



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2025-201089

DELETE WHICHEVER IS NOT APPLICABLE
(1)REPORTABLE: NO
(2)OF INTEREST TO OTHERS JUDGES: NO
(3)REVISED: YES

In the matter between:

TIYANI VAVANUNA MBALATI N.O.

First Plaintiff

BANGISITA BERNARD MKHONDO N.O.

Second Plaintiff

GLORIA GWEBU N.O.

Third Plaintiff

and

MANDI OIL (PTY) LTD

Defendant

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 26 August 2026.*

JUDGMENT

SUMMARY:

Exception – application for amendment – Rule 30

ERASMUS, AJ:

INTRODUCTION:

- [1] Before me is an exception, as well as an application for leave to amend. The Particulars of Claim involve a lease agreement for premises with a filling station. Apparently a suspensive condition was not fulfilled, and the lease did not come to fruition. Yet, the Defendant remained in occupation and had to be evicted. Plaintiffs therefore claim damages under three separate heads.
- [2] Defendant first filed a notice in terms of Rule 23(1) on or about 9 February 2026. Plaintiffs thereafter served a notice of amendment on or about 11 March 2026. Defendant filed an exception the next day. It also filed an objection to the proposed amendment on 24 March 2026.
- [3] It was argued by Defendant's counsel at the outset that the opposed amendment application was not properly before me, because Defendant had filed a Notice in terms of Rule 30, objecting to the manner in which the amendment application had been pursued. The Rule 30-application is opposed and first has to be dealt with before I can deal with the amendment – according to Defendant. In light of my view on the exception, as well as the proposed amendment, I regard this “point *in limine*” as academic – for reasons set out below.

GROUND OF EXCEPTION:

FIRST GROUND:

- [4] It pertains to paragraph 9 of the Particulars of Claim or “*Claim A*” as the parties referred to it in argument. Paragraph 9 deals with a claim for

“damages equal to the unpaid rent the defendant would have paid had the suspensive condition been fulfilled in the (total) sum of R2,169 782.04 for the period 2019 to 2025.”

- [5] The essence of Defendant’s complaint is that the specific months for unpaid rental, the amount per month, the due date for payment of the rental, date of the alleged breach and whether the sums are inclusive of VAT are not stated. It also complains that it is unable to formulate defences such as prescription.
- [6] Plaintiff’s counsel argued *inter alia* that any “embarrassment” can be cured by a Request for Further Particulars or a Rule 35(3)-notice; that Defendant can simply deny the allegations or can amend its Plea later once it is provided with more detail. Adv Kruger SC also referred to *Harms: Amler’s Pleadings (10th Edition)* at p.310 where it is stated that: “*The proper way of raising of prescription in action proceedings is by way of a plea or special plea and not by way of exception*”.¹
- [7] In my view, this ground of exception is well taken for the following reasons:
- 7.1 Rule 18(4) stipulates that “*every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim ... **with sufficient particularity to enable the opposite party to reply thereto***” (my emphasis). Rule 18(10) furthermore stipulates that “*A plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof ...*”
- 7.2 By simply pleading a total sum of unpaid rental for a specific year, Defendant would not know for which specific months it allegedly did not pay and in which amounts. I note in this regard that the amounts for each year vary considerably. It is therefore

¹ *Jugwanth v Mobile Telephone Networks (Pty) Ltd* [2021] 4 All SA 346 (SCA).

conceivable that the "*unpaid*" months do not form an uninterrupted period of non-payment from 2019 to September 2025.

7.3 I take note of the authority on prescription. In my view, the authority does not assist Plaintiff in *casu*. In the decision of Jugwanth, the defendant raised the exception that the plaintiff's claims were not enforceable because they had become prescribed *ex facie* the Particulars of Claim. The exception *in casu* is not expressed in those terms. It simply states that "*The Defendant is unable to determine whether the claims may be prescribed*". Such objection is tied to the complaint of insufficient detail pertaining to months, amounts, etc. The latter forms the gravamen of the objection and not the issue of prescription by itself.

7.4 It also does not assist Plaintiff to argue that a request for further particulars can cure the alleged embarrassment. The simple reason for this is that further particulars can only be sought for purposes of trial after the close of pleadings. It therefore cannot assist a defendant when faced with insufficient detail at the pleading stage. By the same token, it is not an argument that a defendant can simply baldly deny the allegation. Had that been an answer, it would open the door to plaintiffs to fail to plead their cases with insufficient particularity to enable a defendant to plead meaningfully thereto. I am well aware that many defendants abuse the exception procedure simply to gain time. However, that cannot excuse a plaintiff from pleading with sufficient particularity.

[8] In the premises, I find that paragraph 9 of the particulars is vague and embarrassing.

SECOND GROUND (PARAGRAPH 10 TO 12 OF THE PARTICULARS OF CLAIM):

[9] The claim pertains to income earned by Defendant from banks which installed automatic teller machines at the premises.

[10] Defendant's complaint is that Plaintiff fails to plead facts pertaining to the terms of the alleged agreements it had concluded with the banks; why such agreements are unlawful; and why the Plaintiff had to consent and Defendant's conduct amounted to a breach.

[11] In my view this ground of exception is not well taken for the following reasons:

11.1 The ground of exception was not raised in a clear manner. It states that *"the Plaintiffs fail to plead material facts ..."* and that the relevant paragraphs amount to *"mere conclusions without supporting material facts"*. It then concludes that the Defendant *"is prejudiced and unable to plead thereto"*. Although it is not explicitly averred, I can only assume that the true complaint is that paragraphs 10 to 12 (Claim B) miss allegations to sustain a cause of action and not that it is vague and embarrassing. I have to make an assumption because Defendant failed to state whether it relies on *"lacking averments to sustain a cause of action"* or *"vague and embarrassing"*. An excipient cannot simply rely on prejudice in a vague manner. It must identify the category of Rule 23 upon which it relies.

11.2 In my view the legal basis for averring that the alleged agreements with the banks were unlawful, is sufficiently covered by paragraph 4(ii) of the particulars – which is derived from clause 4.1 of the lease agreement - an annexure to the particulars.

11.3 Defendant might have been successful had it raised similar complaints as to Claim A, in that paragraph 12 of the particulars simply states globular amounts in respect of each bank without laying a basis for computing those amounts. I appreciate that Plaintiff states in paragraph 10 that the dates of conclusion of the relevant agreements between Defendant and the banks are unknown. But, Plaintiff must have had some basis for computing the amounts in paragraph 12 - as the claim pertaining to Standard Bank appears to confirm "*Up to July 2025*".

11.4 However, such was not Defendant's complaint. Paragraph 8 of the Exception is insufficient to found such ground. "*How*" the damages were suffered is sufficiently evident from paragraphs 10 and 11 of the Particulars of Claim: Defendant derived income from third parties to the detriment of the trust. The unlawfulness clearly stems from the provisions of the lease.

[12] In the premises, I find that the second ground of the exception must fail.

THIRD GROUND:

[13] Ground 3 pertains to paragraph 13 of the Particulars of Claim. The complaint is that no breakdown is provided for the sum of R664 057.98 which Plaintiff allegedly failed to pay to the City of Tshwane. In my view, this ground should be sustained. Defendant is entitled to more particularity, such as the relevant constituent amounts, the period during which those amounts were billed and on which basis those levies were raised.

FOURTH GROUND:

[14] The complaint is that prayer 1 of the particulars simply states a total sum and does not separate the amounts claimed under Claims A, B and C. The prayer is alleged to be vague and embarrassing.

- [15] Although it might have been more elegant to formulate separate prayers for each claim, this ground of exception has no merit. It is evident that the sum in the prayer is the grand total of Claims A to C. No embarrassment whatsoever is caused to Defendant. This ground borders on the frivolous.

THE PROPOSED AMENDMENT:

- [16] The Notice of Amendment in essence seeks to:

- 16.1 amend paragraph 9 of the particulars by amending the total damages in *lieu* of unpaid rental and by altering its constituent amounts. It therefore does not address the complaint raised in Ground 1 of the Exception;
- 16.2 amend paragraph 13 of the particulars by adding the phrase "*despite the contractual obligation to do so*". It also does not address the complaint that no breakdown is provided for the total sum claimed in respect of levies paid to the local authority;
- 16.3 it alters prayer 1 to a slightly lower amount.

OBJECTION TO THE AMENDMENT:

- [17] I am not going to set out every detail of the objection. In essence, it repeats the grounds of the Exception and in some instances expands on them.
- [18] Apart from the objection to the amendment of prayer 1, I am of the view that the objection to the amendment of paragraphs 9 and 13 of the particulars is well taken. This is because the amendment does not remove the vagueness of those paragraphs.

- [19] Save for the amendment to prayer 1, the amendment should therefore be refused.

THE RULE 30- APPLICATION:

- [20] Because Defendant raised it as an issue *in limine* – allegedly preventing me from hearing the amendment application, I deal with the Rule 30(2)(b)-notice. In essence the complaint is that Plaintiffs' application for the amendment should have been brought by means of a "*substantive interlocutory application on notice of motion supported by affidavit*". Furthermore, that the amendment seeks to expand upon the Plaintiffs' damages claim; Plaintiffs allegedly had to explain why these allegations had not been made originally; and Defendant was not granted an opportunity to respond to the proposed amendment. In summary, that the Defendant is prejudiced.

- [21] In my view the Rule 30-notice is baseless primarily in view of the following:

- 21.1 An application for an amendment is generally not supported by an affidavit except in cases where an admission is to be withdrawn (which is not the case here).
- 21.2 Defendant had every opportunity to object to the amendment in a Notice of Objection as it duly did.²

- [22] Defendant would be well advised to have regard to the primary consideration arising in a Rule 30-application, namely prejudice. It is evident that here Defendant suffered no prejudice: it knew exactly what the amendment entails and had already objected to it. There was nothing wrong with the procedure followed by Plaintiff in setting down the opposed amendment.

² See the Notice of Objection at CaseLines 034.6 to 034.12.

[23] In the premises, the service of the Rule 30-notice was an abuse of the process. It would have been an utter waste of the court's valuable time to adjudicate an opposed application purely on the Rule 30-objection.

[24] In view of the fact that the bulk of the proposed amendment is refused, the Rule 30-notice / application has become academic. It is thus immaterial that answering and replying papers have not been exchanged therein.

COSTS:

[25] In my view, this is an appropriate case to exercise the court's discretion that each party pays its own costs, in view of the following factors:

25.1 Two of the four grounds of exception were successful and two were not.

25.2 The application for the amendment was procedurally in order. The fact that the amendment is largely refused flows from the grounds of exception and did not take up additional court time.

25.3 Defendant's "*point in limine*" was not *bona fide*. The Rule 30-application was clearly a ploy to delay the action.

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

(1) The first and third grounds of the Exception (dated 12 March 2026) pertaining to paragraphs 9 and 13 of the Particulars of Claim respectively, are sustained.

(2) Plaintiffs are granted leave to amend their Particulars of Claim within 15 days of date of this order.

- (3) Plaintiffs' amendment as contained in its Notice of Amendment dated 11 March 2026 is refused, save for the amendment of prayer 1 of the Particulars of Claim.
- (4) Each party is to pay its own costs incurred in the Exception and the Application for Amendment.


F J ERASMUS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Electronically delivered and signed.

APPEARANCES:

For Plaintiff: Adv T Kruger SC

Instructed by: Jordaan & Smit Inc

For Defendant: Adv T C Kwindu

Instructed by: Magolego Attorneys