REPUBLIC OF SOUTH AFRICA

THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 23236/2017

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO

28/2/2019
DATE

SIGNATURE

In the matter between:

MADLALA, NONTOBEKO REJOICE Plaintiff/Respondent

And

CITY OF JOHANNESBURG Excipient/First Defendant
JOHANNESBURG ROAD AGENCY (PTY) LTD Excipient/ Second Defendant

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JUDGMENT

INTRODUCTION

[1]. In this matter, the Plaintiff sues the First and Second Defendants ("the Defendants") for damages arising out of her falling into an open manhole whilst she was walking on the sidewalk along John Page Street, next to Main Street, Jeppestown, Johannesburg ("the manhole").

[2]. Plaintiff avers that she was entitled to regard the sidewalk as safe and to proceed on such sidewalk unless warned of the danger in such sidewalk by the Defendants by displaying a visible warning sign.

[3]. Plaintiff further alleges that the Defendants were, at all material and relevant times, responsible for the design, maintenance, repairs and development of *inter alia*, the road network, footways, traffic mobility and management of manhole covers within the city of Johannesburg. The said manhole is allegedly one feet deep and one feet wide in size.

[4]. The Plaintiff further avers that the Defendants owed a duty of care to the road users, and, in particular her, to ensure that the manhole at Concord Road was attended to and/or attended to within a reasonable time.

[5]. Plaintiff pleads that the aforesaid duty of care encompassed, *inter alia*,:

"9.1 A duty of care to plaintiff to take such reasonable steps necessary to ensure that the sidewalk and the roads were safe for users thereof;

9.2 That in the event of hazards on the footways or sidewalks on which the Plaintiff travelled and that it was necessary to erect signs to inform users, including the Plaintiff of any hazards on the footway." (Sic.)

[6]. In paragraph 10 of the particulars of claim, the Plainitff states the following:

"10. The plaintiff persists in his allegations that as a consequences of the Defendants failure to act reasonably and to exercise care that she sustained injuries described in paragraph 14 herein under." (Sic.)

[7]. As a result of the alleged fall, the Plaintiff avers that she allegedly suffered personal injuries in the form of a fracture on the right ankle and the third toe.

[8]. Furthermore, as a result of the incident and as a consequences of the injuries sustained, the Plaintiff was treated at Charlotte Maxeke Hospital in Johannesburg, and currently complains about pain on ***her right femur***[1] especially during inclement weather.

[1] I note that in the Plaintiff's Notice in terms of Rule 28 dated June 2018, the Plaintiff attempted to amend this to refer to "right ankle". I deal with all of these hereinbelow.

[9]. The Plaintiff states that her injuries are as per the medical reports supplied from Charlotte Maxeke Hospital and that she is still to undergo further assessment by the relevant medical experts.

[10]. As a result of her alleged injuries, the Plainitff sues for payment in the amount of R1,300,000.00 (One million three hundred thousand) made up as follows:

10.1. Past and future medical expenses: R600,000.00;

10.2. Past and future loss of income and loss of earning capacity: R400,000.00;

10.3. General damages for pain and suffering, loss of amenities of life and disfigurement: R300,000.00.

[11]. The Plaintiff avers that the amount of R1,300,000.00 is not yet quantified and will be **qualified** upon receipt of relevant experts reports (sic). I must point out that despite the manner in which the Plaintiff phrased her particulars of claim, it was only in a botched attempted amendment that the Plaintiff sought to clarify that the amount claimed is made up of estimated amounts. I shall revert back to this in due course.

[12]. On 3 July 2018, the Defendants delivered their notice of exception in terms of rule 23(1) of the Uniform Rules of Court.

[13]. In their first ground, the Defendants state that in paragraphs 9 and 10 the Plaintiff's particulars of claim, the Defendant is said to be owing the Plaintiff a duty of care.

[14]. They however complain that in paragraphs 12 to 12.3 of the Plaintiff's particulars of claim, a second duty of care is stipulated therein to:

> *"1.3.1 Ensure that the aforesaid road was reasonably safe for use by members of the public;*
>
> *1.3.2. Prevent the occurrence and/or alternatively the perpetuation of dangerous circumstances arising on the road, and*
>
> *1.3.3. Ensure that all maintenance repairs and improvements affected to the said road were executed expediently and in a reasonably safe manner."*

[15]. The Defendants complain that the Plaintiff fails to state whether the facts alleged in paragraph 12 and its subparagraphs are in addition, to or in the alternative to paragraphs 9 and 10.

[16]. It is on that basis that the Defendants contend that the Plaintiff's particulars of claim are vague and embarrassing.

[17]. As their second ground, the Defendants contend that the Plaintiff stated in paragraph 14.4 of her particulars of claim her injury as "a fracture on the right ankle and third toe". However, in paragraphs 15.2 of her particulars of claim, the Plaintiff complains of pain in her "right femur." From my reading of the Plaintiff's particulars of claim, the Plaintiff's complaint herein is about the sequelae from the injury.

[18]. That notwithstanding, the Defendants state that:

> *"2.4 Two different injuries are stated and it is not clear whether these are the same injuries alleged, whether a relation is alleged or whether alternative injuries are alleged."*

[19]. Again, the Defendants complain that the Plaintiff's particulars of claim are vague and embarrassing.

[20]. The third ground of complaint relates to the Plaintiff's pleading in compliance with rule 18(10). The complaint is that in paragraph 16.1 of her particulars of claim, the Plaintiff provides an amount of R600,000.00 in respect of future hospital and past medical expenses. From this paragraph, the Defendants complain that the amount claimed *"provides a globular figure without any particularity as to how it is made up, more specifically how it is capitalised, quantified and what contingencies have been taken into account."* (Sic)

[21]. Accordingly, the Defendants are unable to reasonably assess the Plaintiff's quantum thus rendering the Plaintiff's particulars of claim excipiable, alternatively, the paragraphs are vague and embarrassing for lack of particularity.

[22]. The fourth ground of exception relates to a claim of R400,000.00 claimed by the Plaintiff in paragraph 16.2 of her particulars of claim and in respect of her alleged past and prospective loss of earnings.

[23]. In this regard, the complaint, *inter alia*, is that *"[A] figure has been provided without any particularity as to how it is made up."* (Sic)

[24]. It is stated that the *"Plaintiff does not specify the period in respect of which the amount is claimed or whether the amount is inclusive of tax".* Also, the Plaintiff, it is averred, *"has not specified how much she earned at the time of the alleged incident."* Finally, that "*there is no particularity in respect of the employment which the Plaintiff had, the employment which the Plaintiff was able to do, the employment which the Plaintiff will in future be able to do, the Plaintiff's income and/or period of disability despite what is required by virtue of Rule 18(10)(c)(i)".*

[25]. Accordingly, the Defendants aver "*that paragraph 16.2 of Plaintiff's Particulars of Claim do not set out the claim adequately and the Defendants are unable to reasonably assess the Plaintiff's quantum in the absence of the particularity."*

[26]. Fifth complaint is similar to the paragraphs above, and it relates to the Plaintiff's failure to specify whether or not any pain and suffering claimed by the Plaintiff was temporary or permanent in nature, or whether the disfigurement was temporary or permanent with full description of the disfigurement as required by Rule 18(10)(d).

THE LAW ON VAGUE AND EMBARRASING PARTICULARS OF CLAIM

[27]. Rule 23 of the Uniform Rules of Court provides a defendant with an avenue of excepting to the plaintiffs' particulars of claim on two possible grounds. The first ground is where the pleadings are vague and embarrassing and the second ground that the pleadings do not carry sufficient facts to sustain a cause of action.

[28]. A successful challenge of vague and embarrassing pleadings would result in the said pleadings having to be amended to provide particularity required by Rule 19. The case and the pleadings still remain extant as between the parties.

[29]. In support of the above, Olivier AJ ***in Giant Leap Workspace Specialists (Pty) Ltd v Scoin Trading (Pty) Ltd T/A The South African Gold Coin Exchange***[2], had the following to say:

"[32] An exception that a pleading is vague and embarrassing can only be taken when the vagueness and embarrassment strikes at the root of the cause of action as pleaded. See Jowell v Bramwell-Jones and Others 1998 (1) SA 836 (W) at 905 H-I. If the defendant knows which claim it must meet, the particulars of claim cannot be vague and embarrassing, and the exception cannot be upheld.

[33] This exception covers the instance where, although there is a cause of action, it is incomplete or defective in the way it is set out, resulting in embarrassment to the defendant. At issue is the formulation of the cause of action, not its validity. See Trope v South African Reserve Bank 1993 (3) SA 164 (A) at 269I.

[34] Herbstein & Van Winsen (636) says the following in respect of particularity, with reference to past case law:

> *It has been held that it is sufficient if a defendant knows 'adequately' what a plaintiff's case is or 'sufficiently' shows the defendant the case which he is called upon to meet."*

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[2] Case No: 2014/37464.

RULES OF PLEADINGS (RULE 18)

[30]. The general rule relating to pleadings provides that the particulars of claim (statement of claim) must state in sufficient particularity the claim which Defendant must answer. In particular, rule 18(4) states that: *"every Pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defense or answer to any pleading as the case may be, with sufficient particularity to enable the opposite party to reply thereto."*

[31]. ***Shill v Milner 1937 AD 101***[3] took the point further in support of the above rule 18(4) where the Appellate Division expressed a word of caution to litigants that parties should not be encouraged to rely on the Court's readiness to consider and deal with unpleaded issues.

[32]. Rule 18(4) is interpreted and applied as requiring that a cause of action or defence must be contained in the pleading. The term "*cause of action*" was defined in ***Mckenzie v Farmers Co-operative Meat Industries Ltd*** as *"every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the Court. It does not comprise every piece of evidence which is necessary to each fact, but every fact which is necessary to be proved."*

[33]. It is trite law that the true object of an exception is either, if possible, to settle

[3] At para 105.

the case, or at least part of it, in a cheap and easy fashion, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception.

[34]. It is also trite law that for purposes of deciding an exception, the Court would consider the facts alleged in the pleadings as correct[4] unless they are palpably untrue or so improbable that they cannot be accepted.[5] This trite proposition cannot extend to assumptions or inferences.

[35]. It is trite law that Rule 18 of the Uniform Rules of Court deals with rules relating to pleadings generally. Rule 18 (4) requires that each pleading in an action 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.

[36]. The material facts whereon a plaintiff relies should be concisely stated in his particulars of claim and these facts only, and no other should be pleaded.

[37]. The material facts do not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. *Facta probantia* has no place in pleadings.

[38]. A pleading should not contain matters irrelevant to the claim.

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[4] Marney v Watson 1978 (4) SA 140 (C) at 144F-J (Coram Friendman J).
[5] Voget v Kleynhans 2003 (2) SA 148 (C) at 151G-H (Coram Van Reenen J).

[39]. Pleadings that are a rambling preview of the evidence proposed to be adduced at the trial do not meet the requirements of Rule 18 (4) and would be excipiable as being vague and embarrassing.[6]

[40]. The plaintiff is certainly not entitled to plead a jumble of facts and force the defendant to sort them judiciously and fit them together in an attempt to determine the real basis of the claim.[7]

[41]. The purpose of the exception procedure is *inter alia* to remove the need for guesswork.

[42]. The particulars of claim should be ***so phrased that a defendant is able to reasonably comprehend what case he is called upon to meet and reasonably and fairly able to plead thereto without embarrassment***. I shall advert to the aforegoing rule of law later on herein.

[43]. It may be possible to plead to particulars of claim by simply denying the allegations made, yet such a pleading would itself be expiable as being vague and embarrassing. Same would defeat the whole purpose of pleadings to wit to bring clearly to the notice of the court and the parties to an action the issues upon which reliance is to be placed.

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[6] Moaki vs. Reckott 1968 (3) SA 98 AD at 102 A-B.
[7] Roberts Construction Ltd vs. Dominion Earthworks Ltd 1968 (3) 255 at 263.

[44]. It is further trite law that an exception that a pleading is vague or embarrassing will not be upheld unless the excipient **will be seriously prejudiced**. I shall advert hereto later on.

[45]. The excipient has a duty to persuade the Court that the pleading is excipiable on any interpretation that can be attached to it.[8] The pleading must be looked at as a whole.[9]

[46]. An exception that the pleading is vague and embarrassing is not directed at a particular paragraph within a cause of action: **it goes to the whole cause of action, which must be demonstrated to be vague and embarrassing**. [Emphasis provided]

[47]. An exception that the pleading is vague and embarrassing **strikes at the formulation of the cause of action and not its legal validity**.[10] [Emphasis provided]

[48]. An exception that the pleading is vague and embarrassing will not be allowed **unless the excipient will be seriously prejudiced if the offending allegations were not expunged**.[11] **The effect of this argument is that the**

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[8] Frank v Premier Hangers CC 2008 (3) SA 595 (C) at 600F-G (per Griesel J). Picbel Groep Voorsorgfonds (in liquidation) v Somerville, and Related Matters 2013 (5) SA 496 (SCA) at 506E-I (Ponnan JA).
[9] Nel and Others NNO v MacArthur 2003 (4) SA 142 at 149F – H (per Basson J).
[10] Trope v SARB 1993 (3) SA 264 (A) at 269I (per F H Grosskopf JA). See also Trobe v SARB and two Others 1992 (3) SA 208 (T) at 211B the decision of Kollapen J).
[11] Gallagher Group Ltd v IO Tech Manufacturing (Pty) Ltd 2014 (2) SA 157 (GNP) at 166G-H.

exception can only be taken if the vagueness relates to the cause of action.[12] [Emphasis provided]

[49]. The Court has to consider as a test for vagueness whether the pleading does lack particularity to an extent amounting to vagueness. Where a statement is vague it is either meaningless or capable of more than one meaning. To put it at its simplest, a reader must be unable to distil from the statement a clear, single meaning.[13]

[50]. The ultimate test as to whether or not the exception should be upheld is whether the excipient is prejudiced.[14] I note the lowering of the bar in terms of whether or not the prejudice is serious or just any normal prejudice is required.

[51]. Finally, it is part of our law that a successful challenge of vague and embarrassing pleadings would result in the said pleadings having to be amended to provide particularity required by Rule 19. The case and the pleadings still remain extant as between the parties.

[52]. Armed with the above legal principles, I propose to approach the fats and apply same to the facts of this case. I am further minded when reading on the basic principles governing an exception which were summarised by Makgoka J in ***Living Hands (Pty) Ltd and Another v Ditz and Others,***[15] that "*(e) An over-*

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[12] Keely v Heller 1904 TS 101 at 103.
[13] Venter and Others NNO v Barrit; Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd 2008 (4) SA 639 (C) at 644B (per Potgieter AJ).
[14] Standard Bank of South Africa v Hunkydory Investments 194 (Pty) Ltd and Another (No 1) 2010 (1) SA 627 (C) at 630B (per Steyn AJ).
[15] 2013 (2) SA 368 (GSJ).

technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit."

[53]. I concur with the view expressed above by my learned Brother Makgoka J that a court should be able, where necessary, cut to the chase and to be practical about these matters, resolution of matters on technicalities only serves to delay the resolutions of matters much to the unnecessary escalation of costs of dispensing justice.

[54]. I thus also propose to approach the matter on the aforegoing basis.

APPLICATION OF THE LEGAL PRINCIPLES TO THE FACTS

[55]. I must accept, at the outset, the provisions of rule 18(10) and what each pleader is required to do in order to meet the requirements of rule 18(4). However, I am not persuaded that the Defendants have been or will be prejudiced by the formulation of the claim as set out by the Plaintiff.

[56]. In fact, and as pointed out, the complaint made against the Plaintiff's particulars of claim do not go to the formulation or the heart of the claim but to specific issues (i.e. the nature of the harm suffered, the nature of the duty of care at play herein, and the explanation of the amounts claimed) which in my view are largely to do with the unrequired *facta probantia*.

[57]. Accordingly, I am of the view that the Defendants can plead to the particulars of claim as they stand and be able to demonstrate, if they are minded to, whether

or not they are liable in law to compensate the Plaintiff for her alleged loss or damages, alternatively, whether or not the Plaintiff failed to prove her case as well as damages claimed.

[58]. The Plainitff obviously bears the overall onus to prove her case.

[59]. It is further important to note that this Court deals, on daily basis, with personal injury claims, wherein as at the issuing stage, those claims would not be fully quantified, and injuries, and quantum would not be fully assessed given the fact that expert reports are usually filed in the pre-trial stages to clarify the extent of the injuries, their sequelae and the quantum applicable.

[60]. In my mind, there is nothing wrong with this prevalent situation provided, of course, that the pleadings must, at all times, meet the minimum requirements of the facts to be set out in the particulars of claim as provided for in rules 18(4) read with 18(10).

[61]. The experts would then have to flash out any doubts and provide required evidence, opinions and assumptions that the experts are entitled to present at Court. In other words, they are there to add flesh to the bones (being the facts compliant with rule 18(4) read with rule 18(10)).

[62]. In any other instances and in the event that the Defendants seek clarity on some of these issues, there are numerous mechanism within the rules of Court to ensure that the Defendants' rights are protected. One immediately thinks of the provisions of rules 24 and 35 procedures. These would protect the Defendants' interests in any case.

[63]. Furthermore, this Court has adopted a practice of certifying matters requiring that all cases where there will be expert evidence, to be certified for being trial ready long before the actual trial itself. In the event that the Plaintiff fails to file her expert reports, the matter will not be certified, as ready for trial, or if certified, the claim would be dismissed for failure to prove certain facts which require expert evidence. The risk is assumed by the Plaintiff not the Defendants.

[64]. I accordingly do not see the serious prejudice that the Defendants would suffer should the exception not be upheld. There is absolutely none to refer to from the papers as they stand. The law instructs me that where there is no serious prejudice to the Defendants, the exception must fail.

[65]. I demonstrate, herein below, few examples arising from the complaints or grounds of exception.

[66]. First ground of complaint deals with a duty of care. The Defendants complained that it is not clear that the duty of care referred to in paragraphs 9, 10 and 12 is one and the same duty of care or that the said duties of care [if there is more than one], are in addition to or in the alternative to each other.

[67]. This complaint does not make sense with respect. It is not clear how many duties of care can there be that the Defendants legally owe to the members of the public in order to avoid the eventuating of a particular harm that is foreseen or should have be foreseen. In my view and my reading of the **Law of Delict** by

Boberg,[16] there is only one duty of care especially in relation to the requirement, or an element, of delict that requires a defendant to take care that a foreseen harm does not eventuate.

[68]. Furthermore, my reading of the particulars of claim shows me that the Plaintiff did not suggest that the duties of care referred to in her particulars are (i) more than one, or (ii) different, or (iii) are in addition to, or (iv) in the alternative to one another.

[69]. By postulating the above, I do not mean that the Plaintiff has set out a case for compensation of her injuries. I merely demonstrate that the Defendants can and should plead to the claim as formulated i.e. that they owed the Plaintiff a duty of care that she would not fall into the manhole as and when she did and under the circumstances set out in her particulars of claim. The Defendants may have a defence.

[70]. It appears to me that the Defendants merely seek to throw the Plaintiff's case out on technicalities. Accordingly, I cannot accede to this ground of complaint.

[71]. The second ground of complaint deals with the difference between the injury which is the fracture on the right ankle and the sequelae thereof being a pain on the right femur. I mention the femur and take note of the proposed amendment herein which sought to correct this to mean the right ankle.

[72]. I find that whether or not it was the right femur or right ankle, it matters not as it is evident from the particulars of claim that from the medical reports of Charlotte Maxeke Hospital, the **injury** recorded is a fracture on the right ankle and the

[16] PQR Boberg, The Law of Delict, Aquilian Liability, Vol. 1 (Juta).

third toe. The issue of the subsequent **pain** felt by the Plaintiff whether to the ankle to the right femur, is a **sequelae** of the main injury and not, by itself, another injury.

[73]. In other words, there are no "two injuries" as the Defendants seek to suggest in their exception, and I would accordingly not accede to this complaint either.

[74]. The third to fifth grounds of complaints deal with the consequences of the alleged negligent conduct of the Defendants. They are not the core of the claim.[17]

[75]. In as much as the relevant rule 18(10) require certain facts to be pleaded, I have stated that in this division, both the main and the local division of the High Court, a practice exists where facts such as the exact amount claimed for medical expenses, are resolved by an exchange of medical vouchers which may be more or less than what the Plaintiff claims. It is for the Plaintiff to react to the subsequent revelation of the correct or objective amount arising from the exchange of medical vouchers.

[76]. Secondly, claims for disfigurement, pain and suffering etc. are issues largely concerned with general damages. These too are often dealt with in expert medical reports filed only after the Plaintiff would have attended further relevant medical assessments to establish, with more certainty, the extent of her injuries and their sequelae. Prior to this stage, the Plaintiff is required by the rules to put up a case that the Defendants can reasonably know what it is required of them. Sufficient facts are to be set out as required by rule 18(4) read with 18(10).

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[17] I have already demonstrated that a successful challenge of an exception on the ground that the claim of defence is vague and embarrassing must go to the core of the claim not to individual paragraphs.

[77]. Furthermore, the claims for payment of compensation, are almost always left for actuarial scientists to assist the Court to come to a just and equitable amount for compensation. Whatever the Plaintiff claims as monies due to her for compensation cannot, absent this expert evidence, be the end of it all.

[78]. In many instances, the amounts claimed are merely estimates which are subject to the expert's evidence. Again, it is for the Plaintiff to react thereto once the fuller picture is established. As I mentioned, the Defendants have at their disposal, ***especially if they have not been left to guess what the Plaintiff's case is***, various rules of court to obtain clarity or particularity on any issue they seek.

[79]. Where a Plaintiff does not call on these experts, s/he runs the risk of failing to prove her claim and/or the amounts the Defendants may be liable for. That would, in my view, be the sufficient remedy for the Defendants.

[80]. Accordingly, although I tend to accede to the Defendants' complaint, in respect of the fourth complaint i.e. the employment, salary advises of the Plaintiff etc, and the nature of the disfigurement, the disability etc., I am satisfied that these are issues that a proper pre-trial process can deal with.

[81]. Once again the Defendants will not be seriously prejudiced by the Plaintiff's claim as it stands.

PLAINTIFF'S NOTICE OF AMENDMENT IN TERMS OF RULE 28

[82]. As pointed out, on 18 June 2018, the Plaintiff filed a Notice in terms of rule 28 effectively seeking to amend her particulars of claim and provide some facts she had already pleaded, i.e. that the amounts claimed are estimates and that the "right femur" stated in her particulars of claim was to be replaced with "a right ankle."

[83]. On 3 July 2018, the Defendants objected to the Plaintiff's proposed amendment and raised substantially the same issues they raised in their notice of exception.

[84]. Since then, the Plaintiff has not set its amendment down for hearing. The Plaintiff is presently very late in filing same. I however do not propose to speculate on the reason(s) why the said amendment was not set down or to even make a final decision thereon.

[85]. I intend to make an order directing that the Plaintiff brings an application setting out justifiable reasons why she has failed to set the amendment application down and, if court permitting, to then deal therewith.

[86]. Should the Plaintiff fail to bring this application within the days stipulated herein below, the Defendants are entitled to invoke the rules of Court to protect their interests, including but not limited to the dismissal of the Plaintiff's claim.

[87]. Having considered the matter as a whole, I am satisfied that the Defendants will not suffer any serious prejudice should their exception be dismissed. The Plaintiff's claim is formulated in such a manner that any defendant can reasonably deduce what it is about.

[88]. I find that a cause of action has been properly set out and that the amounts claimed, although at this stage, not fully set out, are in such a manner that the Defendants can ***reasonably*** – not ***certainly***, know what the Plaintiff's case is and what is it that they are in for.

[89]. The reasonability of the amounts claimed will always remain in dispute and an expert will be required to deal therewith and assist the Court and the parties.

[90]. With this judgment I hereby express this Court's reluctance to approach this matter on technicalities and its desire to adopt a practical approach thereto.

[91]. For all of the above reasons, I come to the following conclusion:

1. The exception is dismissed;

2. The Plaintiff is afforded a period of fifteen (15) days within which to make an application to deal with her proposed amendment;

3. In compliance with the provisions of order 2 above, the Plainitff is ordered to file an appropriate affidavit setting out reasons for the delay in setting down the aforesaid application for an amendment;

4. The parties are also afforded leave to file answering and replying affidavits and to do so within the time frames allowed in interlocutory applications, and to set the application referred to in orders 2 and 3 above, down accordingly;

5. In the event that the Plaintiff fails, refuses, or neglects to file the abovementioned application to deal with her proposed amendments for

hearing, then and in that event, the Defendants are granted leave to approach this Court, and on the papers filed of record, to seek an appropriate relief; and

6. There is no order as to costs;

T J MACHABA

Acting Judge

Gauteng Local Division

Johannesburg

APPEARANCES:

Date of hearing: 25 February 2019

Date of Judgment: 28 February 2019

For Plaintiff: No appearance

For Defendants: Adv. A J Venter