

“ANNEXURE 11”

Practice Direction 61

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>AISO Cash Loan CC v President of the Republic of Namibia</i>	Case No.: HC-MD-CIV-ACT-OTH -2018/04499
	Division of Court: High Court (Main Division)
Heard/tried before: Honourable Mr Justice B Usiku J	Date of hearing: 24 January 2020
	Delivered on: 14 February 2020
Neutral citation: <i>AISO Cash Loan CC v President of the Republic of Namibia</i> (HC-MD-CIV-ACT-OTH -2018/04499) [2019] NAHCMD 50 (14 February 2020)	
The Order: Having heard Ms Boesak , on behalf of the Plaintiff(s) and Ms Janke , and Ms Lovisa Ihalwa , on behalf of the Defendant(s) and having read the pleadings for HC-MD-CIV-ACT-OTH-2018/04499 and other documents filed of record: IT IS ORDERED THAT: 1. Paragraphs 45 to 75 (all inclusive) of the plaintiffs’ particulars of claim are ordered to be struck out as irrelevant averments. 2. The plaintiffs are ordered to pay the costs of the defendants, occasioned by the application to strike out, jointly and severally, the one paying the other to be absolved. The costs are to include costs consequent upon the employment of one instructing and	

one instructed counsel. It is further ordered that the costs are not to be capped in terms of rule 32(11).

3. The defendants' exception on the ground that the particulars of claim do not disclose a cause of action or lack averments necessary to sustain a cause of action is dismissed.
4. The defendants' first, second, fourth, sixth and seventh grounds of exception on the basis that the particulars of claim are vague and embarrassing are upheld.
5. The plaintiffs are ordered to pay the costs of the defendants occasioned by the exception, jointly and severally, the one paying the other to be absolved. The costs are to include costs consequent upon the employment of one instructing and one instructed counsel. It is further ordered that the costs are not to be capped in terms of rule 32(11).
6. The plaintiffs are granted leave to amend their particulars of claim, if so advised, within 20 days of this order.
7. The matter is postponed to 8th April 2020 at 15:15 for Case Planning Conference.
8. The parties are directed to file a joint case plan on or before 1st April 2020.

Reasons: Practice Direction 61(9)

Introduction

[1] This is an exception taken by the first to sixth defendants ("the defendants"), against the plaintiffs' particulars of claim, on the basis that they are vague and embarrassing, alternatively disclose no cause of action, in the further alternative lack averments necessary to sustain a cause of action.

[2] At the same time the defendants also apply for the striking out of certain paragraphs from the plaintiffs' particulars of claim on the grounds that the allegations contained therein are vexatious and/or irrelevant, as they, inter alia, burden the pleadings with inadmissible

(and unnecessary allegations to support material facts alleged) and/or argumentative material, requiring to be addressed in the plea by the defendants.

3. During November 2018, the twenty-six (26) plaintiffs instituted action attacking the constitutionality of various provisions of the Microlending Act (No.7 of 2018) (“the Act”). The plaintiffs seek for an order declaring numerous provisions of the Act unconstitutional and null and void.

4. The particulars of claim contains sixty (60) pages (excluding annexures) and has eighty-two (82) paragraphs. The general complaint raised by the defendants is that the entire particulars of claim are vague and embarrassing and/or lack averments necessary to sustain a cause of action. Furthermore, the defendants apply for certain paragraphs of the particulars of claim to be struck out.

The legal principles

Exception

[6] The legal principles regarding exceptions were succinctly set out in *Van Straten and Another v Namibia Financial Institution Supervisory Authority and Another* 2016 NR 747 SC in the following terms:

[18] Where an exception is taken on the grounds that no cause of action is disclosed or is sustainable on the particulars of claim, two aspects are to be emphasized. Firstly, for the purpose of deciding the exception, the facts as alleged in the plaintiff’s pleadings are taken as correct. In the second place, it is incumbent upon an excipient to persuade this court that upon every interpretation which the pleading can reasonably bear, no cause of action is disclosed. Stated otherwise, only if no possible evidence led on the pleadings can disclose a cause of action will the particulars of claim be found to be excipiable.

[19] Whether an exception on the ground of being vague and embarrassing is established would depend upon whether it complies with rule 45(5) of the High Court Rules. This rule requires that every pleading must contain a clear and concise statement of the material facts on which the pleader relies for his or her claim with sufficient particularity to enable the opposite party to identify the case that the pleading requires him or her to meet. Assessing whether a pleading is vague and embarrassing is now to be undertaken in the context of

rule 45 and the overriding objective of judicial case management. Those objective include the facilitation of the resolution of the real issues in dispute justly and speedily, efficiently and cost effectively as far as practicable by saving costs by, among others, limiting interlocutory proceedings to what is strictly necessary in order to achieve a fair and timely disposal of a cause or matter.

[20] The two-fold exercise in considering whether a pleading is vague and embarrassing entails firstly determining whether the pleading lacks particularity to the extent that it is vague. The second is determining whether the vagueness causes prejudice. The nature of the prejudice would relate to an ability to plead to and properly prepare and meet an opponent's case. This consideration is also powerfully underpinned by the overriding objects of judicial case management in order to ensure that the real issues in dispute are resolved and that parties are sufficiently apprised as to the case that they are to meet.'

[7] The main purpose of an exception that the particulars of claim disclose no cause of action (or that a plea does not disclose a defence) is to avoid the leading of unnecessary evidence.¹

[8] Where a statement is vague, it is either meaningless or capable of more than one meaning. It is embarrassing in that it cannot be gathered therefrom what ground is relied on and therefore it is also something which is insufficient in law to support in whole or in part the action or defence.²

Strike out

[9] Applications to strike out are dealt with by rule 58. There are two requirements for an application to strike out:

- (a) the impugned pleading contains statements that are scandalous, vexatious or irrelevant, and,
- (b) the applicant will be prejudiced in the conduct of his defence if the offending statements are not struck out.

¹ Lampert –Zakiewicz v Marine and Trade Insurance Co Ltd 1975(4) SA 597 at 600 G-A.

² Trusco Capital (Pty) Ltd v Atlanta Cinema CC 2012 JDR 1148 (Nm) at p.10.

[10] The purpose of an application to strike out is to reduce the issues that will have to be canvassed in the pleadings and more particularly at the trial.³

Defendants' exception and application to strike out

[11] For convenience purposes, I shall first deal with the application to strike out and later deal with the exception.

Application to strike out

[12] Firstly, the defendants seek to strike out the undermentioned paragraphs on the ground that they contain allegations of a vexatious and/or irrelevant nature, namely:

- (a) paragraphs 45 to 53 (all inclusive),
- (b) paragraphs 55 to 75 (all inclusive),
- (c) paragraphs 79 to 79 (all inclusive),
- (d) paragraphs 80 to 80.5(all inclusive),
- (e) paragraphs 81 to 81.3 (all inclusive).

[13] The defendants contend that in some instances the allegations contained in the foregoing paragraphs burden the pleadings with inadmissible and/or unnecessary material and in other instances the allegations amount to legal argument.

[14] The plaintiffs have dedicated about 12 pages of their particulars of claim setting out legal argument, the defendants argue. The defendants further state that the particulars of claim are littered with plaintiffs' own conclusions and opinions without material facts supporting those conclusions.

[15] According to the defendants, the prejudice that the defendants stand to suffer is to be found in the sheer vastness of the vexatious and/or irrelevant matter pleaded by the plaintiffs. Furthermore, the legal costs of having to trawl through irrelevant matter and advise on the same is similarly prejudicial and result in unnecessary and costly prolix of documentation which in the circumstances is prejudicial, the defendants argue.

³ Erasmus: Superior Court Practice: RS 7,2018,D1-307

[16] The plaintiffs, on the other hand, contend that paragraphs 45 to 53 establish the principles underlying the action. These paragraphs, the plaintiffs argue, are not irrelevant or vexatious, nor are they inadmissible or impermissible argumentative matter. They are correctly contained in the particulars of claim and the defendants are at liberty to plead to them.

[17] In regard to paragraphs 55 to 75, the plaintiffs contend that these paragraphs similarly deal with the underlying legal principles and the grounds upon which relief is sought.

[18] Paragraphs 79 to 79.84, the plaintiffs argue, identify the impugned provisions of the Act and serve to explain the basis upon which the impugned provisions are sought to be challenged. These paragraphs are required for the plaintiffs to sustain their cause of action.

[19] As far as paragraphs 80 to 80.5 are concerned, the plaintiffs contend that the same submissions as above apply and that there is no basis to seek the striking out of these paragraphs.

[20] In regard to paragraphs 81 to 81.3, the plaintiffs state that the same argument as raised above apply.

[21] In regard to the allegations contained in paragraphs 45 to 53, and I add paragraph 54, I agree with the defendants that such paragraphs amount to legal argument (as opposed to allegations of material facts upon which the pleader relies for his claim). The allegations contained in these paragraphs, are in my opinion, irrelevant to the particulars of claim. The fact that the defendants are diverted from pursuing the real issues in dispute, by having to deal with irrelevant matter, is in my opinion sufficient to constitute prejudice. In addition, I am also of the opinion that the sheer vastness of the irrelevant matter constitute sufficient prejudice to the defendants warranting the striking out of the irrelevant matter. These paragraphs therefore stand to be struck out.

[22] Similarly paragraphs 55 to 75 contain legal argument as opposed to statements of

material facts on which the plaintiffs rely for their claim and for the same reasons as raised above are irrelevant and stand to be struck out.

[23] In regard to paragraphs 79 to 79.84 I agree with the plaintiffs' submission that these paragraphs identify the impugned provisions of the Act and explain the basis upon which the impugned provisions are sought to be challenged. I am therefore of the opinion that these provisions are neither vexatious nor irrelevant and must stand.

[24] Similarly paragraphs 80 to 80.5 and paragraphs 81 to 81.3 are neither vexatious nor irrelevant and must stand.

Defendants' exceptions

First ground of exception

[25] The first ground of exception concerns paragraphs 50, 53 and 77 of the plaintiffs' particulars of claim. I have, in the preceding paragraphs hereof already found that paragraphs 45 to 75 of the particulars of claim are to be struck out on the ground that they are irrelevant. I shall therefore only deal with the defendants' ground of exception insofar as it concerns paragraph 77 of the particulars of claim.

[26] The defendants contends that in paragraph 77 the plaintiffs raise a general, wholesale and all-encompassing challenge to the constitutionality of the entire Act on several grounds. To sustain a constitutional challenge to a statute or provisions thereof, the defendants argue, the plaintiffs must specify in what respects the statute, in its entirety or the particular provisions thereof are alleged to be in violation of a particular provision of the Constitution.

[27] Furthermore, the defendants contend that the plaintiffs fail to plead which provisions of the Act violate the constitutional provisions specified by the plaintiffs in paragraph 77, and how the specific provisions of the Act violate or infringe the constitutional rights of the plaintiffs.

[28] The defendants state that they are embarrassed by the vagueness of the pleading and are unable to plead meaningfully or at all, as they are not made aware of the facts relied on by the plaintiffs to set aside certain provisions or the whole Act.

[29] The defendants further contend that the particulars of claim also fail to sustain a cause of action in that respect.

[30] In response to the defendants first ground of exception, the plaintiffs contend that the defendants' interpretation of paragraph 77 is inaccurate. Paragraph 77.1 relates to the limitation of the exercise of rights and freedoms as identified in the particulars of claim. The plaintiffs underline that the particulars of claim do specify in which respects the particular provisions of the Act are in violation of the relevant provisions of the Constitution or constitute an infringement of a particular right relied upon.

[31] I am of the view that the plaintiffs have numerous causes of action, in respect of the different sections of the Act which the plaintiffs seek to be declared unconstitutional and null and void. The bases for constitutional attack on the validity of the impugned sections include:

(a) alleged imperfections in the definition of the words "this Act", in that the definition is said to be 'impermissibly vague, wide, unguided and unfettered and militates against the separation of powers enshrined in the Namibian Constitution'

(b) alleged shortcomings in certain sections of the Act, in that they are said to grant 'impermissibly vague, wide, unguided and unfettered discretion to the Minister constituting an infringement of rights enshrined in Article 21 (j)'

(c) alleged imperfections of certain sections of the Act in that they are said to infringe upon the plaintiffs' rights enshrined in Articles 8,10 and 11 etc etc.

[32] Insofar as the defendants' exception alleges that the particulars of claim fail to disclose a cause of action, it is incumbent upon them to persuade the court that upon every interpretation which the particulars of claim can reasonably bear, no cause of action is disclosed.

[33] I am not persuaded that the particulars of claim lack necessary averments to

disclose a cause of action. When regard is had to the particulars of claim as a whole, paragraph 77 appears to me to contain material facts sufficient to disclose a cause of action.

[34] However, it is apparent that the formulation of the cause of action as appears in paragraph 77 leaves much to be desired. Paragraph 77 attacks the constitutionality of the entire Act on several grounds, even though the plaintiffs seek no specific relief concerning the entire Act. In addition the plaintiffs do not specify with sufficient particularity, which provisions of the Act violate the plaintiffs' constitutional rights and how the entire Act does that. In my view, the averments contained in paragraph 77 insofar as they attack the entire Act, read with other averments which only attack specific sections of the Act, are contradictory and, therefore, vague and embarrassing. Prejudice exists, in my opinion, in that if the vagueness is allowed to persist the defendants would be compelled to meet averments in respect of which the plaintiffs seek no relief.

[35] I am of the opinion that the exception that the defendants are embarrassed by the vagueness of the particulars of claim in this regard, is well taken and stands to be upheld.

Second ground of exception

[36] Under the second ground of exception the defendants state that in paragraph 78 of the particulars of claim, the plaintiffs plead that the legislature's failure to appreciate that it was restricting or limiting the plaintiffs' constitutional rights and that it impermissibly delegated or abdicated uncircumscribed and unguided discretionary powers to the Minister and NAMFISA. According to paragraph 78, such delegation resulted in the limitation and infringement of plaintiffs' rights and in arbitrariness, unfairness and unreasonableness.

[37] The defendants contend that the aforesaid averments do not sustain a cause of action, alternatively, are vague and embarrassing in that:

(a) the "provisions" of the Act referred to in paragraph 78 are not pleaded,

(b) it is not pleaded which provisions of the Act "impermissibly delegated" powers to the

Minister and NAMFISA,

(c) the plaintiffs failed to plead the basis for labelling the alleged delegation of powers to the Minister as impermissible or as an abdication of powers,

(d) the plaintiffs do not specify in what respects the unspecified provisions result in “arbitrariness, unfairness and unreasonableness.”

[34] The defendants submit that they are embarrassed by the vagueness of the allegations in that they do not know the case they are expected to meet.

[39] In response, the plaintiffs contend that the “provisions of the Act” referred to in paragraph 78 pertain to the absence of invoking the provisions of Article 22(b) by the Act. As a result, the plaintiffs argue, the legislature did not appreciate that it was restricting or limiting the plaintiffs’ constitutional rights, nor that it impermissibly delegated or abdicated uncircumscribed and unguided discretionary powers to the Minister and NAMFISA. The plaintiffs assert that the impugned provisions of the Act are identified in paragraph 79 of the particulars of claim.

[40] In considering an exception raised on the ground that no cause of action is disclosed or is sustainable on the particulars of claim, the facts pleaded by the plaintiffs must be accepted as correct. When the particulars of claim are read as a whole, I am not persuaded that upon every interpretation which the particulars of claim can reasonably bear, no cause of action is disclosed. The argument advanced by the defendants that the particulars of claim lack the necessary averments to disclose a cause of action on account of the provisions of paragraph 78, is therefore without substance.

[41] However, I agree with the defendants that paragraph 78 attacks unspecified statutory provisions having impermissibly delegated discretionary powers to the Minister and NAMFISA, and thereby infringing the plaintiffs’ constitutional rights. The plaintiffs argue that the unspecified provisions are the provisions specified under paragraph 79. From the reading of paragraph 79, not all provisions under that paragraph delegate powers to the Minister and NAMFISA.

[42] I am therefore of the opinion that the statements contained in paragraph 78 are

worded in such a way that the defendants are prevented from clearly understanding the case they are required to meet. Such statements are vague insofar as they are said to refer to provisions under paragraph 79, which contain numerous provisions not delegating discretionary powers to the Minister. They are embarrassing in that it cannot be gathered therefrom the ground relied on by the plaintiffs for alleging that the unspecified provisions delegated powers that resulted in the limitation of the plaintiffs' unspecified constitutional rights.

[43] The exception taken under the second ground of exception that the averments in question are vague and embarrassing is well-founded and stands to be upheld.

Third ground of exception

[44] Under the third ground of exception, the defendants state that, the plaintiffs alleged in paragraph 79.2 that the legislature impermissibly delegated the power to make "standards" on the aspects identified in paragraphs 79(2) (a) to (dd) to a statutory body, which aspects the plaintiffs allege, must have been legislated on by Parliament.

[45] The defendants contend that these allegations are vague and embarrassing in that:
(a) the plaintiffs fail to allege why the delegation is impermissible,
(b) the plaintiffs fail to allege why only Parliament must (or can) legislate on the aspects identified.

[46] In response, the plaintiffs contend that the 'standards' referred to in the Act, govern pivotal aspects of the Act which must have been legislated upon by Act of Parliament and not delegated to a statutory body. The plaintiffs further argue that sufficient particularity has been provided in the particulars of claim.

[47] In my view, there no substance in the defendants contention that the allegations contained in paragraph 79.2(a) to (dd) are vague and embarrassing. The defendants have not established that the impugned allegations render the particulars of claim meaningless or capable of more than one meaning or can be read in any one of a number of different conflicting ways. The defendants' third ground of exception has no merit and stands to be

dismissed.

Fourth ground of exception

[48] In their fourth ground of exception, the defendants state that under various specified paragraphs of the particulars of claim, the plaintiffs plead that certain sections referred to in those paragraphs infringe upon the plaintiffs' rights enshrined in Articles 8, 10 and 11 of the Constitution.

[49] Article 8 has two sub articles. The first one declares that the dignity of all persons shall be inviolable. The second article has two paragraphs. The first paragraph guarantees respect for human dignity in judicial proceedings and in other proceedings before any organ of the State and during the enforcement of a penalty. The second paragraph prohibits torture or cruel, inhuman or degrading treatment or punishment on all persons. Article 10 has two sub-articles. The first article guarantees equality of all persons before the law. The second sub-article prohibits discrimination of any person on the grounds of sex, race, colour etc. Article 11 deals with arrest and detention and has five sub-articles. The first sub-article prohibits arbitrary arrest or detention of any person. The other sub-articles touch on aspects relating to arrest and detention.

[50] The defendants argue that the specified paragraphs of the particulars of claim fail to sustain a cause of action and are vague and embarrassing in that:

- (a) the plaintiffs do not plead which of their Articles 8,10 and 11 rights are infringed,
- (b) the plaintiffs fail to plead in what manner the relevant sections violate their Articles 8,10 and 11 rights,
- (c) the plaintiffs do not plead why Articles 8,10 and 11 find application.

[51] The defendants therefore contend that they are prejudiced as they are unable to meaningfully plead thereto.

[52] The plaintiffs respond that sufficient particularity has been pleaded and that the particulars of claim, read as a whole, disclose the case which the defendants are expected to

meet.

[53] The defendants' exception based on the ground that the particulars of claim fail to sustain a cause of action cannot be upheld in respect of the defendants' fourth ground of exception, for similar reasons expressed under the first and second grounds of exception. The exception taken on the ground that no cause of action is sustainable on the particulars of claim, therefore, stands to be dismissed.

[54] However, I agree with the defendants that the averments contained in the paragraphs referred to by the defendants under the fourth exception, lack sufficient particularity to enable the defendants to identify the case that those paragraphs require them to meet. The Articles of the Constitution which the plaintiffs allege to have been infringed have various sub-articles and the lack of particularity in specifying the precise relevant sub-articles creates vagueness that causes prejudice. The exception by the defendants based on vagueness and embarrassment, stands to be upheld.

Fifth ground of exception

[55] Under this ground of exception, the defendants state that the plaintiffs allege in various specified paragraphs that certain specified sections of the Act confer an 'impermissibly vague, wide, unguided and unfettered discretion and also constitute an infringement of the rights enshrined in Article 21 (1) (j).'

[56] The defendants contend that these averments fail to sustain the relief sought by the plaintiffs and are vague and embarrassing, in that:

- (a) the plaintiffs failed to plead how any of the impugned provisions are impermissibly vague and wide and confer unfettered discretion,
- (b) the plaintiffs failed to identify which of their Article 21 (1) (j) rights are infringed,
- (c) the plaintiffs failed to plead how the impugned sections infringe their Article 21(1)(j) rights.

[57] In response, the plaintiffs argue that whether or not the impugned provisions constitute an infringement of the rights enshrined in Article 21(1)(j) is a matter of interpretation. The plaintiffs further contend that the defendants should not expect the

plaintiffs to plead *facta probantia*.

[58] In my opinion, the defendants have not shown that upon every interpretation which the particulars of claim can reasonably bear, no cause of action is disclosed. Furthermore, the defendants have not established that the impugned averments render the pleading meaningless or capable of more than one meaning. Moreover, the plaintiffs' allegations that their Article 21(1)(j) rights have been infringed constitute sufficient particularity to enable the defendants to reply thereto.

[59] For the foregoing reason, the defendants' fifth ground of exception stands to be dismissed.

Sixth ground of exception

[60] In their sixth ground of exception the defendants assert that the plaintiffs in certain specified paragraphs, plead that the certain sections mentioned in those paragraphs affront plaintiffs' existing rights and infringe the plaintiffs' rights enshrined in Article 12 and 16 and permit unfair, unreasonable and arbitrary decision-making, infringing plaintiffs' rights enshrined in Article 18.

[61] The defendants argue that these averments fail to sustain the relief sought by the plaintiffs and vague and embarrassing, in that:

- (a) the plaintiffs do not plead the nature of their existing rights,
- (b) the plaintiffs fail to allege how the unidentified existing rights are offended by the sections referred to.

[62] Article 12 of the Constitution deals with "fair trial" and has three sub-articles. Sub-article (1) has six paragraphs. Article 16 deals with "property" and has two sub-articles. Article 18 has one sub-article.

[63] The plaintiffs respond that the nature of the plaintiffs, existing rights are obvious and

would be those which were impacted upon by the relevant impugned provisions. The manner and extent of the infringement have been set out in detail in the particulars of claim, read as a whole.

[64] I am not persuaded that the particulars of claim fail to sustain a cause of action. Therefore, for similar reasons expressed under the first, second and fourth grounds of exception, the exception taken on the basis that no cause of action is sustainable on the particulars of claim, stands to be dismissed.

[65] However, I am of the opinion that the averments contained in the paragraphs referred to by the defendants under the sixth ground of exception, lack sufficient particularity to enable the defendants to identify the case that those paragraphs required them to meet. Articles 12 and 16 have various sub-articles and the lack of particularity in specifying the relevant sub-articles create vagueness that causes prejudice. The exception by the defendants based on vagueness and embarrassment, stands to be upheld.

Seventh ground of exception

[66] Under the seventh exception the defendants state that in paragraph 80 of the particulars of claim the plaintiffs plead that the method employed the legislature to reach the objective of the Act constitutes an impermissible restriction to the plaintiffs' rights guaranteed under Articles 1(1), 1(3), 5,8,10,11,13,16,18,21(1),(e) and (j), 22 and 25 in that certain specified sections of the Act provide plenary legislative powers to the Minister, militate against the principle of separation of powers, contravene and fail to comply with the provisions of Article 21(2) etc.

[67] The defendants submit that that paragraph fails to sustain a cause of action and vague and embarrassing in that the plaintiffs have failed to plead:

- (a) in which sections plenary powers are provided to the Minister,
- (b) how and in which sections the Act allegedly violated the principle of separation of powers,

- (c) how the provisions amount to impermissible restriction of plaintiffs' rights, and
(d) how and which of the provisions of the Act are alleged to be offensive of Article 21(2).

[68] In the same breath, the defendants contends that paragraph 81 and 82 contain allegations which are vague and embarrassing, in that the plaintiffs fail to specify which provisions are hit by which of the complaints of the unconstitutionality detailed under paragraphs 81 and 82. The defendants therefore submit that they are prejudiced in pleading to these allegations.

[69] In reply, the plaintiffs argue that paragraph 80 refers to the 'relevant above-described and identified sections of the Act.' Paragraphs 81 and 82 refer to the 'afore-pleaded impugned provisions of the Act (as pleaded above)'. Paragraph 82 refers to coercive measures which links to what is pleaded in the preceding paragraph 81.

[70] I am not persuaded that upon every interpretation which the particulars of claim can reasonably bear, no cause of action is disclosed on account of the averments set out in paragraphs 80 to 82 of the particulars of claim. The defendants' ground of exception based on the allegation that the particulars of claim lack the necessary averments to disclose a cause of action on account of the provisions of paragraphs 80 to 82, therefore stands to be dismissed.

[71] However, I agree with the defendants paragraphs 80 to 82 are vague and embarrassing. The allegations contained under these paragraphs lack sufficient particularity in that they do not state the nature, extent and grounds of the cause of action. I am persuaded to agree that the defendants, for the purposes of plea, would be substantially embarrassed by the lack of particularity. The defendants' seventh ground of exception that the averments in question are vague and embarrassing, is well founded and stands to be upheld.

Conclusions

[72] In conclusion, the defendants' application to strike out is upheld to the extent set out in the body of this ruling.

[73] The defendants' exception on the basis that the particulars of claim disclose no cause of action is dismissed.

[74] The defendants' first, second, fourth, sixth and seventh grounds of exception on the basis that the plaintiffs' particulars of claim are vague and embarrassing, are upheld.

[76] In the circumstances of this case, I am of the opinion that it is fair and just to afford the plaintiffs opportunity to amend their particulars of claim in such manner as they might be advised.

[77] Although both application to strike out and the exception have only been partially successful I am of the view that the grounds on which they have succeeded are decisive. In the circumstances it is only fair that the defendants be granted their costs.

[78] In this matter both parties have argued that the costs to be granted in this matter be permitted to be in excess of the limit imposed by rule 32 (11). I believe a costs order in those terms is justifiable in the circumstances of this case and I shall make an order in those terms.

[79] In the result, I make the following order:

1. Paragraphs 45 to 75 (all inclusive) of the plaintiffs' particulars of claim are ordered to be struck out as irrelevant averments.
2. The plaintiffs are ordered to pay the costs of the defendants, occasioned by the application to strike out, jointly and severally, the one paying the other to be absolved. The costs are to include costs consequent upon the employment of one instructing and one instructed counsel. It is further ordered that the costs are not to be capped in terms

of rule 32(11).

3. The defendants' exception on the ground that the particulars of claim do not disclose a cause of action or lack averments necessary to sustain a cause of action is dismissed.
4. The defendants' first, second, fourth, sixth and seventh grounds of exception on the basis that the particulars of claim are vague and embarrassing are upheld.
5. The plaintiffs are ordered to pay the costs of the defendants occasioned by the exception, jointly and severally, the one paying the other to be absolved. The costs are to include costs consequent upon the employment of one instructing and one instructed counsel. It is further ordered that the costs are not to be capped in terms of rule 32 (11).
6. The plaintiffs are granted leave to amend their particulars of claim, if so advised, within 20 days of this order.
7. The matter is postponed to 8th April 2020 at 15:15 for Case Planning Conference.
8. The parties are directed to file a joint case plan on or before 1st April 2020.

Judge's signature	Note to the parties:
	Not applicable
Counsel:	
Plaintiff	Defendant
Adv. R Töttemeyer, SC Mr D Obbes	Adv. Esi Schimming-Chase SC Adv Natasha Bassingthwaighte Ms Lovisa Ihalwa