IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: **015031 / 2024**

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

29 June 2026

SIGNATURE **DATE**

In the matter between:

ABABAKKER MOOSA RAVAT	1st Plaintiff / Respondent
ANISAH RAVAT	2nd Plaintiff / Respondent
MUHAMMED ABABAKKER RAVAT	3rd Plaintiff / Respondent
AAYESHA ABABAKKER RAVAT	4th Plaintiff / Respondent
HAWWA BIBI RAVAT	5th Plaintiff / Respondent

And

NUR-UL-ISLAM PLAZA LTD	1ST Defendant / Excipient
NUR-UL-ISLAM CENTRE LTD	2ND Defendant

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. The Order is further uploaded to the electronic file of this matter on Caselines by the Judge's secretary. The date of this Order is deemed to be 29 June 2026.

JUDGMENT

LUKHAIMANE AJ:

[1] This is in opposed exception application which is before this Court at the behest of the first defendant ("defendant") in the action proceedings brought by the plaintiffs in the main action. For convenience, the parties are cited as in the main action.

[2] The defendant is a company with limited liability, registered in 1995. The second defendant is a non-profit company with limited liability, registered in 2005. The second defendant holds 34% (majority) shareholding in the defendant.

[3] The Muslim community around Lenasia needed to fund a commercial plaza would be built to generate income for the second defendant. The second defendant currently operates a mosque, function hall, girls' preschool and various other activities for the Muslim community in Lenasia.

[4] In order to raise funds for the commercial plaza (because interest is forbidden "haram" in Islamic / Shariah law a form of debenture / share scheme was proposed where members of the community would loan the money at zero interest. The arrangement was approved at the Islamic Court (the plaintiffs' term it a financial agreement).

[5] The defendant issued 5 000 debentures at a cost of R1 000 each and 5 000 accompanying shares per debenture for R1 each. The second defendant

transferred to the defendant Erf 5121, Lenasia Extension 5 in exchange for 34% interest in the defendant.

[6] The plaintiffs advice that the rental activities would only pay dividends to the second defendant, it was never to pay profits. Any debenture purchase would constitute a loan. The plaintiffs allege that now it is being managed contrary to the underlying principle of its formation in that:

(a) interest is being charged or accounted for in the Annual Financial Statements (AFS)

(b) certain purchases of debentures were paid, but not to the second defendant

(c) certain debenture holders were paid to the exclusion of others

(d) the payments were recorded as interest

(e) the first defendant failed to heed and comply with the Fatwa (Islamic ruling) dated 4 April 2006 as money was not used exclusively for the Masjid

(f) those already paid did not return the moneys

(g) failed to hold annual general meetings (AGM)

(h) failed to provide AFS since 28 February 2019

(i) failed to file tax returns since 2013 and other compliance issues.

[7] As a result, the plaintiffs have suffered prejudice in that not only have they been excluded from the affairs of the defendant, the latter has been managed contrary to good faith and religious rulings, constituting abuse of power and violation of the conditions of the original outcomes of the defendant.

[8] Relying on the common law, section 163 of the Companies Act, 71 of 2008 (Companies Act), as well as section 15(3)(a)(ii) of the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution), the plaintiffs pray for the following order:

(a) *An order declaring the conduct of first defendant contra bonos mores, in contrast to religious and societal norms, oppressive and unfairly prejudiced to, or unfairly disregards, the interests of the first to fifth plaintiffs; and / or*

(b) *An order confirming that the religious rulings of Mufti M.S. Motara is enforceable and binding on the first defendant; and / or*

(c) *An order confirming the Fatwah Islamic Ruling dated 4 April 2006 and especially that every cent of the profit in respect of the debentures is void or voidable and should be repaid (Waqf); and / or*

(d) *An order in which the first defendant shall within 3 months from the date of the order:*

- *render a full account, supported by vouchers, of its business for the entire period of its existence;*
- *debate the account and pay over to all the purchasers the value of the debentures purchased;*
- *schedule and convene an annual general meeting;*
- *submit and resolve its deregistration due to any non-compliance with legislation;*
- *submit and make available to all stakeholders (which shall include the first to fifth plaintiffs) for inspection all financial statements to date;*
- *pay and resolve any outstanding municipal debts;*

- *submit and make available to all stakeholders (which shall include the first to fifth plaintiffs) an certificate form a registered health and safety officer confirming that the rental units are safe for habitation;*

(e) *Costs of suit*

(f) *Further and /or alternative relief.*

[9] In response to the Rule 23(1) notice by the defendant dated 9 April 2024, the plaintiffs filed a notice to amend their particulars of claim on 3 May 2024 and amended the particulars of claim on 28 May 2024.

[10] A new notice in terms of Rule 23(1) was filed by the Excipient on 3 June 2024 with the defendant complaining that the plaintiffs amended particulars of claim do not disclose a cause of action, are vague and embarrassing, and/or do not comply with Rule 18. The plaintiffs invited the Excipient to file an exception, which the latter did on 4 July 2024.

[11] The grounds on which the first defendant relies are as follows:

(11.1) **First cause of complaint**

(11.1.1) The plaintiffs plead, at paragraph 10 of their particulars of claim, that they are holders of 40 separate debentures and shares in the defendant. The plaintiffs' claim is therefore premised on being a shareholder in the first defendant.

(11.1.2) The plaintiffs plead:

(a) at paragraph 12 of their particulars of claim, that the purpose of the debenture / share scheme (labelled 'financing agreement') was the raising of funds, at zero % interest, to construct the commercial plaza.

(b) at paragraph 14 of their particulars of claim, that the sole purpose of the financing agreement was the funding of a communal project by the Lenasia Muslim Community.

(c) at paragraph 15 of their particulars of claim, that the financing agreement was never intended to generate a return for the purchasers (such as the plaintiffs) of the debentures.

(11.1.3) The purpose of the debenture / scheme, i.e to finance the construction of an income generating asset, was achieved.

(11.1.4) The plaintiffs' interest in the defendant is, on its pleaded case, limited to repayment of the loan (in the form of the purchase of debentures and shares by the plaintiffs) to the plaintiffs

(11.1.5) Any prejudice or unfairly prejudicial conduct complained about by the plaintiffs ought to relate directly to the loans by the plaintiffs.

(11.1.6) The plaintiffs plead, at paragraph 17 of their particulars of claim, conduct that is contrary to Islamic Shariah principles and rulings and purportedly prejudicial to the plaintiffs.

(11.1.7) The plaintiffs plead, at paragraph 18 of their particulars of claim, how they were prejudiced.

(11.1.8) The conduct complained about, as per paragraph 19 of their particulars of claim, has the result of contravening religious and morally acceptable standards.

(11.1.9) The plaintiffs claim is not one for repayment of the loan by them for the construction of the commercial plaza.

(11.1.10) The plaintiffs' only interest remains the repayment of the amounts loaned by the plaintiffs (in the form of the purchase of the debentures and shares by the plaintiffs).

(11.1.11) The plaintiffs have not raised conduct by the defendant that has the result of being oppressive or unfairly prejudicial to, or that unfairly disregards the interest of the plaintiffs, more so in relation to the loan by the plaintiffs.

(11.2) **The second cause of complaint**

(11.2.1) The plaintiffs plead, at paragraph 15 of their particulars of claim, that:

(a) any rentals earned from the rental activities of the defendant would be paid only to the second defendant.

(b) the intention was never to generate a return for the purchasers.

(c) all profits earned from the assets of the defendant were only to be used for religious and similar activities.

(11.2.2) The fact that the profit generated by the defendant ought to be paid only to the second defendant is conduct oppressive and unfairly prejudicial to the second defendant and not the plaintiffs.

(11.2.3) The plaintiffs' only interest in the defendant is the repayment of the loans by the plaintiffs to raise funds for the commercial plaza.

(11.2.4) The plaintiffs claim is not one for repayment of the loan by them for the construction of the commercial plaza.

(11.2.5) The plaintiffs have not raised the conduct by the first defendant that has the result of being oppressive or unfairly disregards the interest of the plaintiffs, more so in relation to the loan by the plaintiffs.

(11.3) **Third cause of complaint**

(11.3.1) The plaintiffs seek to confirm the religious rulings of Mufti M.S. Motara dated 4 April 2006, which ruling is attached as annexure 'NUR1' to the plaintiffs' particulars of claim.

(11.3.2) The purported ruling by Mufti M.S. Motara dated 4 April 2006, declares and finds, from an Islamic Sharia law perspective, the entire debenture scheme a haram (impermissible) in Islam.

(11.3.3) Mufti M.S. Motara, as per paragraph 12 of the plaintiffs' particulars of claim, approved of the debenture / share scheme.

(11.3.4) The plaintiffs seek a declaratory order recognising the religious rulings by Mufti M.S. Motara dated 4 April 2006 under circumstances where the rulings, in terms of the particulars of claim, are internally inconsistent.

(11.3.5) Further, the granting of the declaratory order recognising the religious rulings by Mufti M.S. Motara dated 4 April 2006 would render debenture schemes impermissible.

(11.4) **The fourth cause of complaint**

(11.4.1) The plaintiffs, as per paragraph 20 of their particulars of claim, claim in terms of section 15(3)(a)(ii) of the Constitution.

(11.4.2) Section 15(3)(a)(ii) of the Constitution properly construed, does not found a cause of action.

(11.4.3) The plaintiffs thus cannot claim under section 15(3)(a)(ii) of the Constitution.

(11.5) **The fifth cause of complaint**

The plaintiffs as per paragraph 20 of their particulars of claim, claim in terms of the common law. However, they failed to plead the law they rely on.

(11.6) **The sixth cause of complaint**

The plaintiffs at paragraph 16 of their particulars of claim plead a specific term of the Financing Agreement, however failed to plead who represented the purchasers of debentures / shares and /or the community members in concluding the Financing Agreement, who acted for the first defendant, the material terms of the agreement etc.

(11.7) **The seventh cause of complaint**

The plaintiffs at paragraph 16 of their particulars of claim plead that profits earned would be paid to the second defendant and that such constitutes a salient feature of the Financing Agreement. It is not clear whether the profits earned to be paid to the second defendant are a feature of the Financing Agreement or a term of the Financing Agreement.

(11.8) **The eighth cause of complaint**

The plaintiffs at paragraph 15 of their particulars of claim plead reliance on Islamic Law without pleading the specific Law/s.

(11.9) **The ninth cause of complaint**

The plaintiffs' particulars of claim at paragraph 17 aver that certain facts have now come to their knowledge. However, they have failed to indicate when exactly such facts came to their knowledge

(11.10) **The tenth cause of complaint**

The plaintiffs at paragraph 17 of their particulars of claim reference "Islamic / Shariah religious principles and rulings" and at paragraphs 18.2.2 and 19.4 reference "religious rulings" without pleading the specifics of such religious principles / rulings.

(11.11) **The eleventh cause of complaint**

The plaintiffs in prayers 4e and 4g of their particulars of claim require the defendant to make available to "all stakeholders" certain documentation. It is unclear who constitutes "all stakeholders".

(11.12) **The twelfth cause of complaint**

The plaintiffs at paragraph 20.7 of their particulars of claim require submission to "all interested parties" without indicating who these "all interested parties" are.

(11.13) **The thirteenth cause of complaint**

The plaintiffs at paragraph 12 of their particulars of claim refer to a "Finance Agreement" as meaning the participation on a debenture / share scheme wherein funds are loaned at zero % interest and at paragraph 14 plead an intention for a debenture / loan scheme. It is unclear whether the debenture / loan scheme are one and the same thing.

(11.14) **The fourteenth cause of complaint**

The plaintiffs at paragraph 15 of their particulars of claim plead an intention. It is unclear which parties' minds met to form such intention.

(11.15) **The fifteenth cause of complaint**

The plaintiffs seek to enforce an Islamic Ruling of Mufti M.S Motara and to hold same as binding against the first defendant. The Fatwa arose in response to a question whose background and facts are not disclosed by the plaintiffs.

(11.16) **The sixteenth cause of complaint**

It is unclear whether the plaintiffs seek to claim on Islamic Shariah Law or the Law of the Republic of South Africa.

(11.17) **The seventeenth cause of complaint**

The plaintiffs at paragraph 11 of their particulars of claim plead a decision taken without indicating who made the decision.

(11.18) **The eighteenth cause of complaint**

The plaintiffs at paragraph 12 of their particulars of claim plead a proposal for a debenture / share scheme, without indicating who from the Muslim community made such a proposal and the reasons therefor.

(11.19) **The nineteenth cause of complaint**

The plaintiffs at paragraph 14 of their particulars of claim plead a "universal understanding", without indicating which persons had that understanding, the representations made to induce such understanding and who made the representations.

(11.20) **The twentieth cause of complaint**

The plaintiffs at paragraph 19.3 of their particulars of claim plead that the defendant is conducting itself in contravention of Islamic and moral standards without pleading the Islamic and moral standards that have been contravened.

[12] Plaintiffs' Response to the Exception

(12.1) **First cause of complaint**

The plaintiffs' response is that the prejudicial conduct complained of is not limited to the denture scheme / loans. The plaintiffs have pleaded broader prejudicial conduct hence the declaratory relief sought in terms of section 163 of the Companies Act. Further that the exception does not raise any point of law.

(12.2) **The second cause of complaint**

The plaintiffs' objection is similar to the one to the first cause of complaint, above.

(12.3) **Third cause of complaint**

The plaintiffs state that the foundation of the original approval that all profit should be waqf referred to at paragraph 12 was not complied with.

(12.4) **The fourth cause of complaint**

A court is enjoined by virtue of section 39(2) of the Constitution to promote the spirit, purport and object of the Bill of Rights, where appropriate.

(12.5) **The fifth cause of complaint**

The plaintiffs respond that this is a "surplus verbiage" that does not justify an exception.

(12.6) **The sixth cause of complaint**

The plaintiffs respond that this is *facta probantia* for purposes of proving the *facta probanda* and therefore need not be specifically pleaded.

(12.7) **The seventh cause of complaint**

The plaintiffs respond that this may be requested through Further Particulars.

(12.8) **The eighth cause of complaint**

The plaintiffs indicate that only the material facts need to be pleaded and not the legal principles. There is further sufficient reference in paragraphs 12, 15 and 17 of the Particulars of Claim to be able to identify the relevant principles.

(12.9) **The ninth cause of complaint**

The plaintiffs respond that this is *facta probantia* for purposes of proving the *facta probanda* and therefore need not be specifically pleaded. This may be dealt with through a Request for Further Particulars.

(12.10) **The tenth cause of complaint**

The plaintiffs respond that this was pleaded in paragraphs 12, 15 and 17. Further that the details are *facta probantia*.

(12.11) **The eleventh cause of complaint**

The plaintiffs respond that these facts are *facta probantia* and therefore need not be specifically pleaded.

(12.12) **The twelfth cause of complaint**

The plaintiffs respond that these are part of *facta probantia* and may be sought in a Request for Further Particulars.

(12.13) **The thirteenth cause of complaint**

The allegations are linked to the "Finance Agreement" as defined in paragraph 12 of the Particulars of Claim. Details may be sought through a Request for Further Particulars.

(12.14) **The fourteenth cause of complaint**

The plaintiffs respond that these are *facta probantia* and the details may be sought through a Request for Further Particulars.

(12.15) **The fifteenth cause of complaint**

The plaintiffs respond that these are *facta probantia* and the details may be sought through a Request for Further Particulars.

(12.16) **The sixteenth cause of complaint**

These are material facts and not legal principles. Further that sufficient facts are provided to be able to identify the legal principles.

(12.17) **The seventeenth cause of complaint**

The plaintiffs respond that these are *facta probantia* and the details may be sought through a Request for Further Particulars.

(12.18) **The eighteenth cause of complaint**

The plaintiffs respond that these are *facta probantia* and the details may be sought through a Request for Further Particulars.

(12.19) **The nineteenth cause of complaint**

The plaintiffs respond that these are *facta probantia* and the details may be sought through a Request for Further Particulars.

(12.20) **The twentieth cause of complaint**

The plaintiffs respond that these are pleaded in paragraph 17 of the Particulars of Claim. In any case, these are *facta probantia* and the details may be sought through a Request for Further Particulars.

[13] This judgment deals with the points raised in the exception and not as raised in the heads of argument as the latter expands on what was initially submitted. Even during argument, the defendants raised additional issues that were not in the exception, which have also not been dealt with in this judgment. It is impermissible for the court to deal with any other aspects except those raised in the exception. Therefore, the plaintiffs' responses are considered only to the extent that they also respond to the exception and not any additional points raised either in the heads of argument or during the hearing.

[14] The defendant states, in objection to the particulars of claim, that no basis is laid for this claim because the plaintiffs have not pleaded what their cause of action is or pleaded with insufficient particularity what their cause of action is.

[15] The plaintiffs on the other hand state that the grounds contained in the exception are repetitive, bereft with reverse arguments on the same

misconceived point(s) and as such is an abuse of process. There are 20 different points raised, the first three not prefaced in the Notices to Remove Cause of Complaint and refer to the Particulars of Claim failing to disclose a cause of action. The other causes of complaint are as per the Notices to Remove Causes of Complaint.

[16] The plaintiffs cause of action is section 163 of the Companies Act 71 of 2008, stemming from what they term the Finance Agreement that they concluded for the sale of the debentures / shares. In their notice of motion, the plaintiffs refer specifically to this section. Then they rely on the four principles in Geffen v Martin[1]. It is not necessary for purposes of this judgment to list those here.

[17] The plaintiffs do respond to each and every one of the points raised in the exception, indicating that they seek declaratory and equitable relief and not payment of any moneys arising out of their relationship with the defendant. More specifically, the plaintiffs indicate that the defendants are aware of the applicable Islamic / Shariah Law, and they need not have mentioned the specific Laws. In this regard, the plaintiffs further indicate that reference to section 15(3)(a)(ii) of the Constitution of the Republic of South Africa is relevant as courts are enjoined to promote the spirit, purport and object of the Bill of Rights where appropriate.

[18] The general principles applicable to exceptions are summarised by Maier-Frawley J in Merb (Pty) Ltd v Matthews [2] as follows:

> *"8. These were conveniently summarised by Makgoka J in Living Hands [3] as follows:*
>
> *'Before I consider the exceptions, an overview of the applicable general principles distilled from case law is necessary:*

---

[1] [2018] 1 SA 21 (WCC) paragraph 23

[2] Unreported, GJ case no 2020/15069 dated 16 November 2021. See also Taitz Cellular (Pty) Ltd t/a Blue Cellular v Chadez Enterprises (Pty) Ltd (unreported, GJ case no 29643/2021 dated 3 August 2022) at paragraph 11.

[3] Living Hands (Pty) Ltd v Ditz 2013 (2) SA 368 (GSJ) at 374G.

(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.

(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.

(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.

(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.

(g) Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars.' "

[19] An exception to a pleading on the ground that it is vague and embarrassing requires consideration: whether the pleading lacks particularity to the extent that it is vague; and whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced in the sense that he/she cannot plead or properly prepare for trial. The excipient must therefore demonstrate that the pleading is ambiguous, meaningless, contradictory or capable of more than one meaning, to the extent that it amounts to vagueness, which vagueness causes embarrassment to the excipient.'[4]

[4] See Erasmus- Commentary on Rule 23(1).

[20] An exception should be dealt with sensibly and not in an over-technical manner. [5] Thus, it is 'only if the court can conclude that it is impossible to recognize the claim, irrespective of the facts as they might emerge at the trial, that the exception can and should be upheld'.[6]

[21] If the exception is successful, the proper course for the court is to uphold it. When an exception is upheld, the unsuccessful party may then apply for leave to amend his pleading. [7]

[22] Leave to amend is often granted irrespective of whether at the hearing of the argument on exception the plaintiff applied for such leave. If the court does not grant leave to amend when making an order setting aside the pleading, the plaintiff is entitled to make an application for such leave once judgment setting aside the pleading has been delivered.[8] If the unsuccessful party does not take any timeous steps, the excipient may take steps to bar him and apply to the court for absolution from the instance.[9]

[23] The test applicable in deciding exceptions based on vagueness and embarrassment arising out of lack of particularity can be summed up as follows: [10]

(a) In each case the court is obliged to consider first whether the pleading does lack particularity to an extent amounting to vagueness. If a statement is vague it is either meaningless or capable of more than

---

[5] See Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006 (1) SA 461 (SCA) at 465H. Luke M Tembani v President of the Republic of South Africa (unreported, SCA case no 167/2021 dated 20 May 2022) at paragraph [14]; Lovell v Lovell (unreported, GP case no 24583/2009 dated 22 September 2022) at paragraph [15].

[6] Luke M Tembani v President of the Republic of South Africa (unreported, SCA case no 167/2021 dated 20 May 2022) at paragraph [16]; Lovell v Lovell (unreported, GP case no 24583/2009 dated 22 September 2022) at paragraph [16]; Shopfitters Studio (Pty) v Ltd Dynamic Design Upholstery (Pty) Ltd (unreported, GP case no 27419/2021 dated 28 November 2022) at paragraph [10].

[7] Santam Insurance Co Ltd v Manqele 1975 (1) SA 607 (D) at 610C; Group Five Building Ltd v Government of the Republic of South Africa (Minister of Public Works and Land Affairs) 1993 (2) SA 593 (A) at 602D–H; Constantaras v BCE Foodservice Equipment (Pty) Ltd 2007 (6) SA 338 (SCA) at 348C–E.

[8] Group Five Building Ltd v Government of the Republic of South Africa (Minister of Public Works and Land Affairs) 1993 (2) SA 593 (A) at 602E–H.

[9] Santam Insurance Co Ltd v Manqele 1975 (1) SA 607 (D) at 610E; Princeps (Edms) Bpk v Van Heerden NO 1991 (3) SA 842 (T) at 845D–F; Standard Bank of SA Ltd v Van Dyk 2016 (5) SA 510 (GP) at 511F–513B).

[10] See Lockhat v Minister of the Interior 1960 (3) SA 765 (D) at 777A–E; Quinlan v MacGregor 1960 (4) SA 383 (D) at 393F–H; Trope v South African Reserve Bank 1992 (3) SA 208 (T) at 211B; Gallagher Group Ltd v IO Tech Manufacturing (Pty) Ltd 2014 (2) SA 157 (GNP) at 166H–J.

one meaning. [11] To put it at its simplest: the reader must be unable to distil from the statement a clear, single meaning.[12]

(b) If there is vagueness in this sense the court is then obliged to undertake a quantitative analysis of such embarrassment as the excipient can show is caused to him by the vagueness complained of. [13]

(c) In each case an ad hoc ruling must be made as to whether the embarrassment is so serious as to cause prejudice to the excipient if he is compelled to plead to the pleading in the form to which he objects.[14] A point may be of the utmost importance in one case, and the omission thereof may give rise to vagueness and embarrassment, but the same point may in another case be only a minor detail.

(d) The ultimate test as to whether or not the exception should be upheld is whether the excipient is prejudiced. [15]

(e) The onus is on the excipient to show both vagueness amounting to embarrassment and embarrassment amounting to prejudice.[16]

---

[11] Leathern v Tredoux (1911) 32 NLR 346 at 348; Callender-Easby v Grahamstown Municipality 1981 (2) SA 810 (E) at 812H; Wilson v South African Railways and Harbours 1981 (3) SA 1016 (C) at 1018H; Venter and Others NNO v Barritt; Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd 2008 (4) SA 639 (C) at 644A–B.

[12] Venter and Others NNO v Barritt; Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd 2008 (4) SA 639 (C) at 644B.

[13] Quinlan v MacGregor 1960 (4) SA 383 (D) at 393E–H; Trope v South African Reserve Bank 1992 (3) SA 208 (T) at 211B; ABSA Bank Ltd v Boksburg Transitional Local Council 1997 (2) SA 415 (W) at 421I–422A. In International Tobacco Co of SA Ltd v Wollheim 1953 (2) SA 603 (A) at 613B and Lockhat v Minister of the Interior 1960 (3) SA 765 (D) at 777B it is said that it must be shown that the excipient will be 'substantially embarrassed' by the vagueness or lack of particularity.

[14] ABSA Bank Ltd v Boksburg Transitional Local Council 1997 (2) SA 415 (W) at 421J–422A; Venter and Others NNO v Barritt; Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd 2008 (4) SA 639 (C) at 645C–D; Standard Bank of South Africa Ltd v Hunkydory Investments 194 (Pty) Ltd and Another (No 1) 2010 (1) SA 627 (C) at 630B.

[15] Quinlan v MacGregor 1960 (4) SA 383 (D) at 393G; Levitan v Newhaven Holiday Enterprises CC 1991 (2) SA 297 (C) at 298A; Trope v South African Reserve Bank 1992 (3) SA 208 (T) at 211B.

[16] Kennedy v Steenkamp 1936 CPD 113 at 115; City of Cape Town v National Meat Supplies Ltd 1938 CPD 59 at 63; Amalgamated Footwear & Leather Industries v Jordan & Co Ltd 1948 (2) SA 891 (C) at 893; Lockhat v Minister of the Interior 1960 (3) SA 765 (D) at 777A; Bendrew Trading v Sihle Property Developers and Plant Hire (unreported, MM case no 1857/2020 dated 13 August 2021) at paragraph [12]; Kok v Botha (unreported, ECPE case no 1494/2020 dated 5 October 2021) at paragraph [13].

(f) The excipient must make out his case for embarrassment by reference to the pleadings alone. [17]

(g) The court would not decide by way of exception the validity of an agreement relied upon or whether a purported contract may be void for vagueness.[18]

[24] A summons will be vague and embarrassing where it is not clear whether the plaintiff sues in contract or in delict, [19] or upon which of two possible delictual bases he sues,[20] or what the contract is on which he relies,[21] or whether he sues on a written contract or a subsequent oral contract, [22] or if it can be read in any one of a number of different ways,[23] or if there is more than one claim and the relief claimed in respect of each is not separately set out. [24]

[25] Although the introduction of irrelevant matter into a summons may make it vague and embarrassing, the pleading of irrelevant matter as history does not. [25] The summons is also vague and embarrassing if there is inconsistency amounting to contradiction between the allegations in a claim in reconvention and the plea in convention,[26] or between the summons and the documents relied upon as the basis of the claim;[27] or where the admission of one of two sets of contradictory allegations in the plaintiff's particulars of claim or declaration would destroy the plaintiff's cause of action; [28] or where a pleading

---

17 Deane v Deane 1955 (3) SA 86 (N) at 87F; Lockhat v Minister of the Interior 1960 (3) SA 765 (D) at 777B.

18 Francis v Sharp 2004 (3) SA 230 (C) at 240F–G; Eskom Holdings v Lesole Agencies CC (unreported, FB case no 2555/2016 dated 28 September 2017) at paragraph [7]; ETG Agro (Pty) Ltd v Varuna Eastern Cape (Pty) Ltd (unreported, ECG case no 5206/2016 dated 3 May 2021) at paragraph [5].

19 Brodovsky v Ackerman 1913 CPD 996; Wellworths Bazaars Ltd v Chandlers Ltd 1948 (3) SA 348 (W); Dunn and Bradstreet (Pty) Ltd v SA Merchants Combined Credit Bureau (Cape) (Pty) Ltd 1968 (1) SA 209 (C).

20 Kock v Zeeman 1943 OPD 135.

21 Luttig v Jacobs 1951 (4) SA 563 (O)

22 Herbst v Smit 1929 TPD 306.

23 General Commercial and Industrial Finance Corporation Ltd v Pretoria Portland Cement Co Ltd 1944 AD 444 at 454; Callender-Easby v Grahamstown Municipality 1981 (2) SA 810 (E) at 812H; Wilson v South African Railways and Harbours 1981 (3) SA 1016 (C) at 1018A.

24 Kock v Zeeman 1943 OPD 135 at 139; Greyvenstein v Hattingh 1925 EDL 308.

25 Du Plessis v Van Zyl 1931 CPD 439 at 442.

26 Florence v Criticos 1954 (3) SA 392 (N)

27 Keely v Heller 1904 TS 101; Naidu v Naidoo 1967 (2) SA 223 (N) at 226; in Small v Herbert 1914 CPD 273

28 Levitan v Newhaven Holiday Enterprises CC 1991 (2) SA 297 (C) at 298J and 300G.

contains averments which are contradictory and which are not pleaded in the alternative. [29]

[26] In the instant matter, the plaintiffs stated that when the defendant could not raise the necessary funds from the Islamic Development Bank and the Iqraa Charitable Trust for the financing of a Commercial Plaza that would generate income for the second defendant and its activities, the Muslim community, in order to raise the funds proposed a form of debenture / share scheme that would raise the required funds at zero interest in order to comply with Islamic Shariah Law in respect of the principle that interest is forbidden in Islam. The plaintiffs' term this the financing agreement. The defendant claims that the particulars of claim are vague and embarrassing insofar as they do not disclose a cause of action. The plaintiffs rely on the financing agreement to invoke the provisions of section 163 of the Companies Act and the Constitution.

[27] The plaintiffs allege that this financing agreement was exclusively for communal projects by the Lenasia Muslim community and it was approved by Mufti MS Motara. It has now come to the attention of the plaintiffs that not all profits generated are being used for religious and similar activities and that other interest is being accounted for in the annual financial statements of the defendant and other community investors were paid. Despite several requests by the plaintiffs, the defendant has failed to account for its activities in regard to the financing agreement. Hence the plaintiffs now approach this court in terms of the Companies Act.

[28] The plaintiffs also, correctly state that an exception on this basis must distinguish between the *facta probanda*, the facts which must be proved to disclose a cause of action and the *facta probantia,* the facts or evidence proving the *facta probanda.*[30] From the particulars of claim, it is evident that there is sufficient *facta probanda* to put the defendant in the picture as to what the

[29] Trope v South African Reserve Bank 1992 (3) SA 208 (T) at 211E.
[30] Jowell v Bramwell Jones 1998 (1) SA 836 at 903

issues are[31]. The plaintiffs have pleaded the outline of their case and the pleadings read as a whole sustain this.

[29] I therefore hold the view that the defendant has failed to persuade the court that upon every interpretation which the particulars of claim may reasonably bear, no cause of action is disclosed. The lack of particularity that the defendant is alleging relates to mere detail, the remedy of which is to plead to the averments made and obtain the particularity / clarity required by means of a request for particulars for trial of those particulars strictly required for trial[32].

[30] The onus is on the defendant to show that the pleadings are vague and embarrassing and that they are also prejudiced thereby. An exception that does not show that the excipient will be seriously prejudiced need not be upheld. In addition, if any of the information sought is within the knowledge or contemplation of the excipient, he/she cannot complain and/or show prejudice. Read as a whole, the particulars of claim are sufficient to allow the defendant to plead to the allegations made. It follows in my view, that the exception should not succeed.

ORDER

[31] In the circumstances, the following order is made:

1. *The defendant's (Excipient's) exceptions are dismissed.*
2. *The defendant is ordered to pay the costs on the scale as between attorney and client on Scale C.*

LUKHAIMANE AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

---

[31] Reid, NO v Royal Insurance Co. Ltd (1951) (1) 713 (T) at 717 D

[32] Jowell v Bramwell Jones 1998 (1) SA 836 at 902 B

Date Application Heard: 24 April 2026

Date Judgment Handed Down: 29 June 2026

Appearances

Counsel for the Plaintiffs: Adv Carel van Jaarsveld

Instructed by: Gildenhuys Malatji Inc

Counsel for the First Defendant: Adv M Karolia

Instructed by: Shahied Dollie Inc