Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates	NO

[redacted]

22 July 2024

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: 182/2023

In the matter between:-

KAGISANO MOLOPO LOCAL MUNICIPALITY 1st Excipient

SELLO MAROGA NO 2nd Excipient

and

SNPRP SECURITY SERVICES CC Respondent

IN RE

SNPRP SECURITY SERVICES CC Plaintiff

and

KAGISO MOLOPO LOCAL MUNICIPALITY 1st Defendant

SELLO MAROGA NO 2nd Defendant

This judgment is handed down electronically by virtue of electronic correspondence (e-mail) to the legal representatives of the parties. The date of hand down is deemed to be ***22 July 2024***

JUDGMENT

FMM REID J
Introduction:

[1] The excipients/defendants (also referred to as the "Municipality", the excipient or defendants) brings this exception against the particulars of claim of the respondent/plaintiff (also referred to as "SNPRP Security Services", the respondent or the plaintiff), on the grounds that no cause of action is disclosed, alternatively that the pleading is vague and embarrassing.

[2] The grounds of exception are as follows:

2.1. That the terms of the contract as pleaded are mutually destructive, thus rendering the pleading vague and embarrassing.

2.2. That the basis of how the amount that is claimed, has been calculated, has not been set out in the particulars of claim, thereby rendering the pleading without a cause of action.

2.3. That the plaintiff failed to set out a basis that a valid contract was concluded between Kagisano Molopo Local Municipality and SNPRP Security Services CC, rendering the claim without a cause of action.

2.4. That the plaintiff pleaded that the defendant Kagisano Molopo Local Municipality was placed under administration on 22 September 2022, which be 7 September 2022, but failed to attach the Notice from the Member of the Executive Council (MEC) of Department of Co-operative Governance, Human Settlement and Traditional Affairs (COGHSTA) placing the defendant under administration. This is material in order to determine whether the former Municipal Manger had the authority to enter into a contract and/or extend the contract, which renders the pleading without cause of action.

[3] It is argued on behalf of the Municipality that the exceptions are devoid of any merit and the exception should be dismissed on a punitive scale.

[4] The claim against the defendants is based on a written security contract entered into by and between the plaintiff and the defendant on 29 April 2022.

[5] This contract is attached to the particulars of claim.

[6] The material terms of the contract included, but is not limited to the following:

6.1. That the plaintiff would render security services to the Municipality as and when needed.

6.2. That the Municipality would pay the plaintiff an amount of R1,390,350 (One Million Three Hundred and Ninety Thousand Three Hundred and Fifty Rand) per month for the security services rendered, payable on the last day of the month.

[7] In the particulars of claim, the plaintiff avers that the defendants unlawfully terminated the security contract on 31 October 2022. Summons was issued in February 2023 and

the exception was filed against the particulars of claim on 13 March 2023.

Legal principles

[8] The legal principles in relation to an exception is extrapolated in the Uniform Rules and case-law.

[9] In terms of Rule 18(4), *"every pleading shall contain a clear and concise statement of material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto."*

[10] Rule 18(6) states that "*a party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.*"

[11] The onus lies on an excipient to persuade the court that upon every interpretation which the pleading in question, and

particular the document on which it is based, can reasonably bear no cause of action or disclose no defence, failing which the exception should be dismissed.

See: Sun Packaging (Pty) Ltd v Vreulink 1996 (4) SA 176 (A)

[12] The established principle in law is that the object of pleadings is to enable each party to come to the trial prepared to meet the case of the other and to not be taken by surprise. In **Naidoo and Another v Dube Tradeport Corp and Others** 2022 (3) SA 390 (SCA) the established approach to exceptions were confirmed by the Supreme Court of Appeal in paragraph [35] of the judgment, which is to:

> *"... accept as true and correct the factual averments in the particulars of claim unless clearly false and untenable."*

[13] The general principle is thus that the court is to accept the factual averments in the particulars of claim unless it is blatantly false and untenable.

Mutually destructive terms

[14] In paragraph 6.1 of the Particulars of Claim, the plaintiff averred that *"The plaintiff would render the security services to the first defendant from 2 May 2022 and it were to endure as long as their services are required."*

[15] The contract is attached to the particulars of claim as Annexure A. Clause 2 of Annexure A reads as follows:

> *"**PERIOD OF AGREEMENT***
>
> *2.1 Notwithstanding the date of signature of the agreement, the agreement will come into force and effect on the 2nd of May and will endure for a period as and when the services are required."*

[16] Clause 1.1.1 of the terms of reference provide that:

> *"The duration of the contract will be as and when the services are required. Commencement date will be in the letter of appointment."*

[17] It is argued on behalf of SNPRP Security Services that the

particulars of claim presuppose that the time period of the contract would be either (a) a contract with no date of termination, or (b) a contract that is on an *ad hoc* basis and would be if and when the services are required.

[18] The argument on behalf of SNPRP Security Services are set out as follows in the heads of argument:

> *"10. These are the alleged express terms of a contract which are mutually destructive.*
> *11. These are averments which go to the heart of the facta probanda of the plaintiff's case which cannot be salvaged by any facta probantia. Such averments make it impossible for the defendants to plead to the particulars of claim.*
> *12. On one end it suggests that the contract is an evergreen contract whilst on the other hand it suggests that it would be on an ad hoc basis as and when the services are required."*

[19] In summation, the argument of the excipient is thus that the terms of when the contract would come to an end, has not been pleaded and is an essential term.

[20] The next part of this ground of the exception deals with Paragraph 7 of the particulars of claim, which reads as follows:

> *"On the 17th of September 2022, the first defendant extended the contract, in writing, to 28 February 2023. The plaintiff was once again represented by Mr Sibangani Msipha and the first defendant was represented by the municipal manager, Mr OJ Mojosinyane. The material terms and conditions of the extension were the same or similar as the terms of the original contract."*

[21] The excipient argues that the failure of the respondent to plead where the extension was contracted, is in failing to comply with Rule 18(6) of the Uniform Rules of the Superior Courts. This, so the argument goes, renders the pleading vague and embarrassing for non-compliance with Rule 18(6).

[22] The excipient further argues that the respondent failed to comply with section 116(3) of the Municipal Management Finance Act, section 116(3) in that the particulars of claim do not plead that the amendment of the terms of the Service Level Agreement vis-à-vis he extension and additional grounds as relied upon by the Municipality were introduced

into the agreement following compliance with section 116(3). It is argued that the amendment is impermissible in law.

[23] In analysis of the exception, the exception is that two contradicting termination periods of the contract are pleaded, namely (a) a never-ending contract and (b) an *ad hoc* contract.

[24] The following is argument is eloquently put in the plaintiff's heads of argument:

> *"3.5 The fact that the agreement was generally inelegant, clumsy in expression, and confused in thought and language, is not per se a reason for holding the agreement as ineffective."*

[25] I agree with this argument. The information provided in the particulars of claim, is that the plaintiff is claiming for services rendered to the Municipality between September 2022 and October 2022.

[26] The termination date of the contract, whether it is on a never ending basis or on an *ad hoc* basis, is not sufficient to say

that the plaintiff does not disclose a cause of action.

[27] This ground of the exception can thus not succeed.

Quantum

[28] The excipient argues that the plaintiff failed to plead how the amount claimed was determined, in the light of the number of security officers it was to dispatch.

[29] This ground is augmented by paragraph 8 of the particulars of claim, that the plaintiff in or around September 2022 were instructed by the Municipality to increase the number of security personnel on site, that the plaintiff has increased the number of personnel and rendered the service as per the contract.

[30] The excipient argues that failure to plead the date of the extension, the manner (in writing or verbal), whether the instruction was executed or not, and other information forms part of the information needed in order to be in a position to plead as it has a direct impact on the quantification of the

amount payable.

[31] In paragraph 6.2 of the particulars of claim, a material term of the contract is pleaded that the plaintiff would render security services to the Municipality and it would pay the Municipality the amount of R1,390,350.00 (One Million Three Hundred and Ninety Thousand Three Hundred and Fifty Rand) per month.

[32] In application of the legal principles of exception, the plaintiff has set out the basis on which the calculations are done.

[33] It cannot be held that the amount is not duly quantified. This ground of exception cannot be upheld.

Placing under administration and MFMA

[34] Whether there was compliance with section 116(3) of the Municipal Management Finance Act or not, is an issue to be determined by evidence and it is not necessary for the plaintiff to plead in order to establish a cause of action.

[35] The fact that the Municipality was placed under administration in September 2022 and did not attach the Notice from the MEC of COGHSTA, does not provide a ground for exception. This does not render the pleading vague and embarrassing. In terms of Rule 18 of the Uniform Rules it is only written contracts that should be attached to the particulars of claim. The Notice from the MEC of COGHSTA is evidence which should be discovered in the trial process in terms of Rule 35 and is not something to be attached to the pleadings.

[36] This ground of exception can therefore also not be upheld.

Conclusion

[37] The excipient has not proven that the pleadings are vague and embarrassing, or does not disclose a cause of action.

[38] All the grounds for exception are dismissed.

Costs

[39] The general principle is that the successful party is entitled to

be granted a cost order in its favour.

[40] I find no reason to deviate from the general principle, and the excipients are ordered to pay the cost of the respondents.

Order:

[41] In the premise I make the following order:

i) The exceptions are dismissed with cost.

FMM REID
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION MAHIKENG

DATE OF HEARING: 7 MARCH 2024

DATE OF JUDGMENT: 22 JULY 2024

APPEARANCES:

FOR EXCIPIENT: ADV CZ MUZA

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