

SOUTH AFRICA / JUDGMENT

## Nedbank Limited v Madonsela (2022/044542) [2024] ZAGPPHC 343 (8 April 2024) [2024] ZAGPPHC 343

### COURT

North Gauteng High Court, Pretoria

### BEFORE

SST Kholong

### CASE / FILE NUMBER

2022/044542

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IN THE HIGH COURT OF

SOUTH AFRICA

(GAUTENG DIVISION,

PRETORIA)

Case: 2022/044542

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

SIGNATURE

DATE: 8/04/2024

In

the matter between: NEDBANK  
LIMITED  
APPLICANT  
and  
JOHN  
MADONSELA  
RESPONDENT  
IN  
RE  
JOHN  
MADONSELA  
PLAINTIFF  
And  
NEDBANK  
LIMITED  
1st  
DEFENDANT  
FINDLAY  
NIEMEYER INCORPORATED  
2nd DEFENDANT  
SHERIFF  
OF THE HIGH COURT, PRETORIA CENTRAL  
3rd DEFENDANT  
REGISTRAR  
OF THE HIGH COURT, PRETORIA  
4th DEFENDANT

## JUDGEMENT

KHOLONG AJ

### Introduction

1. This Court is called upon to determine an exception noted by Nedbank Limited (“applicant”) following an action instituted by John Madonsela in the main matter between John Madonsela and Nedbank limited together with three others. The Court is also called upon to determine an opposed notice in terms of rule 30(2) to have the plaintiff’s undated application for summary judgement served on 19 May 2023 set aside on the basis that same constitutes an irregular step.
2. Respondent in these two applications is Mr John Madonsela (“respondent”) a major male person residing at Evander. He is acting in this matter pro se.
3. Essentially, applicant as “excipient”, submits to this court that the whole of the particulars of claim initiating action against them amounts to mere speculation and conjecture, consisting of irrelevant matter which do not apply to the matter at hand nor contribute to a decision in the matter and thus do not comply with the requirements for a pleading as required by Rule

18(4) of the Uniform Rules of Court (“the rules”). Alternatively, that Plaintiff’s particulars of claim lack averments which are necessary to either disclose or sustain any cause of action against the defendant and should be struck.

4. They also contend that respondent’s application for summary judgement, following their noting of an exception, should be held by this Court to be an irregular step and set aside.

#### Factual Background

5. Respondent in this application, Mr. John Madonsela, instituted legal action against applicant on 14 February
2023. The Summons and particulars of claim reveal that this matter arose from the sale in execution of a property bonded by respondent in favor of excipient arising from the purchase by respondent of a house. It appears that whatever the reason, applicant called the bond and executed against and sold the house in question on or around
2000. There were amounts outstanding following the sale of the property in execution by applicant for which respondent was still held liable and appears, he paid. Respondent now instituted action to seek redress arising from that train of events.
6. Respondent served undated combined Summons accompanied by approximately 54 page particulars of claim and annexures taking the total bundle to approximately 151 pages. Applicant in response thereto filed notice of intention to defend followed shortly thereafter by notices of exception.
7. Excipient grounded its application on two points. The first ground was that the particulars of claim amounts to mere speculation and conjecture, consisting of irrelevant matter which do not apply to matters to be considered, nor contribute to a decision in the matter and do not comply with the requirements for a pleading as set out in rule 18(4) of the Uniform Rules of Court. This Court was reminded that the rules dictate that every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, with sufficient particularity to enable the opposite party to reply. That this requirement implies that the pleader, such as the Plaintiff in this case, should not plead the evidence which he will adduce in support of his allegations, nor should he plead irrelevant matter, which is what they allege the respondent did.
8. They aver that the 54 page particulars of claim in essence consists of numerous vague allegations supported by continuous references to case law and academic commentaries which are all pleaded intertwined. They submit that this alleged improper pleading by respondent and his failure to set out the material facts relied upon in accordance with rule 18 and failure to state the grounds of his alleged action with sufficient particularity, prevents the excipient from knowing what case it has to meet. That therefore the particulars of claim lack averments which are necessary to either disclose or sustain any cause of action against excipient and should be struck.

9. The second ground of exception is that particulars of claim lack clarity, is ambiguous and contradictory. They point out that in paragraph 1 of the particulars of claim Plaintiff raises a point in limine, which is then followed up in paragraph 2 with a new heading of “Judgement by default – residential property”. That this is then followed by several allegations in paragraphs 3 under the heading “general” and in paragraph 4 under the heading “grounds of rescission”. That the plaintiff then in paragraph 5 refers to “condictio indebiti” followed by the heading “grounds of restitution” in paragraph 6. That in paragraph 7 the Plaintiff refers to “shortfall in sale in execution- legal maritime precedent”. Excipients then contend that by so doing Plaintiff attempts to make the provisions of the admiralty/Maritime law applicable to the sale of houses in execution.
10. They further aver that in paragraph 4.24.1 of the particulars of claim, plaintiff refers to an application wherein he wishes to have Section 18 of the Criminal Procedure Act, 51 of 1977 declared unconstitutional which purported application appears on pages 1-25 to 1-27 of the documents served on them. The excipient put to this Court that plaintiff wishes to launch some sort of hybrid action/application wherein he wishes to simultaneously bring an application for rescission of judgement as well as an action wherein various forms of relief are sought. They thus contend that

the particulars of claim in its current state is completely vague and embarrassing in that it omits material facts and is ambiguous and contradictory thus causing them prejudice as they are unable to plead to the particulars of claim. That if the particulars of claim were allowed to stand they wouldn't know what they are defending or opposing. That respondent's reply failed to remove excipient's causes of complaint.

11. Excipient submitted that having regard to the grounds of objection, the particulars of claim should be struck with costs as between attorney and client.
12. Following excipient's filing of notice of intention to defend on 27 March 2023; notice of intention to except on 5 April 2023, respondent filed a reply on 24 April 2024 essentially restating the averments made in the particulars of claim and stated at paragraph 2.8.4 that “A plaintiff may join several causes of action in the same action”. Excipient proceeded to file an exception on 03 May 2023.
13. Respondent in turn filed on 17 May 2023 an application for summary judgement. Paragraph 1 of that notice states that given that Summons were delivered on 13 February 2023, respondent submitted ‘that no plea has been entered or an exception delivered, effectively trampling [on] and in contravention to Uniform rules of Court..’ respondent argued in this application that defendant gave notice of exception on 5 April 2023 to which Plaintiff replied on 24 April which was within 15 days. At paragraph 3.2 respondent avers that “This non-delivery of the exception forestalls ...application to set it down for hearing within 15 days. Respondent stated “This far the defendant's notice of intention to except is non-adjudicated allegation for which no legal pronouncements have made, hence there is nothing (no ruling) to uphold the defendant's allegations. A way to a competent, working and practical

understanding of rule 23(10(b) is to interpret it in reverse...”.

14. Respondent proceeded to argue rule 23 and at paragraph 7 states that defendant’s contention that plaintiff failed to remove first defendant’s cause of complaint

is mischaracterization of the reply to the notice of exception and states: “Nothing of what is alleged by defendant.. took place...What it was; was total rejection of the Defendant’s irrational request allegations that are not backed by material facts and sound rationale”. Respondent then proceeds to cast aspersions against Counsel for excipient. A point repeated in argument before this Court.

15. At paragraph 21 respondent submits to this Court that he is proceeding with an application for summary judgement on ‘terms expounded herein..’ and paste on the paragraph under heading liquid document providing ownership of property in this action a photocopy of a document with various amounts. At paragraph 22 respondent then states under heading “Notice Application for Summary Judgement” that “this Notice Application for Summary Judgement is for rescission of default judgement case No 28647/98 in the Supreme Court of South Africa (TPD) and for restitution in pecuniary form in lieu of the title deed and property as well as related remedies per uniform court rule 32 and 42(1)(a) for stand No.7[...], extension 1[...] E[...], Mpumalanga; property alienated unlawful and illegally by the defendant”. At paragraph 25 respondent states that the arguments put forward to “strike out of the whole summons lacks viable, reliable and credible material facts in defence as well as sound rationale, and thus do not raise any issues for or warranting trial other than fundamentally evading pleading to the numerous material facts of the summons..”.
16. Respondent essentially proceeded to contend that there is no substance to the cause of complaint by excipient. At paragraph 54 to 56 contended that plaintiff prays for R16208.77 shortfall of sale in execution and proceeded to anchor this claim on section 9 equality provision of the constitution whilst contrasting Uniform rules to admiralty proceedings rules and section 130(2) of National Credit Act, 2005. The affidavit filed in support of summary judgement at paragraph 60.4 claims ‘restitution in lieu of the actual physical property and title deed and ‘performance thereof: R900 000 plus R680 921,05 = R1 580 921.05. At paragraph 60.5 claimed shortfall of sale in execution plus interest totaling R132 989.85. At paragraph 61 claims punitive damages for ‘delicts-torts’ and sets them out from 6.1.1.1 to 6.1.1.5. and at paragraph 62 concludes these claims to a grand total of R1 782 715.88.
17. On 22 May 2023 applicant filed a rule 30 notice objecting to plaintiff’s application for summary judgement served on 19 May 2023 as an irregular proceeding contemplated in rule 30. The first ground of objection is that their filing of an exception suspends litigation between the parties until such time that the exception has been adjudicated upon by the Court. The second ground, according to applicants, is that Plaintiff in terms of rule 32 is only permitted to apply for summary judgement in the event that 1st defendant has delivered its plea and the claim in the summons is a) On a liquid document; b) for a liquidated amount in money;

- c) for delivery of specified movable property; or d) ejectment. That these requirements are obligatory and are not met on the papers and that they have to date also not delivered their plea rendering the application irregular and premature.
18. On 5 June 2023 respondent filed what is termed 'Reply rebuttal to defendant's rule 30 notice'. In this reply from paragraph 1 to 15 respondent argues whether there are merits to the exception and at paragraph 15 states "In these proceedings the defendant's exception' is "dead in the water due to the nature and circumstances of the case, the Court shall not grant it". "This means essentially that the averments of fact in plaintiff's summons shall be deemed to be admitted per rule 23(3). In particular those in the summary judgement affidavit."
19. At paragraph 17 respondent then submits that excipient failed to deliver exception within 10 days as required. This, respondent contended, is equivalent to not delivering a plea or in alternative, contended does not raise an issue for trial which necessitates, in his submission, summary judgement application. At paragraph 26.2 respondent states that "Because the defendant gave notice of exception and possibly will follow the process through which the plaintiff reckons will ultimately be unsuccessful, there wont be any pleadings or plea whatsoever. This is a given". At paragraph 26.3 he states that for the purpose of summary judgement application there is no plea to consider but 'the defendant's exception endeavors'. At paragraph 35 he proceeds to contend that excipient didn't deliver exception within 10 days which in his view was due by 9 May 2023. Thus submitting it is irregular. Various supplementary papers were filed by respondent either supplementing the rebuttal to applicant's rule 30 notice or elucidating their opposition to the exception raised and seeking summary judgement.

### Ruling on the Exception

20. It has been held that an exception is a legal objection to the opponent's pleading. It in essence complains of a defect inherent in the pleading. It has been held that it asserts that even if all the allegations in a summons or plea were true, by noting an exception a litigant still asserts that even with such admission the pleading does not disclose either a cause of action or defense as the case may be[1].
21. Rule 18.3 states that every pleading shall be divided into paragraphs which shall as nearly as possible each contain a distinct averment and at 18(4) the rule reads: ".. Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his action, defense or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto". Rule 18(12) in turn states very clearly that if a party fails to comply with any of the provisions of rule 18, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30. It is trite that the object of pleading is to define the issues so as to enable the other party to know what case he has to meet[2].

22. Without having to repeat the complaint by applicants referenced above and the various paragraphs noted by this Court following the invitation by the parties for this court to go through the approximately 54-page odd particulars of claim and annexures totaling approximately 151 pages, this pleading does not meet the test envisaged in rule 18. This court thus finds merit in the exception raised by applicants.
23. The particulars of claim as referenced above do not meet the test prescribed by rule 18(3) and 18(4) of the uniform rules as the paragraphs do not contain distinct averments that are a clear and concise statement of the material facts upon which the respondent in the main action relies for his claim. There is certainly no sufficient particularity to enable excipient to reply. This Court also finds that the reply by respondent does not cure the cause of applicant's complaint as pleaded above. Both the particulars of claim and reply are replete with irrelevant material; argument; cases; academic material and evidence which are not distinct, clear and concise. This renders the particulars of claim to be deemed an irregular step envisaged in rule 18(12) of the Uniform rules of this Court. The applicants in this action seek relief on the papers in terms of rule 28 having raised an exception in terms of rule 23.

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24. The Court finds on this score and for the same reasons stated above that applicant is entitled to have acted in terms of rule 23 to raise an exception. Rule 23(3) states that whenever an exception is taken to any pleading, the grounds thereof shall be concisely and clearly given. Sub(4) proceeds to state that wherever any exception is taken to any pleading '..no plea..or other pleading shall be necessary'[3]. In the result, this Court finds that this pleading is irregular, lends itself to be set aside to be corrected in terms of rule 28. In the event of doubt this authority can also be founded in rule 30. Rule 30(3) states that if at the hearing of such application the Court is of the opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part and grant leave to amend or make such order as to it seems meet.
25. This Court thus sets aside the particulars of claim filed by respondent and orders correction thereof before any further step can be taken. This Court also finds it just and equitable having had regard to the submissions of the parties, the documents on record and considering that respondent is acting for himself without legal assistance, that leave be granted in the interest of justice for the particulars of claim to be amended to be in line with rule 18 within 10 days.

#### Ruling on the Summary Judgement Application by Respondent

26. In the light of this Court's ruling on the particulars of claim, this Court finds it difficult to sustain respondent's application for summary judgement. As pleaded in their rule 30 notice dated 22 May 2023 and application of 6 June 2023, applicant had a duty not to take any further step in terms of the rules knowing of the irregular step as the exception suspends any further step in the cause. The court thus finds merit in applicant's first ground of objection set out in the notice. This is dictated and clearly stipulated by rule 23(3); 18(12)

read together with rule 30(2)(a).

27. The basis of the respondent's application for summary judgement is that applicant failed to respond to the particulars of claim in terms of the rules and that therefore they are entitled to their claim. This court disagrees as the applicants could not be expected to take any further step in the cause knowing of the irregular step. They issued due notices. In this regard in this court's view they seem to have acted in line with the requirements of the rules by serving notices to respondent to correct the irregular step and by requiring him to file clear and concise particulars of claim. Which respondent, despite these notices

failed to correct and instead proceeded with his summary judgement application.

28. In any event, the Court also concurs with applicants that the requirements of rule 32(1) for summary judgement are not met as the case thereof has not properly been made on the evidence, even if this court were for a moment to ignore the procedural defects. This Court also finds in passing that if one had regard to the spirit of rule 30(4) which states that until a party has complied with any order of Court made against him in terms of this rule, he shall not take any further step in the cause. This would have meant that until respondent had corrected his particulars of claim to be clear and concise in line with the ruling above, that also would have made an order for summary judgement undesirable, in this Court's view. The application for summary judgement is thus dismissed.

## Conclusion

29. The conclusion is therefor that the exception is upheld. The Plaintiff is to remove the grounds of objection and amend his particulars of claim to be clear and concise within 10 days. This Court further sets aside the application for summary judgement for the reasons aforementioned.

## Costs

30. Applicant had requested this Court to grant costs in the event they were successful on an attorney and own client scale. This Court considers that having regard to special circumstances obtaining in this case; The fact that respondent in this matter and in the main action is prosecuting this action as a lay person unassisted by legal representation. Having regard also to circumstances surrounding the main action, such an award would not be fair and equitable. Consequently, costs are awarded on a party scale, following the results.

## Order

31. Having heard Counsel for Applicants and respondent acting pro se, and having read the notice of motion and other documents file of record,

IT IS ORDERED THAT:

1. That the first Defendant's exception is upheld.
2. That Plaintiff is ordered to remove the grounds of objection and amend his particulars of claim within 10(ten) days of this order having been granted to be in line with rule 18 of the Uniform Rules.
3. The application for summary judgement by respondent is set aside as an irregular step.
4. Respondent is ordered to pay the costs related to Applicant's application.

SST KHOLONG

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA GAUTENG DIVISION,

PRETORIA

Appearances:

For the Applicant: Adv. PSAJ Jacobsz Instructed by: Hack, Stupel and Ross Attorneys For the  
Respondent: John Madonsela Acting Pro se Date Heard: 23 January 2024 Date Judgement  
delivered: 8 April 2024

- [1] Champion v JD Celliers and Co Ltd 1904 TS 788 at 790.
- [2] Robinson v Randfontein Estates GM Co Ltd 1925 AD 173 at 198.
- [3] Rule 23(4) of the Uniform Rules of Court, *ibid*.

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