

SOUTH AFRICA / JUDGMENT

Steenkamp N.O. and Others v De Waal and Another (3389/2023) [2025] ZAFSHC 58 (17 February 2025)

[2025] ZAFSHC 58

COURT

Free State High Court, Bloemfontein

BEFORE

Mahlatsi AJ

CASE / FILE NUMBER

3389/2023

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IN THE HIGH COURT OF
SOUTH AFRICA

FREE STATE DIVISION,
BLOEMFONTEIN

Reportable / Not
reportable

Case no: 3389/2023

In

the matter between

ANET

STEENKAMP N.O.

First

Excipient

(Identity Number:

750[...])

FREDERIK

BASSON N.O.

Second

Excipient

(Identity Number:

720[...])

FREDERIK

BASSON

Third

Excipient

(Identity Number:

720[...])

ZULULAND

FARMERS SUPPLIES CC

Fourth

Excipient

and

CHRISTINA

SUSANNA DE WAAL

First

Respondent

(Identity

Number: 330[...])

SUSSANA

JOHANNA JACOBA HAMANN

Second

Respondent

(Identity

Number: 380[...])

In

re:

CHRISTINA

SUSANNA DE WAAL

First

Plaintiff

(Identity

Number: 330[...])

SUSSANA

JOHANNA JACOBA HAMANN

Second

Plaintiff

(Identity

Number: 380[...])

And

ANET STEENKAMP N.O.

First

Defendant

(Identity

Number: 750[...])

FREDERIK

BASSON N.O.

Second
Defendant
(Identity
Number: 720[...])
FREDERIK
BASSON
Third
Defendant
(Identity
Number: 720[...])
MASTER
OF THE HIGH COURT, BLOEMFONTEIN
Fourth
Defendant
ZULULAND FARMERS
SUPPLIES CC
Fifth
Defendant

Neutral citation:

Coram: Mahlatsi AJ

Heard: 29/11/2024

Delivered: 17 / 02 / 2025

Summary: Exception – particulars of claim
– vague and embarrassing – lack of averment to sustain a claim – credit agreement – National Credit Act 34 of 2005
– Non-joinder of a third party excipiable or to be pleaded.
ORDER
The exception is dismissed with costs.

JUDGMENT

Mahlatsi AJ

Introduction

- [1] Before this court is an exception to the plaintiffs' particulars of claim. The plaintiffs are the first and second plaintiffs as referred to in the summons. The first and second defendants are the children of the deceased father, and they are executors appointed to liquidate and distribute the deceased estate. The third defendant is cited in his personal capacity while the fifth defendant is a juristic person (collectively called the defendants). The fourth defendant, the Master of the High Court Bloemfontein, is not involved in these proceedings because no relief is sought against it. The assistant master elected to abide with the decision of the court. For easy reference, the parties are referred to as in the summons.

[2] The defendants take exception to the plaintiffs' claim on the basis that it is vague and embarrassing and lacks averments necessary to sustain a valid or recognised claim in the law of contract and is therefore excipiable in terms of rule 23 of the Uniform Rules of Court. The plaintiffs oppose the application and maintain that the particulars of claim is not vague and embarrassing to the extent that the defendants are not in a position to plead to the particulars of action as a cause of action is properly disclosed in those particulars of claim.

[2] The plaintiffs instituted an action against the defendants based on the plaintiffs' claim for payment from the deceased's estate, as stipulated in written acknowledgement of debt agreements executed by the deceased over eight years prior. The plaintiffs, in addition, claim that the cession of the life insurance policy in question be declared invalid.

[3] The defendants, having received the summonses referred to above, noted an exception on grounds that the particulars of claim are vague and lack averments that sustain a cause of action, or put differently, that the particulars of claim does not disclose a cause of action and the defendants cannot be readily expected to plead thereto.

Background

[4] The plaintiffs' claim relates to money which had been lent to the deceased over a period of about eight years, which he failed to repay. The particulars of the money are pleaded in the summons. In addition to claiming of the outstanding debt, the plaintiffs claim that the cession of a life policy, which the fifth defendant ceded to the third defendant, be declared invalid, which will have the effect that the proceeds of the life policy revert to the deceased's estate and such proceeds be utilised to pay the indebtedness of the estate to the plaintiffs.

[5]

[6] The defendants filed a notice of exception on 7 November 2023 which included an option to remedy the particulars of claim within a period of 15 days, and electronically served this notice to the plaintiffs' attorneys who electronically acknowledged receipt on the same date.

[7] The defendants noted exceptions on the specific grounds stated below;

[A] FIRST GROUND: NATIONAL CREDIT ACT 34 OF 2005

(i). The defendant refers to paragraph 19 and 20 of the particulars of claim.

(ii). Paragraph 33 is also referred to wherein plaintiffs allege that there were no credit agreements entered into with the deceased in terms of the National Credit Act, 34 of 2005.

(iii). The National Credit Act came into effect on 01 June 2007.

(iv). The terms pleaded by the plaintiffs of the agreement constitute a credit agreement in terms of the Act and were entered into after the commencement of the Act.

(v). This is similarly applicable to agreements entered into from 21 January 2008 to the 17 March 2014 as per annexures referred to in the summons.

(vi). The plaintiffs pleaded that it would be just and equitable if the Estate is ordered to repay the capital amounts lent and advanced to the deceased.

[B] SECOND GROUND: LIFE POLICY

(i). The plaintiffs pleaded in paragraph 37 to 46 that the deceased agreed to a life policy on the first plaintiff's life to be issued to the deceased's benefit as an insurance for the deceased's alleged indebtedness to the first plaintiff.

(ii). The plaintiffs failed to allege any material facts upon which it relies to entitle the plaintiffs to seek a declaration of invalidity in an instance where they were not beneficiaries of the policy.'

Applicable Law

[8] Rule 23 of the Uniform Rules of Court provides:

'(1) 'Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may set it down for hearing in terms of paragraph (f) of sub rule

(5) or (6):

Provided that

- (a) where a party intends to take an exception that a pleading is vague and embarrassing, such party shall, by notice, within 10 days of receipt of the pleading, afford [his opponent] an opportunity to remove the cause of complaint within 15 days; and
- (b) the party excepting shall, within 10 days from the date on which a reply to the notice . . . is received or, or within 15 days from which such reply is due, deliver the exception.'

[9] In the case of *Inzinger v Hoffmeyer and Others*[1] (*Inzinger*) it was said that:

'An exception that a pleading is vague and embarrassing strikes at the formulation of the cause of action and its legal validity. It is not directed at a particular paragraph within a cause of action but at the cause of action as a whole, which must be demonstrated to be vague and embarrassing. As was stated in *Jowell v Bramwell-Jones and Others* 1998(1) SA at 905 E-H: "I must first

ask whether the exception goes to the heart of the claim and, if so, whether it is embarrassing to the extent that the defendant does not know the claim he has to meet. . .'"[2]

[12] When an exception is raised against the pleadings in the basis that it lacks averments necessary to disclose a cause of action, this implies that, even if one were to accept the factual averments as set out in the pleading as correct, these factual averments do not justify the conclusion of law or the relief the pleader intends to reach. It therefore follows that the defendant cannot plead the defence to a cause of action which does not exist or is otherwise precluded on any lawful ground. The same position was restated by the Constitutional Court in the matter of *Pretorius and Another v Transport Pension Fund and Others*:[3]

[15] In deciding an exception the court must accept all the allegations of fact made in the particulars of claim is true, and may not have regard to the extraneous facts or documents, it may uphold the exception to the pleading only when the excipient has satisfied the court that the cause of action or conclusion of law in the pleading cannot be supported on every interpretation that can be put on the facts. The purpose of an exception is to protect litigants against claims that are bad in law or against an embarrassment which is so serious as to merits costs even those of an exception. It is useful procedural tool to weed out bad claims at an early stage, but an overly technical approach must be avoided.'

[13] Furthermore, as to the pleadings which do not disclose the course of action, Griessel J stated in *Frank v Premier Hangers CC*[4] that '[i]n order to succeed in its exception, the plaintiff has the onus to persuade the court that, upon every interpretation which the defendant's plea and counter claim can reasonably bear, no defence or cause of action is disclosed. Failing which, the exception need not be upheld.'[5] This applies with equal force to an exception raised by a defendant to the plaintiff's particulars of claim.

[14] In *Vermeulen v Goose Valley Investment (Pty) Ltd*[6] Marais JA stated:

'It is trite law that an exception that a cause of action is not disclosed by a pleading cannot succeed unless it can be shown *ex facie* the allegations made by the plaintiff and any document upon which his cause of action may be based, the claim is, (not may be) bad in law'.[7]

[15] In *Benson & Simpson v Robinson*,[8] Wessels J held that:

'[A] plaintiff must not set out the evidence upon which he relies, but he must state clearly and concisely on what facts he bases his claim and he must do so with such exactness that the defendant will know the nature of the facts which are proved against him so that he may adequately meet him in court and tender evidence to disprove the . . . allegations.'[9]

In other words, pleadings should only state facts. It should not contain statements of either law or evidence in order to establish facts. Only material facts need be alleged. Similarly, rule 18(4) of the Uniform Rules of Court reads: 'Each 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 thereto.'

[16] In *Trope and Others v South African Reserve Bank*[10] Grosskopf JA held:

'It is trite that a party has to plead with sufficient clarity and particularity , the material facts upon which he relied for the

conclusion of law he wishes the court to draw from those facts (*Mabaso v Felix* 1981 (30 SA 865 at 875A-H). It is not sufficient, therefore , to plead a conclusion of law without pleading the material facts giving rise to it. (*Radebe and Others v Eastern Transvaal Development Board* 1988 (2) SA 785 (A) at 792J -793G.)'[11]

[17] In *Evins v Shield Insurance Co Ltd*[12] it was said that “cause of action” . . . is ordinarily used to describe the factual basis, the set of material

facts, that begets the plaintiff’s legal right of action. . .’[13]

[18] Section 89(5) of the National Credit Act 34 of 2005 (NCA) provides that: ‘If a credit agreement is unlawful in terms of this section, despite any other legislation or any provision of the agreement to the contrary, a court must make a just and equitable order including but not limited to an order that –

(a) the credit agreement is void as from the date the agreement was entered into.’

[19] In *Regulator National Credit v Opperman and Others*[14] (Opperman) the Constitutional Court, in considering the validity of s 89(5) above stated as follows:

‘It follows that the High Court’s judgement cannot be faulted. Its interpretation of section 89(5)(c) is the most plausible of the interpretations advanced. The interpretation of the NCR cannot reasonably be applied to the provision. The alternative interpretation proposed is futile. The provision is also capable of interpretation and is thus not unconstitutionally vague. It results in the deprivation of Mr Opperman’s property because it extinguishes his right to claim restitution based on unjustified enrichment, without leaving any discretion to a court to consider a just and equitable order under the circumstances. This deprivation is arbitrary because sufficient reasons have not been given for it. The infringement of the right not to be arbitrarily deprived of property is disproportionate to the purpose of the provision. There are less restrictive means available to achieve the purpose. Therefor it is not a constitutionally acceptable limitation of the right.’[15]

[20] In *Anirudh v Samdei and Others*[16] (Anirudh) the learned judge described the basis of the exception in that case as follows:

‘the plaintiff excepts to the claim in reconvention on the ground that it lacks averments which are necessary to sustain an action, in that :

- (a) the defendants purport to act on behalf of or for the benefit of Mahadav’s estate;
- (b) it is not alleged that they are executors of the estate;
- (c) only the executor has legal competence to institute legal proceedings on behalf of the estate; and
- (d) the defendants lack the necessary locus standi to make the claim and the claim in reconvention does not allege any facts which would entitle them to do so.’[17]

[21] The court in *Anirudh* continued at para 707E-F:

‘In the view that I take of this matter it is unnecessary to decide whether a plea in abatement on the ground of non-joinder would have been appropriate or whether it was essential to the defendant’s right of action that the executor should have refused to take action himself. Even if the plaintiff’s objection is really that one of non-joinder or non-locus standi I think that it was

competent for him to raise it by way of exception under rule 23(1), The plaintiff takes the claim in reconvention as it stands and says, correctly in my opinion, that even if the defendants succeed in proving each and every averment contained therein they will not be entitled in law to any relief. In that matter the exception was against the particulars of claim in reconvention claimed. That being so, it cannot be gainsaid that the claim in reconvention “lacks averments which are necessary to sustain an action.”

[22] In concluding this judgment, I have had recourse to the above principles in evaluating the defendant’s exceptions. Both counsels submitted their heads of arguments and supplemented their viewpoints orally on the issues.

On the first ground of exception

[23] The defendants counsel submitted that the plaintiffs’ particulars of claim, particularly paras 19, 20 and 33 are vague and embarrassing in that both the plaintiffs rely on oral agreements entered into with the deceased who signed an acknowledgement of debt, which were not in terms of the NCA. Furthermore, they allege that the plaintiffs were not registered credit providers and the resultant credit agreement were not in terms of NCA.

[24] Furthermore, the plaintiffs alleged that the agreements entered into from 21 January 2008 to 17 March 2014 as per annexures ‘AOD22’ to ‘AOD24’ and ‘AOD39’ to ‘AOD50’ were in terms of s 8 of the Act 34/2007.

[25] In addition, the defendants counsel submitted that the plaintiffs did not put the basis for claiming a just and equitable remedy. Just and equitable claim is not acceptable cause of action in law. The defendants counsel referred this court to the case of Opperman and asked the court to apply it to the matter.

[26] The plaintiffs’ counsel submitted that it cannot be disputed that the only interpretation of the agreement, given the context of the oral agreement, was that only one agreement was concluded. It is not a tenable construction to plead that the amounts advanced to the deceased after commencement of the NCA constituted new credit agreements subject to the NCA. Furthermore, even if that can be so found by the trial court, the later advances constituted separate credit agreements. The trial court would have to declare the later advances as unlawful credit agreements as contemplated by s 89(2) of the Act, because the plaintiffs were not registered credit providers

[27] The plaintiffs’ counsel referred this court the decision of Vosal Investment (Pty) Ltd v City of Johannesburg and Others[18] at para 18 where the court stated:

‘Mr Nowitz argued that the summons issued in the present case contained no reference to the provisions of s118 and it was therefore

excipiable for want of such allegation. In this regard he referred to a well-known case of Yannakou v Apollo Club 1974(1) SA 614 (A). In that judgement Trollip JA said the following at 623G-H : Hence if he relies on a particular section of the statute, he must either state the number of the

section and the statute he is relying on or formulate his defence sufficiently clearly so as to indicate he is relying on it . . . And if his defence is illegality, which does not appear ex facie the document the transaction sued on but arises from its surrounding circumstances ,such as illegality and the circumstances founding it must be pleaded’.

[28] In *Fundstrust (Pty) Ltd (In liquidation) v Van Deventer*[19] Hefer JA quoted with approval the following at 725H:

‘It is not necessary in a pleading, even where the pleader relies on a particular or section of the statute, for him to refer to it provided that he formulated his case clearly ... or put differently, it is sufficient if the facts are pleaded from which the conclusion can be drawn that the provisions of the statute apply.’

[29] The test applicable to decide if a pleading is vague and embarrassing has been dealt with on several authorities for example in *Inzinger* the court determined that a pleading is vague and embarrassing if it strikes at the formulation of the cause of action and its validity. It is not directed at a particular paragraph within a cause of action but at the cause of action as a whole which must be demonstrated to be vague and embarrassing.

[30] In casu, it is common cause that the plaintiffs and the deceased entered into an oral agreement whereafter the deceased signed an acknowledgement of debt as per the pleadings. There were monies loaned and advanced even after the commencement of the NCA. I am of the view that the plaintiffs’ counsel’s submissions are correct to say particulars of claim are not vague and embarrassing to the extent that the defendants cannot plead to the claim. There is no prejudice to the defendant if they are to plead to the particulars of claim as pleaded by the plaintiffs.

[31] In addition, I have made the observation that the plaintiffs’ averments on the cause of action are based on the clear undisputed oral agreement as well as the monies loaned and advanced. There can be no more than one interpretation that the plaintiffs and the deceased entered into a contract. Thus, the defendants failed to demonstrate that the cause of action as a whole is vague and embarrassing and the plaintiffs failed to show a cause of action. I also find that the issues on the NCA, whether the oral agreement between the plaintiffs and the deceased was void ab initio, is factual matter for the trial court, which must also make a ruling on whether it can make an order which is just and equitable in terms of s 89(5) of the Act. In the result, this ground of exception falls to be dismissed.

On the second ground of exception

[32] This ground of exception is directed at paras 37 to 46 of the particulars of claim. This ground is rooted in the fact that the deceased consented to a life insurance policy on the life of the first plaintiff, which was issued for the deceased benefit as a form of security for the alleged indebtedness of the deceased to the first plaintiff.

- [33] The defendant's counsel submitted that the plaintiffs misinterpreted their pleadings by stating that the insurance policy pertained to the life of the first plaintiff rather than that of the deceased. On reading the plaintiffs pleadings, it can be understood and it is clearly stated that the deceased consented to a life insurance policy on the life of the first plaintiff as security and the deceased as the owner.
- [34] On further perusing page 21 of the of the plaintiff's pleadings, 'C5D4' is a reply from Sanlam to the fifth defendant on the cession of the of the life policy. The first plaintiff's name is mentioned as the person whose life is insured. The life policy was ceded to the third defendant on the 1st of October 2020.
- [35] The defendants' counsel on this ground of exception further state that the plaintiffs failed to allege any material facts upon which it relies to entitle them to seek a declaration of invalidity in an instance where they were not beneficiaries of the policy. I find this submission to be without substance and is misplaced.
- [36] Counsel for the defendant referred this court to Anirudh as authority on the non-joinder issue. The submission is that the plaintiff failed to join Sanlam as a party to the proceedings, in an instance where the plaintiff seeks rectification of a policy held or issued by Sanlam. This renders the particulars of claim vague and embarrassing to such an extent that the defendants cannot plead thereto and renders the claim as not disclosing a cause of action.
- [37] The plaintiffs' counsel submitted that Anirudh is distinguishable from the present matter. This Court is not here to decide the non-joinder, the exception is in terms of rule 23 and non-joinder is not one of the grounds.
- [38] In Titan Asset Management (Pty) Ltd and Others v Lanzerac Estate Investments (Pty) Ltd and Another[20] (Titan) the court held as follows:
- 'There is, in my respectful opinion, no sound basis to quarrel with the reasoning in Anirudh. Unless the respondent in that case was able to, and did, allege that she was the executrix of the deceased estate, the pleaded claim lacked averments to sustain the action and was consequently susceptible to exception. It did not matter that the excipient could have taken the point in a special plea of non-locus standi. Averments sufficient on their face to establish the claimant's legal standing to make the claim are an essential part of the case that has to be made out in the particulars of claim if the pleading is to sustain the cause of action. The Judge's remarks make it clear that the exception in Anirudh was good cause of action was not made out in the plaintiff's pleading. He expressly refrained from characterising the objection, and the judgement therefore does not stand as authority that non-joinder point can properly be raised on exception. It seems to me, in any event, that the objection in Anirudh was founded on evident lack of standing, not joinder.'
- [21]
- [39] Furthermore, in Titan, the court stated the following:

‘I have sought, in the course of discussing the aforementioned reported judgements, to demonstrate that the exception procedure would not be appropriate in any case where the nature of the complaint does not resort within either of the categories expressly identified in Uniform Rule 23, viz. that the pleading is vague and embarrassing or lacks averments to sustain a course of action or a defence, as the case may be. If, as in the current matter, the pleading concerned discloses a cause of action but also suggests that the cause of action should not be heard until an absent party has been joined or indicated its unwillingness to be bound by the judgement in the cause, then the apparent non-joinder is not appropriately raised by the exception. It is instead a point to be specially pleaded. . . . the plaintiff in such a case might be able to plead facts that provide an effective answer to the point , and it would be prejudicial to it for the court to determine the point without the plaintiff being afforded the opportunity to meet it in a replication.’[22]

I align myself with this dictum.

[40] I agree with the plaintiffs’ counsel that the defendants failed to demonstrate how the alleged complaint on this ground is vague and embarrassing so that it is unable to plead and the nature of the complaint with the non-joinder of Sanlam was not appropriately raised as an exception in terms of rule 23.

[41] I find the pleading in this regard to be concise, comprehensible and very apparent. The absence of information complained of by the defendants does not render the pleading vague and embarrassing, let alone prejudicial. This ground for exception is accordingly dismissed.

Costs:

[42] I do not see the reason why the costs should not follow the result. Accordingly, the following order is made:

The first and second grounds for exception are dismissed with costs.

MAHLATSI AJ

Appearances For the Plaintiff: Adv. J H van der Merwe Instructed by: Van Heerden Schoeman Inc. C/o Honey Attorneys BLOEMFONTEIN For the Excipients: Adv. A A Basson Instructed by: Tim du Toit & CO Inc C/o Symington de Kok Inc. BLOEMFONTEIN

[1] Inzinger v Hofmeyr and Others [2010] ZAGPJHC 104.

[2] Ibid para 2.

[3] Pretorius and Another v Transport Pension Fund and Others [2018] ZACC 10; [2018] 7 BLLR 633 (CC); 2019 (2) SA 37 CC.

[4] Frank v Premier Hangers CC [2007] ZAWCHC 21; 2008 (3) SA 986 (C).

[5] Ibid para 15.

- [6] Vermeulen v Goose Valley Investment (Pty) Ltd [2001] ZASCA 53; 2001 (3) SA 986 SCA.
- [7] Ibid para 7.
- [8] Benson & Simpson v Robinson 1917 WLD 126.
- [9] Ibid at 130.
- [10] Trope and Others v South African Reserve Bank [1993] ZASCA 54; 1993 (3) SA 264 (A).
- [11] Ibid at 273A.
- [12] Evins v Shield Insurance Co Ltd 1980
- [2] SA 814
- [13] Ibid at 825F.
- [14] Regulator National Credit v Opperman and Others [2012] ZACC 29; 2013 (2) BCLR 170 (CC).
- [15] Ibid para 88.
- [16] Anirudh v Samdei and Others 1975
- (2) SA 706 (N).
- [17] Ibid at 707A-B.
- [18] Vosai Investment (Pty) Ltd v City of Johannesburg and Others [2009] ZAGPJHC 28; 2010 (1) SA 595 (GSJ).
- [19] Fundstrust (Pty) Ltd (In liquidation) v Van Deventer 1997
- (1) SA 710 (A).
- [20] Titan Asset Management (Pty) Ltd and Others v Lanzerac Estate Investments (Pty) Ltd and Another [2023] ZAWCHC 136; [2023] 3 All SA 589 (WCC).
- [21] Ibid para 53.
- [22] Ibid para 59.

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