against Vumatel is based on the same issue that has been dealt with above. It follows that if the defect is cured this ground if exception will be moot. I therefore find no reason to deal with it. As I have found that the pleadings are excipiable, it follows that the exception succeeds.

## **Costs**

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<sup>11</sup> Living Hands (Pty) Ltd v Ditz 2013 (2) SA 368 (GSJ) at 374G

[31] It is an established principle that costs follow the results. I find no reason to deviate from this principle in this case. The first third-party has succeeded in its exception and is therefore entitled to an award of costs on a party and party scale.

## **Order**

[32] In the result, the following order is made:

1. The exception in respect of the first defendant's particulars of claim against the third parties is allowed.
2. Leave is granted to the first defendant to amend its particulars of claim against the third parties.
3. The first defendant is ordered to pay costs of the first third-party, such cost to include counsel's costs on High Court scale B

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**ZL MAPOMA**  
**ACTING JUDGE OF THE HIGH COURT**

## **Appearances**

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|-----------------------------|---|------------------------------------|
| Counsel for the Plaintiff   | : | Adv MA Creig                       |
| Instructed by               | : | Sohn and Wood Attorneys, Cape Town |
|                             |   |                                    |
| Counsel for the Respondents | : | Adv HP Van Nieuwenhuizen           |
| Instructed by               | : | Andrew de Vos Attorneys, Cape Town |