



The Exceptional Exception

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Introduction

The Law of Civil Procedure. It is a subject most law students dread but it is also the subject in which one as a young attorney in the making acquires the most knowledge with regards to the litigation procedure. Slowly as you start litigating more frequently, you realise that our law is not only black and white, but has numerous grey areas to it as well. One of these grey areas being the Exception to an opponent's statements of fact.

When a person sues or is sued the norm is to state the facts relevant to your case and for your opponent to answer thereto either by admitting the facts, or denying them, or admitting but stating additional facts. In exceptional circumstances a party has the option to raise an exception to such actions from their opponent.

How and when can an Exception be raised?

The Rules of Court¹ enables someone who is suing or who is sued, within the period for delivery of a subsequent legal document, to deliver an exception after receiving a pleading. A party who intends to take an exception shall, after first giving written notice offering the chance to the other party to fix their pleading to remove issues, take exception to the pleading by applying to Court. An exception can be raised in two (2) instances:

1. The pleading is considered vague and embarrassing, being evasive and unclear by putting the other party in an unfavourable position of being unable to deliver an answer to the pleading. The pleading must be considered so vague and embarrassing that a party will not be able to reasonably and fairly answer/reply to it;
2. The pleading lacks the necessary averments to sustain a cause of action or to raise a defence.

An exception may be raised against any pleading which does not comply with the Rules of Court. However, it is considered to be general practice that a Defendant normally raises an Exception with regard to the suing party's claim. A party who brought forth the action may also raise an exception in an instance where the party's answer thereto is so vague and embarrassing that no clear defence/version can be deciphered therefrom.

The purpose of the exception is to allege that a pleading is bad in law, whereof the exception must go to the root of the claim or defence.² This is argued in order to dispose of leading further evidence at trial, whereof the point of law raised in the exception must dispose of the case in whole or in part.³ The effect is that once an exception claiming that

¹ Magistrates' Court Rules 32 of 1944 - Rule 19 and High Court Rules – Rule 23.

² Amler's Precedents of Pleadings, Ninth Edition, LexisNexis (Pty) Ltd, First Floor, Great Westerford, 240 Main Road, Rondebosch, 7700, Page 6.

³ Amler's Precedents of Pleadings, Ninth Edition, LexisNexis (Pty) Ltd, First Floor, Great Westerford, 240 Main Road, Rondebosch, 7700, Page 6.

a Pleading is bad in law is upheld, a judgment will dispose of/set aside the pleading (or the relevant part thereof) but not the action or defence immediately.⁴

The appropriate consequence flowing from a successful Exception will be that the Learned Judge or Magistrate will grant the Defendant (or Plaintiff) leave to amend the Pleading in dispute to remove the issue. However, if the party is unable to amend the pleading to do so, the Judge/Magistrate may then dismiss the claim/defence entirely.

Conclusion

To raise an Exception can be a powerful tool to shorten legal proceedings on the basis that it will be prejudicial to continue with the matter because of the defect. Exceptions must be dealt with in a sensible manner and can provide a useful mechanism to weed out cases/defences without legal merit. If the exception is however too technical, it destroys the utility thereof and it must thus only be done in exceptional circumstances.⁵

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⁴ Amler's Precedents of Pleadings, Ninth Edition, LexisNexis (Pty) Ltd, First Floor, Great Westerford, 240 Main Road, Rondebosch, 7700, Page 7.

⁵ *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority* SA 459/2004.