

SOUTH AFRICA / JUDGMENT

Al Mayya International Limited (BVI) v DDP Valuers (Pty) Ltd (A166/2022) [2024] ZAGPPHC 757 (31 July 2024) [2024] ZAGPPHC 757

COURT

North Gauteng High Court, Pretoria

BEFORE

Collis, Ranchod, Ntlama-Makhanya

CASE / FILE NUMBER

A166/2022

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IN

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Case

Number: A166/2022

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHERS JUDGES: NO

(3)

REVISED: NO

DATE

31 JULY 2024

SIGNATURE

In

the matter between:

AL MAYYA INTERNATIONAL
LIMITED
(BVI)

APPELLANT/PLAINTIFF

and

DDP

VALUERS (PTY) LTD

RESPONDENT/DEFENDANT

This judgment is issued

by the Judge whose name is reflected herein and is submitted
electronically to the parties/their legal representatives
by email.

The judgment is further uploaded to the electronic file of this
matter on CaseLines by the Judge or her Secretary. The
date of this

judgment is deemed to be 31 JULY 2024.

JUDGMENT

COLLIS J:

INTRODUCTION

[1] This is an appeal against the judgment and order delivered on 21 September 2021 by Seneke AJ, sitting as the court aquo. The respondent had raised an exception to the appellant's particulars of claim. The respondent's notice of exception

dated 23 October 2020 was upheld and the appellant was ordered to pay the costs of the exception.

[1]

[2] Leave to appeal was refused by the court a quo, and on 26 May 2022, the Supreme Court of Appeal granted the appellant leave to appeal to the Full Court against the whole of the judgment and order (inclusive of costs).

BACKGROUND

[3] On 25 August 2020 the appellant instituted an action claiming delictual damages from the respondent in the sum of R100 000 000, together with interest and costs.

[4] Upon receipt of the summons the respondent filed a notice of exception to the particulars of claim on the basis that they fail to disclose a valid cause of action and/or that they are vague and embarrassing in a number of respects.[2]

[5] The appellant failed to remedy the causes of complaint and the respondent accordingly instituted exception proceedings which is the subject of this appeal.[3]

[6] The nub of the appellants claim as per the pleaded case can be formulated as follows:

6.1 On 2 May 2012 the Crown Prince of Fujairah engaged Clyde & Co to advise him on a proposed transaction in South Africa. The Crown Prince utilised the appellant as a special purpose vehicle for the transaction. The transaction encompassed the purchase of an interest in a game farm called Rietkuil in Limpopo Province, South Africa, through another special purpose vehicle, Valley of the Kings Thaba Motswere (Proprietary) Limited. The Crown Prince's interest in Rietkuil was ultimately to be held through the appellant.

6.2 Clyde & Co engaged the services of the respondent, a registered property valuer, to undertake the valuation of Rietkuil in order to determine its open market value and to furnish it with a written property valuation report. The terms of the mandate from the plaintiff and/or the Crown Prince are pleaded in paragraph 8 of the particulars of claim.[4] There is no allegation that the defendant was aware of the engagement by the plaintiff or the Crown Prince of Clyde & Co, nor of the terms of the mandate pleaded in paragraphs 3 to 8 of the particulars of claim.

6.3 The farm Rietkuil (which comprised a Portion 3 and a Remainder of the farm) was acquired by a company TMots on 9 November 2011 for a total purchase consideration for both portions of the property of R28,924,700.00.[5]

6.4 In the execution of its instruction the respondent compiled a written property valuation report dated 17 September 2012. The respondent stated in the property valuation report, which was furnished to Clyde & Co on 18 September 2012, that the open market value of Rietkuil was the amount of R104 414 150, rounded up to R105 million.[6]

6.5 In its pleaded case, the appellant further alleges, that at the time of compilation of the property valuation report the respondent knew or ought to have known that the appellant intended acquiring a 55% interest in Valley of the Kings and would subscribe for 550 ordinary shares in Valley of the Kings for a total subscription price of R100 million. In addition, the respondent knew or ought to have known that Valley of the Kings had acquired the accommodation in the game business from TMots for a total purchase consideration of R180 million of which R105 million was attributed to the purchase price of Rietkuil (being the immovable properties only).[7] It is further alleged that the respondent knew or ought to have known that the appellant would rely on the property valuation report of the respondent in concluding the subscription agreement.[8]

6.6 On 27 September 2012, the appellant, relying on the respondent's property valuation report concluded the subscription agreement in terms of which it acquired a 55% equity interest comprising 550 ordinary shares in the issued share capital of Valley of the Kings.[9]

6.7 Prior to the respondent preparing the property valuation report it was aware that TMots had acquired Rietkuil (being the immovable

properties only) for a combined purchase price of R28,924,700.00 on 9 November 2011 and that the respondent accordingly knew that the open market value of Rietkuil on 9 November 2011 was R28,924,700.00 “in as much as that was the purchase price that a willing buyer was prepared to pay to willing sellers in arms-length transactions, being some ten months prior to the compilation of the property valuation report by the defendant”.^[10]

6.8 That the respondent knew or ought to have known that if the appellant had been aware that TMots had acquired Rietkuil on 9 November 2011 for the sum of R28,924,700.00 or that the market value of Rietkuil was no more than R28,924,700.00 on 9 November 2011, it would not have concluded the subscription agreement, nor would it have paid the subscription price of R100 million.^[11]

6.9 On 23 August 2016, Valley of the Kings was placed in business rescue having the result that the appellant’s investment has been irretrievably lost and on 31 October 2018, Valley of the Kings was wound up after it was found that it was both factually and commercially insolvent and as a consequence the appellant’s shares had been rendered worthless.^[12]

6.10 It was further the appellants pleaded case that the respondent had a duty in law to the appellant to ensure that it exercised due care and skill in performing the valuation of Rietkuil and that the open market value of Rietkuil was not overstated in the property valuation report but failed to discharge such duty and performed its functions negligently in overstating the open market value of Rietkuil,^[13] which resulted in the appellant suffering a loss of its R 100 million investment.^[14] It is alleged by the appellant that the respondent’s breach of its duty was wrongful and unlawful.^[15]

GROUNDS OF APPEAL

[7] In essence the appellant contends that the Court a quo erred in holding that the respondent did not owe the appellant a legal duty to prepare a valuation report with due care and skill which properly reflected the open market value of the immovable property in question, or that it had a legal duty to prepare a valuation report reflecting the market value of the immovable property which was not grossly unreasonable and inflated.

[8] In answer to the grounds of appeal the respondent contends inter alia that no legal duty of care in delict can arise on the pleaded averments, regardless of any reading of the particulars of claim and further that there are no allegations supporting the alleged loss or necessary causation. Further that the various allegations considered to be vague and embarrassing are not capable of being meaningfully pleaded to.

LEGAL PRINCIPLES APPLICABLE TO EXCEPTIONS

[9] The object of an exception is not to embarrass one’s opponent but to settle the case (or part of it) in an inexpensive and easy fashion or to protect oneself against an embarrassment that is so serious that it merits the costs of an exception.^[16]

- [10] The main purpose of an exception is to avoid the leading of unnecessary evidence. Given the nature of exception proceedings, the correctness of the facts averred in the pleading must therefore be assumed, unless clearly false and untenable.[17]
- [11] A plaintiff is required to plead his / her case in terms that are lucid, logical and intelligible. [18] A plaintiff must only plead the *facta probanda* and not the *facta probantia*. [19]
- [12] A plaintiff should plead the outline of his case. That does not mean a defendant is entitled to a framework like a crossword puzzle where every gap can be filled by logical deduction.[20] The outline may be asymmetrical and possess rough edges not obvious until actually explored by evidence.[21] Provided the defendant is given a clear idea of the material facts which are necessary to make the cause of action intelligible, the appellant will have satisfied the requirements.[22]
- [13] In an exception premised on the grounds of a failure to disclose a cause of action, the onus is on the excipient to demonstrate that 'upon every interpretation which the pleading in question, and in particular the document on which it is based, can reasonably bear, no cause of action or defence (as the case may be) is disclosed'. [23]
- [14] Whilst it has been said that the procedure provides a useful tool with which to cut down a case which is legally flawed, some allowance must be made for the establishment of further facts through evidence (and any inference which may be sought to be drawn therefrom) which could assist the plaintiff in discharging the onus he has attracted to establish his claims. [24]
- [15] In an exception based on vague and embarrassing grounds, the onus is on the excipient to show that the pleadings are vague and that they are thereby prejudiced. An exception that a pleading is vague and embarrassing will not be upheld unless the excipient will be seriously prejudiced. [25]
- [16] An exception that the pleading is vague and embarrassing is not directed at a particular paragraph within a cause of action; it goes to the whole cause of action, which must be demonstrated to be vague and embarrassing. [26] An exception that the pleading is vague and embarrassing will not be allowed unless the excipient will be seriously prejudiced if the offending allegations were not expunged. [27] The effect of this is that the exception can only be taken if the vagueness relates to the cause of action. [28]
- [17] The enquiry encompasses the following essential questions. The first question is whether the pleading lacks particularity to the extent that it is vague. The second question is whether or not the alleged vagueness causes embarrassment of such a nature that the excipient is prejudiced. [29]

- [18] The evaluation of prejudice is a factual enquiry.[30] It follows that it is up to the excipient to lay an evidentiary foundation in the papers in order to establish prejudice. Unless the excipient can satisfy the court that there is a real point of law or a real embarrassment, the exception should be dismissed.[31]
- [19] An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.[32]
- [20] It is well-accepted that an exception is a permissible and often convenient procedure to adopt in order to raise a contention, i.e. the absence of a legal duty of care.[33]
- [21] Rule 18(4) requires of a plaintiff to set out in the particulars of claim a “clear and concise statement of the material facts upon which the pleader relies for his case”.[34]

GROUNDS OF EXCEPTIONS

No pleaded contractual nexus between the appellant and the respondent

- [22] The court a quo in its judgment found that the appellant had failed to plead a contractual nexus between the appellant and the respondent.[35] As per the pleaded case, the subscription agreement, was concluded between “Al Mayya” subscribing for shares in the Valley of the Kings. [36]
- [23] In its judgment the court a quo found that breach of an obligation contractually undertaken by the respondent, if any, at best can only give rise to a remedy in the hands of the party contracting with the respondent, i.e Clyde & Co. As no obligation was undertaken by the respondent in favour of the appellant, it follows that no legal duty of care could have arisen in delict visiting liability on the respondent as against the appellant in the event that the respondent might have breached its agreement with Clyde & Co.
- [24] On behalf of the appellant it was submitted that the court a quo erred in holding in paragraph [43][37] of its judgment that the respondent did not owe the appellant a legal duty to prepare a valuation report with due care and skill which properly reflected the open market value of Rietkuil or that it had a legal duty to prepare a valuation report reflecting the market value of Rietkuil which was not grossly unreasonable and inflated.
- [25] This is particularly so, as counsel had argued, since the pleadings make it clear that Clyde & Co engaged the respondent to provide a valuation report in circumstances where the respondent knew that the appellant required the valuation of Rietkuil in order to determine whether or not it would make the investment of R100 million in Valley of the Kings.

- [26] On this basis counsel submitted that on a reasonable and sensible interpretation of the appellant's particulars of claim, the appellant's loss was reasonably foreseeable in the event of the respondent breaching its duty not to provide a valuation of Rietkuil which was grossly overstated. On a clear interpretation of the pleadings, the factual matrix gave rise to a special factual relationship between the respondent and the appellant and thus a duty of care by the respondent.
- [27] To support this argument, the appellant relied on the decision *De Bruyn v Steinhoff International Holdings N.V and Others* 29290/2018 per Unterhalter J wherein it was held that in order to find that auditors owe a duty of care to shareholders the auditors must apprehend or reasonably apprehend that their advice will be relied upon by a particular class of shareholder for a particular purpose or transaction.[38] In other words, there must be a special relationship, or advice must have been sought and given to specific persons who depend upon it for a particular purpose.[39]
- [28] In opposition counsel for the respondent had argued that the allegations in the particulars of claim do not even remotely sustain

a basis to recognise a legal duty. At its most fundamental level, the respondent executed a contractual arrangement with a third party, Clyde & Co and there is no nexus between the appellant and the respondent. The high-water mark of the appellant's argument is that the allegations in the particulars of claim are to the effect that the respondent knew or should have foreseen that the appellant would rely upon the respondent's valuation.[40] It is for this reason that the respondent had argued that there is no basis pleaded that would render the respondent liable for any alleged misstatement with regards to the valuation.

- [29] In addition, counsel had argued, that where the claim is one for pure economic loss formulated in delict such as in the present matter, reliance was placed on the decision of *Lillicrap*,

Wassenaar & Partners v Pilkington Brothers (SA) (Pty) Ltd where the following was stated:[41]

"South African law approaches the matter in a more cautious way, as I have indicated, and does not extend the scope of the Aquilian action to new situations unless there are positive policy considerations which favour such an extension."

- [30] Counsel had further argued that the appellant's contention that the alleged foresight is sufficient to give rise to a legal duty on the part of the respondent not to cause harm to the appellant, is simply unsustainable.
- [31] This is so as there has not been any "special relationship" that has been alleged as between the appellant and respondent and even if there were that in itself can never give rise to a legal duty of care. On this basis counsel submitted the appellant has failed to establish any causal nexus between the respondent's conduct and its alleged loss.

[32] The reasoning employed by the court a quo that the appellant had neither pleaded a contractual nexus nor did a legal duty exist, I could find no fault with. This I say so, as no legal duty was undertaken between the appellant and the respondent and furthermore the appellant had failed to plead that a casual nexus existed between the respondent's conduct and its alleged loss. On this ground of appeal, the finding of the court a quo was correctly made.

The allegations further do not sustain a conclusion that the appellant suffered loss in consequence of the respondent not having properly valued Rietkuil.

[33] In this regard the appellant contends that it suffered damages when it relied on the respondent's property valuation report in concluding the subscription agreement and that, based on such reliance, the appellant paid the subscription price of R100 million.[42]

[34] The appellant further pleaded that the respondent knew, or ought to have known, that the appellant would suffer loss in the event that the open market value of Rietkuil was overstated in the property valuation report.[43] As a consequence of the breach by the respondent of its legal duty, which was wrongful, the appellant lost its investment of R100 million.[44]

[35] On this basis counsel for the appellant submitted that the court a quo erred in apparently holding that the conduct of the respondent in furnishing a grossly over-stated valuation of Rietkuil was not, in the circumstances pleaded, wrongful. The appellant's claim is one for pure economic loss arising from a negligent misstatement by the respondent which on the pleadings was reasonably foreseeable by the respondent.

[36] The appellant for the above reasons concluded that the court a quo erred in finding in paragraph [44][45] of the judgment that the averments in the particulars of claim do not sustain the conclusion that the appellant suffered a loss in consequence of the respondent failing to exercise care and skill when valuing Rietkuil.

[37] The finding made by the court a quo in paragraph [44][46] of its judgment overlooked the fact that it was also pleaded at paragraphs 20.5, 20.6 and 20.7[47] of the particulars of claim that the respondent knew (or ought to have known) that the appellant would be the majority shareholder in Valley of the Kings, that Rietkuil was the principal asset of Valley of the Kings and therefore determined the underlying value of its shares, and that the appellant would rely on the property valuation report in concluding the subscription agreement. On this basis it was argued by counsel for the appellant that the appellant would suffer loss as a result of the open market value of Rietkuil being overstated because the appellant would have been induced to subscribe and pay for shares that were overvalued in relation to the underlying asset of Valley of the Kings, namely Rietkuil.

[38] In addition, the appellant had argued that the court a quo erred in paragraph [45][48] of its judgment in holding that there is no basis pleaded as to why a market value of Rietkuil of R105 million (rounded up) was grossly unreasonable and inflated, as what was pleaded at

paragraph 32.6 of the particulars of claim. It was submitted, however, that on a consideration of all the allegations in the particulars of claim, including paragraph 24[49] in which it is pleaded that the respondent knew that the open market value of Rietkuil as at 9 November 2011 was R28 924 700.00, it follows that a valuation of R105 000 000.00 only 10 months later is indeed grossly unreasonable and inflated.

[39] In opposition, counsel for the respondent had argued, that the particulars of claim contain no allegations supporting a conclusion

that the open market value of the Rietkuil properties was less than that stated in the respondent's valuation report. The fact that those properties had previously (and approximately a year prior) been sold by the entities owning the two portions to TMots for R28,924,700.00 does not constitute an allegation that as a fact and at the relevant time of the respondent's valuation report the amount of R28,924,700.00 was the true open market value. In fact, the sale by TMots to Valley of the Kings had been at a price of R180 million.

[40] The court a quo in its judgment and more specifically at paragraph 45 thereof concluded that the appellant had failed to plead the basis for concluding that the purchase consideration price of R105 million referred to in paragraph 32.5 in the POC was unreliable and grossly inflated as alleged in paragraph 32.6 of the POC.

[41] This finding so made by the court a quo, cannot be criticized by this Court. No allegation was indeed pleaded by the appellant supporting a conclusion that the valuation as made by the respondent was indeed grossly unreasonable or inflated.

The Particulars of Claim fails to comply with the provisions of Rule 18(6) and 18(10) in a number of respects and lack material

particularities.

[42] In this regard the counsel for the appellant submitted that the court a quo erred in paragraph [46][50] of its judgment in upholding certain complaints regarding the alleged lack of particularity in the particulars of claim, with reference to "... Rule 18(6) and Rule 18(10) relating to vague reference to material terms of the various agreements, engagements,

transactions, various material terms, failure to plead the terms of the partly written and partly oral agreement, failure to plead

properly relating to what is meant by "ought to have known" and failure to properly plead to instances relating to generally accepted valuation practices and procedures. It is submitted that the Court erred in holding that the particulars of claim failed to comply with Rule 18(6) and Rule 18(10) of the Uniform Rules of Court, alternatively, that such failure rendered the particulars of claim vague and embarrassing.

- [43] Counsel for the appellant had argued further that the court a quo in so doing, overlooked the following facts namely, on a reading of the particulars of claim as a whole, it is clear that the appellant does not “rely” on the agreements since its cause of action is not framed in contract.
- [44] The agreements referenced in its POC, counsel had argued, are not used by the appellant as a link in the chain of the cause of action against the respondent.[51] They are pleaded as part of the factual matrix giving rise to the duty on the part of the respondent. In other words, they are not a material part of the appellant’s cause of action. The agreements were referred to for the purpose of placing the material facts pleaded in context.
- [45] The basis for raising this exception, is as contended for by the respondent that the POC lack particularity such to permit the respondent to meaningfully plead thereto. By way of example, Rule 18(6) requires a pleader, where reliance is placed on a contract, to specifically plead whether the contract was oral or in writing, what the material terms were and where and by whom it was concluded.
- [46] I fail to comprehend, with due respect, the assertion made by counsel for the appellant that the underlying causa is not based on contract. Not only was it pleaded by the appellant, that Clyde & Co was ‘engaged’ and no agreement concluded[52] but similarly it was pleaded in paragraph 15 of the POC that an agreement was concluded between Clyde and Co and the respondent.
- [47] Any reference then made to the conclusion of an agreement in the POC invokes the provisions of Rule 18(6) and thus calls for compliance with the provisions of Rule 18(6).
- [48] Rule 18(10) requires a plaintiff suing for damages to set out the facts in such manner as will enable a defendant reasonably to assess the quantum thereof.
- [49] In this regard counsel for the respondent had argued, that although the appellant alleges failure to comply with the “generally accepted valuation practices and procedures”, it has failed to identify the relevant practices and procedures and has further failed to identify the “comparable sales of agricultural properties in the area” that it alleges ought to have been taken into account but were not taken into account.
- [50] The court a quo, in paragraph 48 of its judgment dealt with the appellants’ failure to specifically plead its damages. In this regard, the court a quo considered that the expertise of the respondent is in valuation of properties and not in valuation of shares. As such any loss which the appellant had suffered could not be pinned on the respondent premised purely on a valuation report produced by it.

[51] It is on this basis that the court a quo concluded that the appellant has also failed to comply with the provisions of Rule 18(10) for the quantification of its damages. Here too, this reasoning employed by the court a quo, I am in agreement with.

[52] Given the totality of the grounds of exception raised, I am satisfied that the court a quo, properly assessed same and correctly concluded to uphold the exceptions.

[53] Consequently, the following order is made:

53.1 The appeal is dismissed with costs, including the costs consequent upon the employment of senior counsel where so employed.

5.2 The appellant is granted leave to, within 15 (fifteen) days of this order, amend its particulars of claim to remedy the causes of complaint.

53.2 The respondent is further awarded the costs of the application for leave to appeal in the court a quo and the costs of the application for leave to appeal in the Supreme Court of Appeal.

COLLIS J

JUDGE OF THE HIGH COURT, PRETORIA

I agree

RANCHOD J

JUDGE OF THE HIGH COURT, PRETORIA

NTLAMA-MAKHANYA AJ

ACTING JUDGE OF THE HIGH COURT, PRETORIA

APPEARANCES:

Counsel for the Appellant: Adv. G. W. WOODLAND SC Adv. C. CUTLER Instructing Attorney: GILLAN & VELDHUIZEN INC Counsel for the Respondent: Adv. A. SUBEL SC Instructing Attorney: YAMMIN HAMMOND INC. Date of Hearing: 15 November 2023 Date of Judgment: 31 July 2024

[1] Record 149.

[2] Notice in terms of Rule 23, 003:87-103.

[3] Defendant's notice of exception in terms of Rule 23, 003:104-120.

[4] POC 8, Vol 1, p6.

[5] POC10, Vol 1, p7-8.

[6] POC15-18, Vol 1, p9-10.

[7] POC20, Vol 1, p11.

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- [8] POC20.7, Vol 1, p12.
- [9] POC21-22, Vol 1, p12; annexure “POC3”, Vol 1, p42.
- [10] POC23-24, Vol 1, p12-13.
- [11] POC25, Vol 1, p13.
- [12] POC28, Vol 1, p13-14.
- [13] POC31-32, Vol 1, p14-16.
- [14] POC35-36, Vol 1, p16
- [15] Record 16: Particulars of Claim, para 34.
- [16] LAWSA Vol 4 3rd ed, para 187.
- [17] Naidoo and Another v Dube Tradeport Corp and Others 2022 (3) SA 390 (SCA) at para [35]. Ocean Echo Properties 327 CC and Another v Old Mutual Life Assurance Company (South Africa) Ltd 2018 (3) SA 405 (SCA) at para [9]. Hlumisa Investment Holdings Rf Ltd and Another v Kirkinis and Others 2020 (5) SA 419 (SCA) at para [22].
- [18] Pretorius v Road Accident Fund (4743/2018) [2019] ZAFSHC 29 (18 April 2019) at paras [8]. Jowell v Bramwell Jones 1998 (1) SA 836 at 902 H.
- [18] Pretorius v Road Accident Fund (4743/2018) [2019] ZAFSHC 29 (18 April 2019)
at paras [8]. Jowell v Bramwell Jones 1998 (1) SA 836 at 902 H.
- [19] Jowell v Bramwell Jones, supra, at 903 A.
- [20] Jowell v Bramwell Jones, supra, at 913E-H.
- [21] Pretorius v Road Accident Fund, supra, at para [9].
- [22] Ibid.
- [23] Sun Packaging (Pty) Ltd v Vreulink [1996] ZASCA 73; 1996 (4) SA 176 (A) at 183E-F; Ocean Echo Properties 327 CC and Another v Old Mutual Life Assurance Company (South Africa) Ltd, supra, at para [9].
- [23] Sun Packaging (Pty) Ltd v Vreulink [1996] ZASCA 73; 1996 (4) SA 176 (A) at 183E-F; Ocean Echo Properties 327 CC and Another v Old Mutual Life Assurance Company (South Africa) Ltd, supra, at para [9].
- [24] Cloete v Edel Investments (Pty) Ltd (8683/18) [2019] ZAWCHC 25; 2019 (5) SA 486 (WCC) (5 March 2019) at para [20].
- [24] Cloete v Edel Investments (Pty) Ltd (8683/18) [2019] ZAWCHC 25; 2019 (5) SA

486 (WCC) (5 March 2019) at para [20].

[25] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd 2019 JDR 0571 (GJ) at para [54].

[26] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd, supra, at para [56].

[27] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd, supra, at para [58]. Levitan v Newhaven Holiday Enterprises CC 1991 2 SA 297 (C).

[27] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd, supra, at para [58]. Levitan v Newhaven Holiday Enterprises CC 1991 2 SA 297 (C).

[28] Ibid.

[29] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd, supra, at para [64].

[30] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd, supra, at para [65].

[31] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd, supra, at para [65].

[32] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd, supra, at para [62], citing Makgoka J in Living Hands (Pty) Ltd and Another v Ditz and Others 2013 (2) SA 368 (GSJ).

[32] Vodacom (Pty) Ltd v GM Graphix (Pty) Ltd, supra, at para [62], citing Makgoka J in Living Hands (Pty) Ltd and Another v Ditz and Others 2013 (2) SA 368 (GSJ).

[33] Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006 (1) SA 461 (SCA), para 2.

[33] Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006 (1) SA 461 (SCA), para 2.

[34] Uniform Rule 18(4).

[35] Judgment court a quo para 43 019-157.

[36] Particulars of Claim para 14.2

[37] Record 143.

[38] Paragraph

[157] of Steinhoff, referred to at paragraph [38] of the judgment.

[39] Ibid.

[40] Appellant's heads of argument para 4.3, p4; para 16, p15.

[41] 1985

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- [1] SA 475 (A); see also Trustees, Two Oceans Aquarium Trust v Kantey & Templer (Pty) Ltd [2006] 3 All SA 138 (SCA).
- [42] Record 12: particulars of claim, para 20.7.
- [43] Record 14: particulars of claim, para 30.
- [44] Record 16: particulars of claim, para 35.
- [45] Record 143.
- [46] Record 143.
- [47] Record 11-12.
- [48] Record 144.
- [49] Record 12.
- [50] Record 144.
- [51] See the discussion in Moosa and Others NNO v Hassan 2010 (2) SA 410 (KZP) at 413B–414B.
- [52] POC paragraph 3 001-5
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Prepared on 14 October 2026 · Esheria