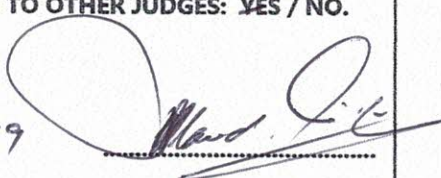




**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG DIVISION, PRETORIA DIVISION,)**

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
<b>(1) REPORTABLE: YES / NO.</b>	
<b>(2) OF INTEREST TO OTHER JUDGES: YES / NO.</b>	
<b>(3) REVISED.</b>	
<b>DATE</b> 2/3/2019	<b>SIGNATURE</b> 

CASE NO: 541 / 2018

In the matter between:

A T MOKGALE N.O.

Plaintiff

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

1<sup>st</sup> Defendant

MINISTER OF HUMAN SETTLEMENT

2<sup>nd</sup> Defendant

MINISTER OF PUBLIC WORKS

3<sup>rd</sup> Defendant

MEMBER OF THE EXECUTIVE COUNCIL FOR  
DEPARTMENT OF LOCAL GOVERNMENT, HOUSING  
PLANNING AND DEVELOPMENT  
NORTH WEST PROVINCE

4<sup>th</sup> Defendant

MOLEBOGENG INVESTMENT CC  
(REG NO: 1998/049263/23)

5<sup>th</sup> Defendant

REGISTRAR OF DEEDS

6<sup>th</sup> Defendant

OLD APOSTOLIC CHURCH

7<sup>th</sup> Defendant

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## JUDGMENT

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HOLLAND-MÜTER A/J:

### INTRODUCTION:

[1] This is an exception in terms of which the excipients contend that the particulars of claim of the respondent (the plaintiff in the main action) are vague and embarrassing. All seven excipients aver that the plaintiff's particulars of claim lack the necessary averments to sustain a cause of action against the defendants and consequently with the consent of all counsel present and in order not to unnecessary hear similar arguments on behalf of all excipients, it was agreed that Mr Klopper on behalf of the 5<sup>th</sup> excipient will argue the exception in general, and if necessary, counsel for the other excipients may add to the argument. Mr Dauds on behalf of the plaintiff agreed with this approach.

[2] I need to mention that the junior counsel for the first excipient arrived late

with the explanation that her leader, Ncongwane SC, was not informed of the date of hearing. I will deal with this aspect below but in view of the similarity of the exceptions, decided to hear the matter and not to postpone it indefinite. It only effects the issue of costs for appearance.

- [3] I deem it necessary to deal with the respondent's claim as set out in the particulars of claim in the main action.

#### RESPONDENT'S CLAIM:

- [4] The plaintiff's claim against the defendants is based on a vindicatory claim for the return of what is stated in the particulars of claim as the "*Morokong Property*", annexing a deed of transfer (title) T29361/1974 to describe the immovable property claimed.
- [5] The property is described as *Portion 16 (a portion of Portion 7) of the farm Nooitgedacht No256 JR, City of Tshwane Metropolitan Municipality, Registration Division JR, measuring 1 216 022 sq m, or 121, 6022 hectares in extent*. No map or plan of the area was annexed.
- [6] In the particulars of claim in par 11 thereof, the averment is made that the defendants are in possession of the aforesaid property and that certain permanent structures were erected on the property:



- 6.1 Two schools; the Odi FET College; the Odi Prison; a South African Police Services station (not naming the specific SAPS station); the Morula Sun Casino & Hotel and the Mabopane Central City large retail outlet. The above mentioned structures are allegedly situated in the Winterveld and Mabopane Suburbs. These suburbs were in the old Republic of Bophutatswana before 1994, now the North West Province. This is judicially known to the court.
- 6.2 The seventh defendant is cited in the particulars of claim to be situated at 1741 Veronica Street, Magalieskruin Suburb in Tshwane in Gauteng (in the old Transvaal Province).
- 6.3 In par 11 the plaintiff alleges that a golf course (unnamed) and four (4) open public spaces or parks have also been established, but without indicating the party or parties responsible therefore and who presently occupy/runs the golf course.
- 6.4 In par 12 of the particulars of claim avers that residential units (ranging from RDP houses to middle and upper class housing) were erected, also not labeling the party or parties responsible therefore. Similar averments are made as to a Youth development centre, a licensing

centre, a shopping centre, a fuel centre and a church. As remarked above, the shopping centre and the fuel station are not identified nor is any of the developed suburbs identified, and there are numerous fuel stations and shopping centres in the claimed area.

6.5 The respondent further gave notice of intention to amend its particulars of claim in respect of the amount claimed from R 500 million to R 1 billion but no amended pages served before this court. This will be dealt with below.

[7] The excipients all filed exceptions to the summons. The grounds upon which the exceptions are based are basically the same and can be summarized as follows:

7.1 Rule 18(4) of the Uniform Rules of Court requires that a pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his/her claim, defence or answer to any pleading with sufficient particularity to enable the opposite party to reply thereto. The exception in this regard is that the respondent (plaintiff) failed to identify each specific portion to be held by each of the excipients (defendants) and /or what the alleged market value of

each alleged portion is to which each party is individually liable towards the respondent (plaintiff). The crux of this ground is that it is not clear which defendant is holding which portion and what the alleged value of each portion is. These are valid objections.

7.2 The next ground of the exceptions is that it is unclear which excipient (defendant) is in possession of which portion of the property in question. This is also a valid objection. It is impossible to determine which fuel station or shopping centre are part of the claimed property.

7.3 The next ground for the exception is that the respondent (plaintiff) did not alleged how and when the late Lebishe Morokong obtained possession of the property and effected registration thereof and how the late Lebishe Morokong lost possession of the immovable property.

7.4 The following ground for the exception is that it is not alleged how the First, Second, Third, Fourth and Seventh defendants became possessors of what portion of the alleged property in question.

7.5 The next ground for the exception is that there is no averment to substantiate the alleged amount claimed for damages in the alternative

claim. It is not clear who holds what portion or who is liable for what amount in the alternative and how the amounts are calculated or determined to constitute damages in the amount of R1 billion.

7.6 It is further not clear why the Ministers of Education and Safety and Security are not parties to the action in view of the averments with regard to the educational institutions and Police Station forming part of the alleged structures on what portion of the property claimed by the respondent (plaintiff). The schools are not identified and there are more than only two schools (educational institutions) on the claimed property. Again there is uncertainty as to the places in question.

7.7 The respondent (plaintiff) alleges that various housing structures were constructed on a portion of the claimed property. There is no indication where these developments were made, by whom, when and who now occupies these housing structures. It may be that this relates to various residential developments and that these houses are owned by possibly hundreds of different owners by virtue of a valid deed of title issued by the Deeds Offices responsible, and who may have an material interest in the outcome of the action and should be parties to the action.



- [8] A summons will be vague and embarrassing if it is not clear what the cause of action is and in particular in this instance, the particulars of each specific portion of land claimed from each individual defendant. It is also the case where a plaintiff sues more than one defendant but fails to set out each claim and the specific relief sought separately. See **Herbst v Smit 1929 TPD 306**.
- [9] It is trite that a pleading can be both vague and embarrassing and constitute an irregular step. In **ABSA Bank v Boksburg Transitional Local Municipality 1997 (2) SA 415 W at 418 E-H** the court found that where pleadings fail to comply with Rule 18 and are vague and embarrassing the defendant has a choice of remedies: he may bring an application in terms of Rule 30 to have the pleadings set aside as an irregular step or raise an exception in terms of Rule 23.
- [10] I deem it not necessary to in detail distinguish between the distinction between Rule 30 and Rule 23 but to state that, like in **Jowell v Bramwell-Jones 1998 (1) SA 836 W** where it was held that the court should: *“first ask whether the exception goes to the heart of the claim and, if so, whether it is vague and embarrassing to the extent that the defendant does not know the claim he has to meet..”*.



[11] In **Living Hands (Pty) Ltd and another v Ditz and another 2013 (2) SA 368 (GSJ)**, Makgoba J enunciated the principles governing an exception. The crux is to determine whether the allegations as pleaded disclose a cause of action, not to by taking an exception, to embarrass the opponent by taking advantage of a technical flaw but to dispose of a matter expeditious, the excipient to establish that upon any construction no cause of claim is disclosed, to avoid an over-technical approach and to read pleadings as a whole and not to take advantage of minor blemishes which could be cured by further particulars.

[12] It is also trite that the excipient has to persuade the court that upon every interpretation of the pleading in issue, that the pleading bears no cause of action. It is also trite even if the pleading is vague and embarrassing, the exception will fail unless the excipient shows that it will suffer substantial prejudice if it were compelled to plead in light of the defective cause of action.

[13] The ultimate test is any prejudice caused to the excipient. The test for determining whether the pleading is vague and embarrassing is whether on the face value of the pleading a party is unable to answer to such pleading. See **All Out Porperty and Complex Maintenance CC v Volker**

**Harmen Schadewaldt and Another Case Number 72678/2016 GNP**

**(unreported)** on 12 April 2018, Shangisa AJ.

[14] In my view the objections raised by the defendants (excipients) do have merit. I am of the view that the defendants are unable to answer to the flawed particulars of claim as discussed above. The defendants cannot with any certainty determine who occupies what portion of the immovable property due to lack of particularity of each portion, of the monetary value ascribed to each portion on the alternative and that parties who may have a direct interest in the claim are not part of the proceedings. See above.

**CONCLUSION:**

[15] There are other further grounds for the exceptions but suffice to state that those grounds listed above is very clear that the particulars as present are vague, embarrassing and lacks the necessary averments to sustain a cause of action.

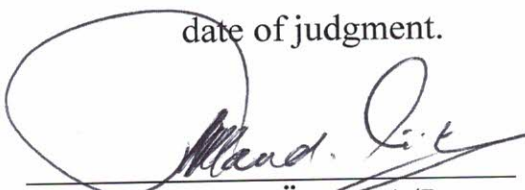
[16] I am of the view that the exceptions are not technical but that the excipients (defendants) are embarrassed by the lack of averments in the particulars of claim and that these exceptions are not merely promoting undue formalism in the pleadings.

[17] I am of the view that the particulars of claim does not set out the material facts upon which the defendants could reply. The exceptions must in my view succeed.

ORDER:

[18] As a result I make the following order:

1. The exceptions are upheld with costs, the First excipient is however not entitled to any costs for appearance in view of the non-attendance by it's senior counsel and the late arrival of the junior counsel after arguments were finalized.
2. The respondent (plaintiff) is granted leave to amend the particulars of claim, such amendments to be done within 30 (thirty) days from date of judgment.

A handwritten signature in black ink, appearing to read "Mand. L. t.", is written over a horizontal line. To the left of the signature is a large, hand-drawn oval.

J HOLLAND-MÜTER A/J  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

Date of Judgment:



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