

SOUTH AFRICA / JUDGMENT

Sunwest International (Proprietary) Limited v Padayachee and Others (963/2024) [2024] ZAWCHC 393 (26 November 2024) [2024] ZAWCHC 393

COURT

Western Cape High Court, Cape Town

BEFORE

P Andrews

CASE / FILE NUMBER

963/2024

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IN THE HIGH COURT OF
SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Case
Number: 963/2024

In the matter between:

SUNWEST
INTERNATIONAL
Plaintiff / Excipient
(PROPRIETARY) LIMITED
and
MAGANATHAN
PADAYACHEE
First Defendant/Respondent
SHARNETHA
HARILALL
Second Defendant/Respondent
SHERILEE
PADAYACHEE
Third Defendant/Respondent
NAZLEY
PADAYACHEE
Fourth Defendant/Respondent

JUDGMENT

Andrews AJ

Introduction

[1] This is an opposed interlocutory application instituted by the Plaintiff against the First, Second and Third Defendants' ("the Defendants") Counterclaim on the grounds that same are vague and embarrassing, alternatively do not contain the necessary averments to disclose a cause of action. The matter has become settled between the Plaintiff and Fourth Defendant, which Settlement Agreement was made an Order of Court on 1 August 2024. The parties shall be referred to as per the pleadings in the main action.

The Pleadings

[2] In order to understand the basis upon which the exception has been grounded, I deem it necessary to provide a brief overview of the essential averments as pleaded by the Plaintiff. In this regard, it is asserted that the Plaintiff is a valid casino license holder under the Western Cape Gambling and Racing Act[1] ("WC Act"), who owns and operates the GrandWest Casino and Entertainment World ("GrandWest"). The Plaintiff is a subsidiary of Sun International (South Africa) Limited ("SISA"). SISA owns and operates the Sun MVG loyalty programme across its licensed casinos and sports betting businesses in South Africa. The Defendants are existing Sun International patrons and members of the MVG loyalty programme to which membership terms and conditions are ascribed.

[3] These terms and conditions included, inter alia, that members accept that it is possible for errors or system malfunctions to occur. In such instances, Sun International reserves the right to adjust or revoke discounts applied, loyalty points, benefits or tier credits accrued by members. The Plaintiff, in terms of the WC Act and its regulations, has various disclaimer notices situated at places such as the entrance to GrandWest, the

cash desks in the casino area and all the slot machines in the casino area. The disclaimer notices included the following:

'...It is possible for electronic equipment and slot machines operated on these premises to malfunction. The operator reserves the right to verify such equipment and machines prior to making payments or rewards in respect of winnings and/or prizes....

Jackpots paid subject to all technical and electronic verification being positive. Malfunction voids all plays and pays.'

[4] The Plaintiff alleges that between 26 and 29 January 2023, the Defendants entered the Plaintiff's premises at GrandWest and partook in gambling activities including playing slot machines. On 26 January 2023, by playing on machine 72504, the First Defendant recognised that the said machine had malfunctioned. In this regard, the credits that were transferred to

machine 72504 remained on the First Defendant's MVG card and thereby increased the number of credits on his card. The Plaintiff furthermore contended that the First Defendant, having recognised that machine 72504 was malfunctioning, through intentional and fraudulent use of his MVG card, unlawfully accrued credits from machine 72504 in the sum of R1 075 772.90. The First Defendant withdrew R24 000 in cash and requested the sum of R1 047 433.80 to be transferred from GrandWest to Sibaya where he withdrew the sum of R1 million in 2 tranches of R100 000 and R900 000 respectively, in cash from the cashier.

[5] It is furthermore alleged that the First Defendant returned to GrandWest on 27 January 2023, having re-established that machine 72504 was still malfunctioning, the First Defendant through intentional and fraudulent use of his MVG card and day visitor card, unlawfully accrued credits from machine 72504 in the sum of R2 484 634.97. On 27 January the First Defendant withdrew R10 000 in cash from the ACM at GrandWest and requested that the sum of R565 197.88 be transferred from GrandWest to Sibaya where he withdrew the sum of R12 000 in cash from the ACM. He also requested that funds in the collective amount of R3 382 214 be transferred by GrandWest to Sibaya for withdrawal by the First and Second Defendants.

[6] The same or similar *modus operandi* was implored by the Second and Third Defendants on 27 January 2023 and 28 January 2023, respectively. It is thus alleged that over

the course of 26 to 29 January 2023, the Defendants unlawfully and intentionally accrued the following credits from machine 72504:

(a) First Defendant – R3 560 407.87 of which he unlawfully withdrew the sum of R1 646 000 as follows:

(i) R34 000 in cash from the ACM at GrandWest;

(ii) R1 612 000 from Sibaya, of which R12 000 was cash from the ACM and R1 600 000 from the cashier.

(b) Second Defendant – R1 350 105.84, of which she unlawfully withdrew the sum of R920 000 as follows:

(i) R10 000 in cash from the ACM at GrandWest; and

(ii) R910 000 from Sibaya of which R10 000 was cash from the ACM and R900 000 from the cashier.

(c) Third Defendant – R1 334 646.10 of which she unlawfully withdrew the sum of R24 000 in cash from the ACM at Sibaya.

[7] The impugned portions of the Defendants' Counterclaim are paragraphs 2 and 4 respectively that read as follows:

‘2. During or about January 2023 (“the relevant period”) and at Cape Town, the First Defendant acting personally, the Second Defendant acting personally, the Third Defendant acting personally and the Plaintiff represented by a duly authorised representative concluded a tacit agreement (“the tacit agreement”).

...

4. The terms of the tacit agreement were, inter alia, the following:

4.1 the Defendants would participate in gambling activities at the Plaintiff’s premises;

4.2 in participating in the gambling activities, the Defendants:

4.2.1 would make use of MVG cards and/or day visitor cards (collectively “loyalty cards”);

4.2.2 would deposit monies into the loyalty card alternatively make use of accumulated credits available on the loyalty cards.

4.3 the Defendants were entitled to withdraw any accumulated credits from the loyalty cards at their exclusive discretion and on demand;

4.4 the Plaintiff would be liable to pay to the Defendants any accumulated credits that the Defendants sought to withdraw at their exclusive discretion and on demand.’

Grounds of Exception

[8] The Plaintiff’s exception is broadly predicated on the Respondents failure to allege:

- (a) the date the tacit agreement was concluded;
 - (b) the place where the tacit agreement was concluded;
 - (c) the identity of the Plaintiff’s authorised representative and
 - (d) the conduct upon which the Respondents intend to rely to establish the tacit agreement, which the Plaintiff contended is necessary to show that the parties intended to, and did, contract on the terms alleged by the Respondents.
- [9] In failing to do so the allegations are said to be vague and embarrassing and the Plaintiff would be prejudiced if required to plead thereto. The Plaintiff contended in the alternative, that the allegations are irregular in that they did not contain a clear and concise statement of material facts on which the Defendants rely for their claim with sufficient particularity to enable the Defendant to reply thereto as required by Rules 18 (4) and 18 (6).

Principal submissions by the Plaintiff

[10] The Plaintiff challenges paragraph 2 as vague and embarrassing. In relation to paragraph 4, it is submitted that “the tacit agreement is not susceptible to the alleged construction alternatively to the terms pleaded in paragraph 4 of its counterclaim”.

[11] The Plaintiff argued that in order to establish a tacit contract it is necessary to show, by a preponderance of probabilities, unequivocal conduct which is capable of no other reasonable interpretation than that the parties intended to, and did in fact, contract on the terms alleged. The Plaintiff ultimately asserted that the Defendants' Counterclaim is effectively stillborn as it was "anorexic" in substance.

Principal submissions on behalf of the Defendants

[12] The Defendants noted that the Plaintiff's position shifted from contending that the Counterclaim was vague and embarrassing and failed to disclose a cause of action, to the Plaintiff only asserting that the Counterclaim is vague and embarrassing or irregular.

[13] The court was referred to the general legal principles governing exceptions insofar as it related to the grounds of exception as pleaded. In this regard, it was argued that it is incumbent on the Plaintiff to persuade the court that upon every interpretation which the Counterclaim, can reasonably bear, no cause of action is disclosed, as failing this, the exception ought not to be upheld. It was furthermore contended that the Plaintiff conflates an irregular step which must be distinguishable from an exception. In this regard, it was argued that an irregular step in terms of Rule 30 does not strike at the root of the cause of action as pleaded but only at individual averments in the summons.

[14] The Defendants submitted that they have, in their Counterclaim, pleaded a complete cause of action in that they have:

- (a) Asserted a tacit agreement concluded in Cape Town during January 2023;
- (b) Pleaded the terms of the tacit agreement;
- (c) Pleaded conduct inimical to the conclusion of a tacit agreement.

[15] The Defendants, furthermore, contended that they have pleaded the facta probanda upon which they seek relief.

Legal Principles

[16] It is trite that an exception can be taken where pleadings are vague and embarrassing or lack averments which are necessary to sustain an action or defence.[2] The test for an exception is firmly established in our law. An overview of the applicable general principles distilled from case law is succinctly set out in *Living Hands (Pty) Ltd NO and Another v Ditz and Others*[3], where Makgoka J, encapsulated the general principles applicable to exceptions.

[15] Before I consider the exceptions, an overview of the applicable general principles distilled from case law is necessary:

- (a) In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by the plaintiff to assess whether they disclose a cause of action.

- (b) 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 or a portion thereof in an expeditious manner, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception[4].
 - (c) The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a very clear case before it would be allowed to succeed.[5]
 - (d) An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclosed.
 - (e) 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.[6]
 - (f) Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained.[7]
 - (g) Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars.[8]
- [17] It is trite that exceptions are raised in an attempt to avoid the leading of unnecessary evidence at the hearing of the action.[9]

Discussion

- [18] In this matter the Defendants did not file an objection to the Rule 23 Notice. The issues in dispute are central to determining whether the grounds of exception raised to the Defendants' Counterclaim are meritorious. In this regard, there are conflicting versions between the parties insofar as it relates to the type of the agreement entered into between the parties which may be gleaned from the pleaded cases of the respective parties.
- [19] It was contended that the Defendants rely on a tacit agreement which is devoid of particularity as envisaged in Rule 18. Rule 18 (4) is clear and states that:
- 'Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto'
- [20] It is therefore incumbent on a party to plead a complete cause of action which identifies the issues called upon which a party seeks to rely, and on which evidence will be led, in an intelligible and lucid form and which allows the Defendant to plead to it. The Plaintiff illuminated that the Defendants do not allege whether precisely or at all, the date on which the tacit agreement was concluded; the place at which the tacit agreement was concluded; the identity of the individual purportedly authorised by the Plaintiff to represent it in

concluding the tacit agreement; and conduct both theirs and that of the unidentified representative of the Plaintiff, upon which they intend to rely to establish that the purported tacit

agreement was concluded on the terms that they allege.

[21] The Plaintiff further demonstrates its assertion in reference to paragraph 2 where the Plaintiff pleaded that it “is the holder of a valid issued casino license under the Western Cape Gambling and Racing Act, 4 of 1996 (the WC Act), and owns and operates the GrandWest Casino and Entertainment World situated at...’, which are admitted by the Defendants. Furthermore, the Plaintiff at paragraph 10 of its Particulars of Claim, pleaded:

‘10. As per the Act and its regulations the plaintiff has various disclaimers situated at, inter alia:

10.1 the entrance to GrandWest;

10.2 the cash desks in the casino area; and

10.3 on all the slot machines in the casino area.’

[22] The Plaintiff contended that despite excerpts of these disclaimer notices being pleaded and images thereof attached; the Defendants have baldly denied these irrefutable allegations which is a legislative imperative in terms of the WC Act. It was contended that the Defendants have also failed to adduce any factual averments that, if proved at the trial, would constitute a defence to this allegation.

[23] The Defendants deny that there were any terms and conditions save for the terms of the tacit agreement as pleaded by the Defendants in the Counterclaim, more particularly paragraphs 4.3 and 4.4 thereof. In this regard, the Defendants pleaded that they were entitled to withdraw any accumulated credits from the loyalty cards at their exclusive discretion and on demand. In addition, the Defendants asserted that the Plaintiff would be liable to pay to the Defendants any accumulated credits that the Defendants sought to withdraw at their exclusive discretion and on demand.

[24] I interpose to mention that it is the Defendants’ position that the terms and conditions the Plaintiff allege bound the Defendants are yet to be decided upon at the trial in due course. This court is mindful that the defences raised are not to be evaluated at the stage of an exception. The overarching consideration ultimately is whether the Defendants’ Counterclaim, as it stands, has been formulated in such a way as to enable the Plaintiff to plead to it. This court is not seized with making any factual determinations especially where the terms of the agreements are materially at odds. Its relevance for the purposes of the exception, in my view, relates to whether the pleaded assertions are vague and embarrassing, to the extent that the Plaintiff cannot properly plead to it.

[25] The central argument by the Plaintiff is that the Defendants have failed to plead with precision when the tacit agreement was entered into; where the tacit agreement was entered into and with whom was the tacit agreement entered into. In other words, who was duly authorised to enter into the agreement on behalf of the Plaintiff. The Plaintiff asserted that in the absence of these material averments, the claim relying on a tacit agreement is not sustainable. It is trite that material terms of a tacit agreement must be pleaded.

[26] The Defendants referred to the matter of *Michael v Frozen Yoghurt Parlour (Pty) Ltd* [10] where the court held that:

‘When an exception is taken to a pleading, the excipient proceeds on the assumption that each and every averment in the pleading to which exception is taken is true, but nevertheless contends that, as a matter of law, the pleadings do not disclose a cause of action or defence, as the case may be.’

[27] The Defendant therefore submitted that the court is required to accept that:

- (a) A tacit agreement incorporating the terms alleged by the Defendants in their Counterclaim was concluded at Cape Town during or about the relevant period;
- (b) Pursuant to the conclusion of the tacit agreement the Defendants participated in gambling activities using loyalty cards into which funds were deposited and/or credits were accumulated;
- (c) During the relevant period, the Defendants demanded payment of credits accumulated on the loyalty cards and were paid portions of the amounts demanded;
- (d) Plaintiff failed to pay the balance of the accumulated credits to each of the Defendants.

[28] It is the Defendants’ contention that the assertion made by the Plaintiff that the allegations pleaded by the Plaintiff must be accepted as true, is incorrect as it is for the trial court to make such a finding. The Defendant submitted that any further details could be acquired by the Plaintiff by requesting trial particulars and/or through the discovery process, as set out in *Jowell v Bramwell-Jones and Others* “(*Jowell v Bramwell-Jones*)” [11] where the following was stated:

‘When the lack of particularity relates to mere detail, the remedy of the defendant is to plead to the averment made and to obtain the particularity he requires:

- (i) Either by means of the discovery/inspection of document procedure in terms of the Rules;
or
- (ii) By means of the request for particulars for trial of those particulars which are strictly necessary to enable the defendant to prepare for trial.’

[29] The Defendants mooted that the attacks mounted by the Plaintiff that their Particulars of Claim are vague and embarrassing cannot found on the mere averment that they are lacking in particularity, as regard is to be had that this is not the trial and that only *facta probanda* are to be pleaded.[12] Furthermore, it was argued that the Plaintiff is able to plead by, for example, denying the averment and stating the terms of the

agreement which the Plaintiff places reliance on and thereafter request the particulars as set out in *Jowell v Bramwell-Jones* (supra). For the purposes of this application, it will not be required to delve into the legalities of a tacit agreement, save to mention that in order for the Defendant to rely upon the terms of a tacit agreement, fundamental averments are necessary to be pleaded.

[30] The Defendants argued that they have pleaded a case that sustains a tacit agreement. The traditional test for inferring tacit contracts was formulated in the locus classicus case of *Standard Bank of South Africa Ltd v Ocean Commodities Inc*[13] (“*Ocean Commodities*”), as follows by Corbett JA:

‘In order to establish a tacit contract it is necessary to show, by a preponderance of probabilities, unequivocal conduct which is capable of no other reasonable interpretation than that the parties intended to, and did in fact, contract on the terms alleged. It must be proved that there was in fact consensus ad idem’

[31] The Plaintiff contended that the Defendants’ Counterclaim is manifestly devoid of facts to show unequivocal conduct. The accepted legal principle is that a litigant is required to plead material facts that are necessary to support his right to

judgment.

[32] It is trite that a litigant must know the case he/she needs to meet and plead to it and should not be taken by surprise which may lead to embarrassment. Prejudice to a party taking exception lies in the inability to properly prepare to meet the case of the party against whom the exception is taken.

[33] The matter of *McKenzie v Farmers’ Co-operative Meat Industries Ltd*[14] clearly defined meaning of a “cause of action”.

‘...every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the court. It does not comprise every piece of evidence which is necessary to prove its fact, but every fact which is necessary to prove.’

[34] The Defendants argued that the Plaintiff has not referred to any authority for the matter to be considered holistically. The matter of *Number Two Piggeries (Pty) Ltd v City of Tshwane Metropolitan Municipality In re: City of Tshwane Metropolitan Municipality v Number Two Piggeries (Pty) Ltd*[15] (“*Number Two Piggeries*”), succinctly deals with the court’s approach when determining whether a pleading is vague and embarrassing. In this regard, the following was stated:

[10] To determine whether a pleading is vague and embarrassing the pleading must be read as a whole.[16] An exception based on vagueness and embarrassment is intended to rectify any defect or incompleteness in the manner in which the pleading is structured and which will result in embarrassment to the party required to plead and strikes at the formulation of the cause of action.[17] It can only be allowed if the excipient will be seriously prejudiced if the offending allegations are not expunged and can only be taken if the vagueness relates to the cause of action.[18]

[11] A court is obliged to consider whether the pleading lacks particularity to an extent amounting to vagueness. A statement is vague if it is either meaningless or capable of more than one meaning.[19] If the aforementioned vagueness exists the court is obliged to undertake an analysis of the embarrassment that the excipient can show is caused due to the vagueness complained of.[20] The ultimate test when determining an exception is whether the excipient is prejudiced.[21] The onus is on the excipient to proof both vagueness, embarrassment and prejudice.[22] [Emphasis added]

[35] The court is required to evaluate, whether upon reading of the pleadings in its entirety the claim has been formulated in a manner that allows the Plaintiff to ascertain clearly what the case against it is and should enable the Plaintiff to plead to it.[23]

Conclusion

[36] The purpose of an exception is to weed out matters without legal merit. The matter of Number Two Piggeries (supra), unequivocally makes it peremptory for pleadings to be read as a whole in order to determine whether a pleading is vague and embarrassing. A court is obliged to consider whether the pleading lacks particularity to an extent amounting to vagueness.

[37] In my view, the vagueness relates directly to the Defendants' cause of action which requires particularity insofar as it relates to the date when the tacit agreement was entered into, the specific place where the tacit agreement was entered into and the specific person with whom the tacit agreement has been entered into. Therefore, this court is obliged to undertake an analysis of the embarrassment.

[38] It is trite that the merits or demerits of this matter cannot be considered at the stage of exception and I make no findings in this regard, based on the pleadings as it stands. It is, however, my view that the vagueness of the Defendants' Counterclaim will indeed cause potential prejudice to the Plaintiff as the Defendants' Counterclaim is manifestly devoid of facts that show unequivocal conduct as set out in Ocean Commodities (supra). Consequently, I am not persuaded that the Defendants have furnished sufficient facts to sustain the Defendants' Counterclaim

relating to the terms of the tacit agreement. I am therefore satisfied that the Plaintiff has succeeded in proving vagueness, embarrassment and prejudice and accordingly, the exception falls to be upheld. In order to ameliorate any prejudice to the Defendants,

the court will, in the exercise of its discretion, grant the Defendants leave to amend their Counterclaim.

Costs

[78] There are no cogent reasons placed before me to consider a departure from the general rule that costs ordinarily follow the result.

Order

[83] In the result, the Court, after hearing the submission on behalf of the respective parties and having considered the documents filed on record makes the following orders:

- (a) The Plaintiff's exception is upheld with costs which costs are to include the costs of Counsel on scale "B".
- (b) The First, Second and Third Defendants' are afforded the opportunity to amend their Counterclaim within 20 days of the granting of this order in terms of Rule 28.

P ANDREWS

Acting Judge of the High Court of South Africa,

Western Cape Division, Cape Town

APPEARANCES:

Counsel for the Plaintiff/ Excipient:

Advocate A Berkowitz

Instructed by:

Knowles Husain Lindsay Inc.

Counsel for the First, Second and :

Advocate D L Williams

Third Defendants

Instructed by:

Harkoo Brijlal & Reddy Inc.

Heard on 22 November 2024

Delivered 26 November 2024 – This judgment was handed down electronically

by circulation to the parties' representatives by email.

[1] Act 4 of 1996.

[2] Rule 23 of Uniform Rules of Court, See also Children's Resource Centre Trust and Others v Pioneer Food Pty Ltd and Others 2013

(2) SA 213 (SCA) at para 36.

[3] (42728/2012) [2012] ZAGPJHC 218; 2013 (2) SA 368 (GSJ) (11 September 2012) at para 15; See also Merb (Pty) Ltd and Others v Matthews 2021 ZAGP JHC 693 (16 November 2021), at para 8; Number Two Piggeries (Pty) Ltd v City of Tshwane Metropolitan Municipality In re: City of Tshwane Metropolitan Municipality v Number Two Piggeries (Pty) Ltd (2081/2021)

[2022] ZAGPPHC 274 (21 April 2022) paras 6 – 12.

[4] Barclays Bank International Ltd v African Diamond Exporters (Pty) Ltd (2) 1976 (1) SA 100 (W).

[5] Van der Westhuizen v Le Roux 1947

(3) SA 385 (C) at 390.

[6] Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006

(1) SA 461 (SCA) at para 3 where Harms JA distils the general approach to exceptions as follows: 'Exceptions should be dealt with sensibly. They provide a useful mechanism to weed out cases without legal merit. An over-technical approach destroys their utility. To borrow the imagery employed by Miller J, the response to an exception should be like a sword that cuts through the tissue of which the exception is compounded and exposes its vulnerability.' See also Erasmus Superior Court Practice, Second Edition (Juta), D1-294 [SERVICE 4, 2017], H v Fetal Assessment Centre 2015 (2) SA 193 at 199B.

[6] Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006

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See also Erasmus Superior Court Practice, Second Edition (Juta), D1-294 [SERVICE 4, 2017], H v Fetal Assessment Centre 2015 (2) SA 193 at 199B.

[7] Jowell v Bramwell-Jones and Others 1998

(1) SA 836 (W) at 902 J.

[8] Jowell (supra) at 900 J; See also Purdon v Muller 1961

(2) SA 211 (A) at 214 e – 215.

[9] Number Two Piggeries (Pty) Ltd v City of Tshwane Metropolitan Municipality In re: City of Tshwane Metropolitan Municipality v Number Two Piggeries (Pty) Ltd (2081/2021)

[2022] ZAGPPHC 274 (21 April 2022). '[6] The law pertaining to exceptions is trite. The aim of exception procedures is to avoid the leading of unnecessary evidence and to dispose of a case wholly or in part in an expeditious and cost effective manner...'

[9] Number Two Piggeries (Pty) Ltd v City of Tshwane Metropolitan Municipality In re: City of Tshwane Metropolitan Municipality v Number Two Piggeries (Pty) Ltd (2081/2021)

[2022] ZAGPPHC 274 (21 April 2022).

'[6] The law pertaining to exceptions is trite. The aim of exception procedures is to avoid the leading

of unnecessary evidence and to dispose of a case wholly or in part in an expeditious and cost effective manner...'

[10] 1999

(1) SA 624 at para 634C.

[11] 1998

(1) SA 836 at para 902C.

[12] Ibid para 902H.

[13] 1983 1 SA 276 (A) 292B.

[14] McKenzie v Farmers' Co-operative Meat Industries Ltd 1922 AD 16 at 23.

[15] (2081/2021) [2022] ZAGPPHC 274 (21 April 2022), paras 10 -11.

[16] Trope and others v South African Reserve Bank

[1993] ZASCA 54; 1993

(3) SA 264 (A) at 268F, 269I.

[17] Jowell v Bramwell-Jones and Others 1998

(1) SA (W) at p 889 G; Nel and Others N.O. v McArthur 2003

(4) SA 142 (T) 149F.

[18] Levitan v New Haven Holiday Enterprises CC 1991 (2) SA 297 (C) p 298 A.

[19] Wilson v South African Railways & Harbours 1981

(3) SA 1016 (C) p 1018 H.

[20] Trope p 211 B.

[21] Trope p 211 B; Francis v Sharpe 2004(3) 230 (C), p 240 E – F;

[22] Lockhat v Minister 1960(3) SA 765 D p 777 A; Colonial Industries Ltd v Provincial Insurance Co Ltd 1920 CPD 627, p 630. Amalgamated Footwear & Leather Industries v Jordan & Co Ltd 1948

(2) SA 891 (C) p 893

[22] Lockhat v Minister 1960(3) SA 765 D p 777 A; Colonial Industries Ltd v Provincial Insurance Co Ltd 1920 CPD 627, p 630. Amalgamated Footwear & Leather Industries v Jordan & Co Ltd 1948

(2) SA 891

(C) p 893

[23] Number Two Piggeries (Pty) Ltd (supra) at para 12.

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