



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Reportable/ not Reportable

Case No:4733/2024

In the matter between:

DR LOFEMBE EKOFO

EXCIPIENT/ FIRST DEFENDANT

DR LESEGO ISMAEL MOKAED

SECOND DEFENDANT

AND

B[...] B[...] A[...]

RESPONDENT/PLAINTIFF

Coram: MNYOVU AJ

Date heard: 28 May 2026

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail, and released to SAFLII. The date that the judgment is deemed to be handed down is **4 September 2026 at 14h00**.

ORDER

1. The exception is dismissed with costs on scale B.
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JUDGMENT

MNYOVU AJ

Introduction

[1] The excipient is the first defendant a duly qualified, registered medical practitioner as cited in his capacity as doctor in the action instituted in the above-mentioned case number. The first defendant except to the plaintiff's amended particulars of claim in that they are vague and embarrassing, alternatively, lacking averments that are necessary to sustain a valid cause of action. The second defendant is a duly qualified registered medical practitioner and not an excipient, is cited as party in the main action, and the plaintiff is cited as respondent in the exception.

[2] To sustain a cause of action, a plaintiff's amended particulars of claim must contain the necessary *facta probanda*, which would be necessary for the plaintiff to prove if traversed, in order to support the plaintiff's right to judgement.

[3] In *casu*, the plaintiff's cause of action is rooted on 24 May 2023 and 08 June 2023 by first defendant accepting the plaintiff as a patient for the purposes of providing her with obstetric and gynaecological medical treatment and care following her pregnancy, and after consultations and ultra sounds performed by first defendant, he referred her to the second defendant to provide her with a general practitioner's medical treatment and care relating to the termination of her pregnancy which resulted to severe complications.¹

[4] As a result of the first and second defendants accepting the plaintiff as a patient, a professional relationship of doctor and patient arose and was in existence, that is not deniable.

Amendment particulars of claim

[5] Paragraph 3, 4, 6 and 7 of excepted amended particulars of claim dealt with the actions of the first defendant, where he accepted the plaintiff as patient, at the respective practice, consulted with the plaintiff verbally, and the plaintiff agreed to consult with the second respondent based on his advise, which means he provided a duty of care to the patient, as expected as a medical practitioner, in cases, where there is a breach of such legal duty of care, the plaintiff with concrete evidence, the plaintiff has full legal right to sue medical doctor on medical negligence where there is an existing engagement. The defendants can raise their defences on legal grounds.

[6] Paragraph 19 deals with the pain, discomfort and suffering experienced by the plaintiff because of removal of her fallopian tube that burst due to medical negligence by the first and second defendants. Paragraph 20 deals with the assessment of the damages, the quantum.

¹ *McKenzie vFarmers'Co-Operative Meat Industries Ltd-1922 AD 16 at 23.*

Applicable Law

[7] Rule 23: Exceptions

(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, an opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may set it down for hearing. . .

(2)

(3) whenever an exception is taken to any pleading the grounds upon which the exception is founded shall be clearly and concisely stated.

[8] The court shall not grant the same unless it is satisfied that the excipient will be prejudiced in the conduct of his defence if exception be not granted.

[9] The general applicable principles are laid down in *Merb (Pty) Ltd v Matthews and Others* (2020/15069) in paragraph 8, under (a) is stated as follows: in considering the exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by the plaintiff to assess whether they disclose a cause of action.

Grounds for exception

[10] The ground of exception raised is that the amendment particulars of claim do not comply with Rules 18 (4), (6) and (10) of the Uniform Court Rules which provide as follows:

Rule 18(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 pleadings or the case may be, with party to reply thereto.

Rule 18(6) - a party who in his pleadings relies upon a contract shall state whether the contract is written or oral, and when, where, and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.

Rule 18(10) -a plaintiff suing for damages shall set them out, in such a manner as will enable the defendant reasonably to assess the quantum thereof. . .

[11] The excipient's first ground raised is that the plaintiff, at paragraph 6 in her particulars of claims pleads a special relationship that existed "at all material times", this statement is prejudicially vague as it fails to state unequivocally what governs the relationship, the terms, conditions were entered into, and the consequences thereof, the plaintiff does not state how accepting a consultation amounted to an admission, that resulted in her ectopic pregnancy consultation, and there is an absent contractual relationship between the plaintiff and first defendant, in essence the cause of action does not arise, the first defendant would be embarrassed where he is required to plead, these particulars are not compliant with Rule 18(4) and Rule 18(6).

[12] There is no merit in this first ground of exception, the averments set out by the plaintiff contain *facta probanda*, primary and material facts which would be necessary for the plaintiff to prove her case, it cannot be deducted that the plaintiff can rely on a verbal agreement whereas there were physical consultations between the plaintiff and the first defendant on 23 May and 08 June 2023, that led first defendant to refer the plaintiff to the second defendant to attend the plaintiff, in deed there was a special professional relationship that

existed between the first defendant and the plaintiff, doctor and patient relationship, that cannot be deniable, the cause of action is undoubtedly vested from the first defendant by virtue of the consultations, on the professional doctor and patient relationship, the excipient can plead to that, either admit or deny if he never consulted with the plaintiff, I find nothing embarrassing in such averment unless the first respondent is not a qualified, registered medical practitioner to perform his legal medical duties.

[13] The excipient 'second ground of exception into plaintiff's amendment particulars of claim, at paragraph 7 in which the plaintiff alleges legal duty that arose between her and the first defendant, does not have merit as I have alluded in paragraph 12 of this judgement, I find this allegation as repeat that is not sustainable but ambiguous to this application.

[14] The excipient third ground of exception into plaintiff's particulars of claim, at paragraph 19.2, 19.3, 19.4 and 19.5 in which the plaintiff alleges to be suffering from pain, suffering from discomfort, and that she will continue to experience pain, suffering and discomfort because of the complications are material facts that the excipient can fully be able to plead on, the plaintiff can provide the necessary evidence in her discovery in terms of Rule 35, medical experts, for purposes of trial to sustain those averments, they will make out a case, as a result there is no merit in this ground of exception.

[15] The excipient fourth ground of exception into plaintiff's particulars of claim, at paragraph 20.1 and 20.2 providing general damages in the amount of R1 924 000.00 and special damages in the amount of R77 329.33 do not have merit as I have alluded in paragraph 14 of this judgement, he plaintiff can provide the necessary evidence in her discovery in terms of Rule 35, an expert, actuary report, to sustain those averments, they will make out a case, I do not

find any irregular steps in terms of Rule 30(2) (b) or Rule 23 (1) in the plaintiff's averments in particulars of claim, I am of the view that the plaintiff did established the cause of action on primary and material facts that can be pleaded by the first and the second defendant.

Analysis

[16] It is common cause that, the first defendant as medical doctor consulted with the plaintiff as patient on 23 May 2023 and 08 June 2023, on professional level, she received medical advice, referrals to be assessed by another medical practitioner, the second defendant, which automatically an doctor and a patient relationship was established.

[17] By virtue of the above, the first and second defendant had a legal medical duty of care towards the plaintiff, I am of the view that the relationship between the first defendant and the plaintiff was the evidence given to support *facta probanda*, the first defendant in his exception taking an advantage of a technical flaw to dispose the case in an expeditious matter to protect himself from litigation, and leave the whole litigation to the second defendant, I am of the view that this over-technical approach destroys the usefulness of the exception procedure without legal merit, the first defendant avoiding to either admit or deny to the allegations.

[18] The *facta probanda* are all set out in the amended particulars of claim, the cause of action is undoubtedly vested in the amended particulars of claim . . . paragraphs 3, 4, 6 and 7 deal with actions of the first defendant, excipient can plead to these allegations, they are not vague or embarrassing, the pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained, the second defendant as joined in the pleadings in the main action must stand the trial with the first defendant on the same pleadings not separately.

[19] The excipient's complaints that plaintiff's particulars of claim constituted an irregular step and are exceptible pursuant to the provisions of Rule 23(1), 30 (2) (b), read together with rule 18 of the Uniform court rules are misplaced, there are *facta probanda* at most, the amended particulars of claim as it stands provide for the leading of evidence, which evidence, if led can disclose a cause of action.²

Conclusion

[20] Having considered the evidence before me, the excipient have not been able to show that the amended particulars of claim are exceptible in every interpretation that can reasonably be attached to it, I could not find any serious prejudice to be suffered by the first defendant in disclosing his defence, let alone the embarrassment, the excipient is the first defendant in the main application to plead his case without any embarrassment, the exception stands to be dismissed with costs.

Order

[21] In the result, I make the following order:

21.1 The exception is dismissed with costs on scale B.

B. F. MNYOVU
ACTING JUDGE OF THE HIGH THE COURT
NORTH WEST HIGH COURT, MAHIKENG

² See *Mckelvey v Cohen N.O.* 1980 (4) SA 525 (2) 526 (D).

Appearances:

For the Excipient/1st defendant :

Adv. C J Zwegelaar

Instructed by:

Bartell Mckellar Attorneys

C/o Nienaber & Wissing Attorneys

Mahikeng

For the Respondent/ Plaintiff:

Adv. JA Du Plessis

Instructed by:

Lekhu Pilson Attorneys

C/o Tlou Attorneys

Mahikeng