



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 13551/2018

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

26 January 2021
DATE

Gavin Rome
SIGNATURE

DE FREITAS: JOSE JORGE

First Applicant

MENEZES: FRANKLIN DOMICIANO DE AGUAR

Second Applicant

and

CHAMDOR MEAT PACKERS (PTY) LTD

First Respondent

BEEFCOR (PTY) LTD

Second Respondent

PETRUS HENDRIK TROSKIE N.O.

Third Respondent

PETRUS HENDRIK TROSKIE N.O.

Fourth Respondent

JOHANNES LODIWIKUS LE ROUX N.O.

Fifth Respondent

CORNELIUS JOHANNES HATEM N.O.

Sixth Respondent

**HENDRIK LAMBERTUS JOHANNES MOULDER
N.O.**

Seventh Respondent

ERENSCHA ALETTA ERASMUS N.O.

Eighth Respondent

MALCOLM JOSEPH FARQUHARSON

Ninth Respondent

PETRUS HENDRIK TROSKIE

Tenth Respondent

CASPARUS JAN HENDRIK WESSELS

Eleventh Respondent

JOHAN ROBINS WATSON

Twelfth Respondent

HERMANUS ABRAHAM VAN STADEN	Thirteenth Respondent
WESSEL JOHANNES MULLER	Fourteenth Respondent
TROSKIE & DE WET CC	Fifteenth Respondent
RING DRYER INVESTMENTS (PTY) LTD	Sixteenth Respondent
GAUTENG MEAT INSPECTION SERVICES CC	Seventeenth Respondent

JUDGMENT

ROME, AJ:

INTRODUCTION

- 1 This application for leave to amend particulars of claim is opposed on one basis only.
- 2 In this judgment I refer to the plaintiffs (being the applicants in this present interlocutory application) as “the applicants” and the defendants (in the action) as “the respondents”
- 3 A perusal of the nature of the particulars of claim as summarised in the founding affidavit indicates that: the applicants as minority shareholders in the first defendant, seek various oppression type remedies against it and various of its other stakeholders and directors (hence the number of defendants who are joined) whom the applicants describe as “joint wrongdoers”. The action was instituted in 2018.
- 4 The applicants served their notice of intention to amend during August 2020. The applicants in their notice sought to amend their particulars of claim in several respects. Only one aspect of the notice of amendment elicited an objection.

- 5 The objection is that in terms of the amendment the applicants seek to introduce two new causes of action, which only arose post the institution of summons. In other words the respondents contend that two of the paragraphs of the amendment introduce two new claims that are based on alleged oppressive conduct that first commenced in March 2020, which post-dates the summons; as such, according to the respondents, these new claims cannot legitimately be included within the ambit of the action initiated by the service of the summons.
- 6 The grounds of the objection are hence narrow.
- 7 The respondents' objection is based on the statement of Voet that there can be no lawsuit before something is due. Hence the contention is that before issuing summons a plaintiff must therefore have a complete cause of action. This precept however as was explained in Bankorp Ltd v Anderson Morshead 1997 (1) SA 251 is subject to at least two further qualifying considerations.
- 8 The first is that it has long been the law that a new claim is permissible if a valid cause of action already appears from the summons. The second is that even where the summons does not disclose a valid and complete claim, the Court may allow an amendment if the plaintiff did not issue the summons merely to have litigation pending before s/he had a claim.
- 9 In this matter both of the above requirements are fatal to the respondents' objection. It is common cause that the particulars of claim disclosed a cause of action at the time they were issued. In any event the events alleged in the relevant aspects of the amendment pertain to the very oppression action that has

already been instituted but are now perforce the subject of an amendment because they pertain to new facts that occurred post the institution of summons.

- 10 If the respondents' arguments were to be accepted it would preclude the introduction of amendments that clearly fall within the ambit of the lis between the parties but which pertain to events that occur after the issuing of summons. This would serve no purpose other than to delay and complicate proceedings.

ORDER

- 11 The following order is made:

- a. The amendments as envisaged in the applicants' notice of amendment dated 4 August 2020 are granted.
- b. The respondents are ordered to pay the opposed costs occasioned by the respondents' notice of objection dated 19 August 2020.

26 January 2021

Gavin Rome

G ROME
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

For the applicants:	Adv. H.H Cowley
Instructed by:	Martin Hennig Attorneys
For the respondents:	Adv. G. Fouché
Instructed by:	Manley Incorporated
Date of hearing:	25 January 2020