

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG HIGH COURT DIVISION, PRETORIA

Case No: **010198/2023**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
30 JUNE 2023
DATE	SIGNATURE

In the matter between:

MODIFHO FELA CATERERS (PTY) LTD

PLAINTIFF

[Registration Number: 2014/0453829]

And

SEFAKO MAKGATHO HEALTH SCIENCE UNIVERSITY

FIRST DEFENDANT

VICE CHANCELLOR & PRINCIPAL: SEFAKO

MAKGATHO HEALTH SCIENCE UNIVERSITY

SECOND DEFENDANT

UNIVERSITY COUNCIL: SEFAKO MAKGATHO

HEALTH SCIENCE UNIVERSITY

THIRD DEFENDANT

THE REGISTRAR: SEFAKO MAKGATHO

HEALTH SCIENCE UNIVERSITY

FOURTH DEFENDANT

DIRECTOR PROCUREMENT SERVICES:

SEFAKO MAKGATHO HEALTH SCIENCE UNIVERSITY

FIFTH DEFENDANT

MANAGER CANTEEN:

J U D G M E N T

MAKHOBBA, J

- [1] The Plaintiff instituted an action for damages against the defendants. The plaintiff contends that the defendants concluded an oral agreement with it. The defendants contented that the particulars of claim has failed to plead the terms of the oral agreement.
- [2] The Plaintiff is MODIFHO FELA CATERERS (PTY) LTD, a company duly incorporated under the company laws of the Republic of South Africa registration number 2014/045382/07] with its' principal place of business at we Boikhutso Accommodation Cafeteria, 139 Francis Baard Street. Pretoria Central, Pretoria, Gauteng Province here in dully represented by Pelo Lese kang Jostinah, its sole Director.
- [3] The First defendant is SEFAKO MAKGATHO HEALTH SCIENCES UNIVERSITY, a university established in terms of the Higher Education Act, Act No. 101 of 1997 with its principal place of business at Motlotlegi Street. Ga Rankuwa zone 1, Ga-Rankuwa.

- [4] The Second defendant is vice chancellor and principal: cited here in as the chief executive officer of the first defendant, with a place of work at Motlotlegi Street. Ga Rankuwa zone 1, Ga-Rankuwa.
- [5] The Third Defendant is University Council: SEFAKO MAKGATHO HEALTH SCIENCES UNIVERSITY, a principal executive policymaking body of the first defendant, with the principal place of business at Motlotlegi Street. Ga Rankuwa zone 1, Ga-Rankuwa.
- [6] The Fourth Defendant is THE REGISTRAR: SEFAKO MAKGATHO HEALTH SCIENCES UNIVERSITY, a senior administrative officer of the first defendant with its principal place of business at Motlotlegi Street. Ga Rankuwa zone 1, Ga-Rankuwa.
- [7] The Fifth Defendant is DIRECTOR: PROCUREMENT SERVICES, SEFAKO MAKGATHO, his senior employee of the first defendant responsible for procurement of goods and services on behalf of the first defendant with its place of work at Motlotlegi Street. Ga Rankuwa zone 1, Ga-Rankuwa.
- [8] The Sixth defendant is MANAGER: CANTEEN, SEFAKO MAKGATHO HEALTH SCIENCES UNIVERSITY, is senior employee of the first defendant responsible for canteens on behalf

of the first defendant with its places of work at Motlotlegi Street. Ga Rankuwa zone 1, Ga-Rankuwa.

[9] During 2021 the plaintiff was unsuccessful in bidding for the tender advertised by the first defendant. However, on or about 6 December 2021 the plaintiff received a telephone call from the first defendant's employee whose full and further particulars the plaintiff cannot remember, offering the plaintiff the same tender. The plaintiff accepted the offer.

[10] On the same day in a virtual meeting between the plaintiff the first defendant and the sixth defendant, the plaintiff was invited to conduct a site inspection the following day.

[11] In this meeting the plaintiff was represented by Pelo Lese kang Jostinah (sole director) the first defendant was represented by Noxolo Tshutsha, Thilivhionali Ramugondo and Walter Maleyane. On 07 December 2021 the plaintiff conducted the site inspection at the first defendant's premises in the company of the sixth defendant.

[12] On 9 December 2021 the plaintiff sent an e-mail to Noxolo Tshutsha, the first defendant employee, and she accepted the offer on behalf of the plaintiff. Plaintiff was informed that the fifth defendant will be in touch with her.

- [13] In brief the terms of the contract are that the plaintiff would provide catering services for the staff and students meals for a period of six months from February 2021 to July 2021 at the quoted price in the bid document.
- [14] The plaintiff discovered early in the year 2022 that another service provider was given the same tender and has started operating.
- [15] Counsel for the plaintiff argued that spurious grounds for an exception have been made, further particulars covers the exception and the course of action is established.
- [16] The excipient (defendants) contend that the applicant (plaintiff) has failed to plead the terms of the contract as well as identifying the person with whom the defendants had entered into contract with the plaintiff.
- [17] The defendants argued further that the particulars of claim do not contain averments essential to sustain a claim in breach of contract.
- [18] A litigant can bring an application for exception either when there is an objection that the pleadings are vague and embarrassing or a pleading does not disclose a cause of action.¹ The aim of exception procedure is to avoid the leading of unnecessary

¹ Rule 23 of the Uniform Rules of Court.

evidence and to dispose of a case in whole or in part in an expeditious and cost effective manner.²

- [19] When dealing with an exception the approach is best described by the court in *Telematrix (PTY) Ltd t/a Matric Vehicle Traking v Advertising Standards Authority of SA*,³ it was said “*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 imaginary employed by Miller J, the response to an exception should be like a sword that cuts through tissue of which exception is compounded and exposes his vulnerability*”
- [20] The particulars of claim must be considered in totality Rule 18 (4) of the uniform Rules of Court provides as follows: “*every pleading shall contain a clear and concise statement of material facts upon which the pleader relies for his claim.... with sufficient particularity to enable the opposite party to reply thereto*”
- [21] It is very important that the defendant must persuade the court that upon every reasonable interpretation the particulars of claim fail to disclose a course of action.⁴

² *Dharumpal Transport (Pty) Ltd v Dharumapal* 1956 (1) SA 700 (A) at 706.

³ 2006 (1) SA 461 (SCA) at para 3.

⁴ *First National Bank of Southern Africa Ltd v Perry N.O. and other* 2001 (3) SA 960 (SCA).

[22] On an exception that no cause of action is disclosed, the main reason why there is such an exception is that if such a plea is allowed it results to the leading of unnecessary evidence.⁵

[23] The above listed case law must be considered in considering the grounds of exception raised by the defendants.

[24] Paragraph 17.2 to paragraph 17.3 of his heads of argument counsel for the defendants contended that the plaintiff failed to plead the existence of a contract.⁶ In my view that was covered by the plaintiff in its particulars of claim on paragraph 7,12,15 and 17.⁷ In paragraph 7 the plaintiff says “*plaintiff was verbally informed by the said person that the tender was awarded to it.*”

[25] It must be borne in mind that the pleadings must be read as a whole and a distinction must be made between *facta Probanda* and *facta probantia*.⁸ I am of the view that the grounds of exception raised cannot succeed.

[26] Another ground of exception raised is that “the plaintiff failed to plead the identity or particulars of the official it purportedly concluded the alleged oral agreement with”⁹. In *Jowell*¹⁰ It was

⁵ Barclays National Bank Ltd v Thompson 1989 (1) SA 547 (A) at 553.

⁶ CaseLines 01-24.

⁷ CaseLines 01-10 to 01-11.

⁸ Jowell v Bramwell-Jones and others 1998 (1) SA 836 (W) at 902 I- J and 903 A-B.

⁹ CaseLines 1 Para 17.4 at 01-25.

¹⁰ Loc Cit at par (a) and (c).

stated that minor blemishes are irrelevant. In my view this ground of exception cannot succeed because it is a matter for evidence and a minor blemish.

[27] The ground raised in paragraphs 17.5 to paragraph 19 of the heads of argument by counsel for the defendants¹¹ have been covered by the plaintiff in his particulars of claim on paragraph 7 - 17. These grounds of exception cannot succeed for the same reasons provided above.

[28] Consequently the exceptions are dismissed with costs.

**MAKHOPA J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

MATTER HEARD AND RESERVED ON: 23 MAY 2023

JUDGMENT HANDED DOWN ON: 30 JUNE 2023

Appearances:

For the Excipients / Defendants: Adv W Maodi (instructed by) MAPONYA INC

For the Respondent / Plaintiff: Adv M Aphane (instructed by) SIEBANI ATTORNEYS

¹¹ CaseLines 01 - 24 and 01-25.