

SOUTH AFRICA / JUDGMENT

Assore Ltd and Others v Paris (44431/2019) [2024] ZAGPJHC 36 (22 January 2024) [2024] ZAGPJHC 36

COURT

South Gauteng High Court, Johannesburg

BEFORE

Holland-Muter

CASE / FILE NUMBER

44431/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED:

NO

DATE:

22 January 2024

CASE

NO: 44431/2019

In

the matter between:

ASSORE
LTD
First
Excipient
AFRICAN
MINING AND TRUST COMPANY
Second
Excipient
CHARLES
EDWARD WALTERS
Third
Excipient
BONGANI
PHAKATI
Fourth
Excipient
And
MEGAN
DOMINIQUE PARIS
Respondent
In

re:

MEGAN
DOMINIQUE PARIS
Plaintiff
ASSORE
LTD
First
Defendant
AFRICAN
MINING AND TRUST COMPANY
Second
Defendant
CHARLES
EDWARD WALTERS
Third
Defendant
BONGANI
PHAKATI
Fourth
Defendant

Coram: Holland-Muter J
Date
of Hearing: 31 October 2023
– Courtroom 9B
Handed
down on: 22 January 2024
(The
matter was heard in open court judgment was handed down
electronically by uploading the judgment onto the electronic file on
CaseLines and circulating to the parties' representatives by
E-mail. The date of judgment is deemed to be the date of uploading
onto CaseLines)

JUDGMENT

HOLLAND-MUTER J

- [1] The excipients (defendants in the main action) objected to the respondents against them, the respondents adamant that the particulars of claim remained excipiable after amended, either as being vague and embarrassing and/or failing to disclose a cause of action.
- [2] I will refer to the parties as they are in the pending action to prevent any possible confusion. The excipients' notice of exception heading already addressed this issue and I will continue referring to the parties as cited in the pending action.
- [3] After hearing arguments on behalf of the parties, F BEZUIDENHOUT AJ granted the plaintiff leave to amend her particulars of claim on 21 February
2023. In arriving to the decision after hearing arguments regarding the proposed amendments to the particulars of claim, F BEZUIDENHOUT AJ in par [47] of the judgment held that "In my view the amended particulars of claim is therefore not excipiable".
- [4] The defendants proceeded to file a rather comprehensive notice of exception against the amended particulars of claim, the matter now before this court to decide upon. When comparing the previous grounds for exception as set out in the judgment supra (from para [26] to [29]), it is clear that the present grounds for exception are nothing more a detailed exposition of the previous grounds for exception previously ruled upon by the court.
- [5] Having the luxury of the written judgment by F BEZUIDENHOUT AJ, there is no need to repeat each claim and objection in detail. The crux of the exception remains the same.

LEGAL PRINCIPLES RELATING TO EXCEPTIONS

- [6] Rule 23 of the Uniform Rules of Court deals with exceptions. The essence of the Rule is that where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, the opposing party may deliver an exception thereto and the grounds upon which the exception is founded shall be clearly and concisely stated.

- [7] The object of an exception is to dispose of a case or a portion thereof in an expeditious manner, or to protect a party against embarrassment which is so serious as to merit the costs. An exception is a useful mechanism for weeding out cases without legal merit. Erasmus, Superior Court Practice Volume 2 D1-294.
- [8] A dismissal of an exception, however, save an exception to the jurisdiction of the court, presented, and argued as nothing other as an exception, does not finally dispose of the issue and is not appealable. The point could be re-argued at the trial in the event of the exception being dismissed. Erasmus *supra* D1-295-295.
- [9] The onus as far as exceptions go, is on the excipient (the defendants present) to establish the objection. *Colonial Industries Ltd v Provincial Insurance Co Ltd* 1920 CPD 627 at 629.
- [10] Important is that if the particulars of claim are excipiable, an amendment for leave to amend ought to be dismissed unless the proposed amendment addresses all complaints. It is trite that amendments ought not to be allowed where its introduction into the pleadings would render such pleading excipiable. *Cross v Ferreira* 1950 (3) SA 443 C at 450 E-F.
- [11] It is clear from the judgment of F BEZUIDENHOUT AJ, in particular para [40] & [47] that the proposed amendment was not excipiable. This is not a court of second standing to re-assess the judgment *supra* and to re-visit the issue whether the amended particulars of claim was excipiable. It remains possible for the defendants to investigate

this at trial stage and to scrutinise and test the plaintiff's case. The defendants are however not allowed to have the proverbial

second bite of the cherry at this stage. The exception ought to be dismissed.

COSTS

- [12] The purpose of an award of costs to a successful litigant is to indemnify the party for the expense to which the party has been put through to initiate or defend unjustly litigation. A cost order is not intended to be compensation for a risk to which a party has been exposed, but to refund expense incurred unnecessary. See Herstein & Van Winsen, *The Civil Practice of the High Courts of South Africa*, 5th ed. Vol 2 p 951 and on.
- [13] Awarding costs is a matter wholly within the discretion of the court. When exercising the judicial discretion, the court will consider all relevant aspects applicable to the specific matter before the court. This will include the kind of litigation, the success of a party, the need for the litigation, inflated claims if applicable, severability of issues, counterclaims if raised etc. The list is not exhaustive but each matter will be determined on the relevant aspects.
- [14] The general rule is that costs normally follow the successful party and the successful party is normally the party in whose favour judgment was given.

- [15] A successful party may be deprived of costs in general terms depending on the conduct of the party and the necessity of the litigation. Likewise, the court may visit a party with a punitive cost order to indicate the court's disapproval of the conduct of a party, and this may result on a punitive scale regarding the awarded costs.
- [16] I have considered all applicable factors in this matter and the reasonable conclusion is that the exception was brought unnecessary. The issue of whether the amended particulars of claim were excepiable was already dealt with by F BEZUIDENHOUT AJ in the previous judgment. I have referred to the relevant passages supra. See para [3] & [11] supra.
- [17] I am of the view that the exception cannot succeed and that it should be refused. The following order is made:

ORDER

1. The exception is refused.
2. The defendants (excipients) are ordered to pay the costs of the plaintiff (respondent) on an attorney and client scale.

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

APPEARANCE. For the Plaintiff (Respondent): Adv G I Hulley gihulley@law.co.za Instructed by: Raphunga Attorneys jon@raphungaattorneys.co.za for the Defendants (Excipients): Adv A Redding SC a.redding@law.co.za Adv R Itzkin riaz@riazitzkin.co.za Instructed by: Mervyn Taback Inc t/a Andersen annelle.kampher@za.anderson.co.za DW@tabacks.com / KM@tabacks.com

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2024/36.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/assore-ltd-and-others-v-paris-unknown-topic-agpjhc-2024>

Prepared on 10 October 2026 · Esheria