

SOUTH AFRICA / JUDGMENT

Norman Luxury Tours (Pty) Ltd v Stalker Hutchingson Admiral (Pty) Ltd (6616/2022) [2025] ZALMPPHC 104 (30 May 2025)

[2025] ZALMPPHC 104

COURT

Limpopo High Court, Polokwane

BEFORE

M Mangena

CASE / FILE NUMBER

6616/2022

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 6616/2022

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 30 MAY 2025

SIGNATURE:

In the matter between:

NORMAN LUXURY TOURS (PTY) LTD

APPLICANT/PLAINTIFF

(Reg Number : 2002/0852028/23)

AND :-

STALKER HUTCHINGSON ADMIRAL (PTY) LTD RESPONDENT/DEFENDANT

(Reg Number 1985/000368/07)

JUDGMENT:

EXCEPTION

MANGENA AJ

- [1] Norman Luxury Tours (Pty) Ltd (NLT) is a bus operating entity and owns a fleet of vehicles insured through Stalker Hutchinson Admiral (Pty) Ltd,(SHA) the underwriting managers for Santam Limited.
- [2] On or about 16 June 2019 one of the vehicles owned by NLT, namely a MAN 18.360 4 x 2 LL-FOCR Bus with registration number F[...] was involved in a motor collision near Modjadjieskloof.
- [3] NLT submitted a claim for insurance payout to SHA and the claim was rejected on the basis that there was no risk cover issued in respect of the damage:-bus.
- [4] Unhappy with the outcome, NLT instituted this proceedings and cited the Defendant as Stalker Hutchinson Admiral (Pty) Ltd obo Santam Limited. The claim is for payment of the amount of R2 263 734.85 being the retail value of the vehicle together with towing costs.
- [5] The particulars of claim alleges that the Defendant and/or its agent undertook to insure NLT's vehicle and indemnify it against any loss which may occur arising out of a motor vehicle collision.
- [6] The Defendant pleaded to the Plaintiff's particulars of claim denying liability both on its own behalf as underwriting managers and on behalf of Santam Limited as the short-term insurer. In amplification, the Defendant stated the following:-
 - 6.1 Plaintiff (NLT) concluded a short-term insurance contract with Santam Ltd for the period 1 May 2019-30 April 2020.
 - 6.2. SHA acted as underwriting managers for and on behalf of Santam Ltd, a registered short-term insurer.
 - 6.3. Both SHA and Santam Ltd specifically plead that the damaged vehicle was not specified by either Plaintiff and/or Defendant and/or Santam Ltd to be covered in terms of the policy and did not therefore form part of the commercial vehicles specified in the schedule.
- [7] NLT, through its attorneys complains about the plea as being vague and embarrassing alternatively lacking averments necessary to sustain a defence. It was submitted on its behalf that it shall not be possible to replicate to the plea it stands without suffering an embarrassment in that SHA cannot plead on behalf of Santam Ltd when same is not a party to the proceedings.

- [8] The Defendant, Stalker Hutchinson Admiral (Pty) Ltd does not agree that the plea as formulated is vague and embarrassing when regard is had to the fact that it is the Plaintiff who introduced Santam Ltd in the summons by stating that it is suing the Defendant on behalf of Santam Limited. The Defendant it is submitted, denied its liability for the debt and in amplification pleaded Santam's involvement in the transaction. This is a perfect answer.
- [9] Rule 18(4) requires every pleading to contain clear and concise material facts a party relies on in support of his or her claim or defence. The pleadings must therefore be lucid, logical and intelligible. To establish whether there is logic, lucidity and intelligence in a pleading, the pleadings must be read as a whole because an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained. 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. It is important to bear in mind that the object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw, but to dispose of the case in an expeditious manner without causing embarrassment. *Living Hands v Ditz*, 2013 (2) SA 368 (GST) para 15.
- [10] Plaintiff instituted the action against SHA on behalf of Santam Ltd. To understand who are the parties to this litigation, it will be important to unpack the meaning of the words "on half of" as used by Plaintiff.
- [11] During oral submissions, Mr Mathebula who appeared for the Plaintiff was at pains to explain the meaning of the phrase or words in relation to who is the defendant in this proceedings.
- [12] As I see it, the words "on behalf of" can have different meanings depending on context. In certain instances, it may mean as a representative of' and this will be the case in situations where a person acts in a representative capacity either as an agent or a principal. It can also mean "for the benefit of' someone as in where a person receives something meant for someone else such as where a curator receives compensation on behalf of a patient. The act of the receiving the funds is done "for the benefit of the patient" and this may not necessarily be in a representative capacity.
- [13] In the context of legal proceedings where reference is made to the words "on behalf of" the meaning capable of ready acceptance is acting in a representative capacity. This is so because litigation can only be between parties involved in a legal dispute acting either in person or in a representative capacity. In *De Visser v Fitzpatrick*, 1907 T.S 355 at P363 Innes CJ explained the phrase "on behalf of" as follows: -

"The popular meaning of those words is that everything done for a man's benefit or in his interest or to his advantage is a thing done on his behalf. On the other hand, the more legal view is that they mean something done by a man's representative or agent. The counsel who have so ably argued this case appeared "on behalf" of their respective clients as their representatives or agents".

[14] If we are to accept the meaning as described above, it follows logically that Plaintiff invited Santam Ltd in the proceedings by describing SHA as its agent or representative. To the extent that Plaintiff may want to argue that SHA is the Defendant and cannot make reference to Santam Ltd in its plea as this will cause it an embarrassment, this is not true. SHA accepts that it is the Defendant but to the extent that Plaintiff seeks to impute liability for an insurance claim on her, it denies and state why it should not be liable for the claim. It says it is not the insurer but an underwriting manager. The policy is with Santam Ltd and has been rejected.

[15] The principles governing exceptions are trite and I referred to them in paragraph 9 above. In the whole allegations or averments pleaded as facts must be taken as true for purposes of an exception. A court may uphold an exception only if it is satisfied that the cause of action or conclusion of law cannot be sustained on every interpretation that can be plead on pleaded facts. In the context of a plea it must be in an intelligible form so that the Plaintiff may not be embarrassed in meeting it or leave one guessing as to what it means. *Tongaat Hullet Limited and Others v Staude and Others* (6075/2020P) [2023] ZAKZPHC 4(23 January

2023) @ para 16 - 17.

[16] Considering the Defendant's plea in its totality and according to it a charitable and benevolent interpretation, it is clear that there is no vagueness in it and Plaintiff will not be prejudiced in any manner. What the Defendant has done was to answer to the Plaintiff's case as pleaded. If the plaintiff does not like the plea as it stands, the door is still open for an amendment or joinder or third-party procedure. It certainly cannot be the Defendant's responsibility to bring other parties to the proceedings when Plaintiff as dominus litis can do so.

[17] In the circumstances, the following orders are:-

17.1 The exception is dismissed.

17.2 The Plaintiff (excipient) is ordered to pay costs on a party and party scale B of the High Court tariffs including the costs of Counsel.

M. MANGENA AJ

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

FOR APPLICANT /PLAINTIFF : Adv. R.C. MATHEVULA

ESPAG MAGWAI ATTORNEYS

POLOKWANE

FOR RESPONDENT/DEFENDANT : Mr. P. BIELDERMAN (Attorney)

BIELDERMANS ATTORNEYS

PRETORIA

C/O HENSTOCK VAN DEN HEEVER

HEARD ON

: 12 MAY 2025

DELIVERED ON : 30 MAY 2025

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