

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 084385/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>26/02/2026</u>	<u>Mahosi</u>
DATE	SIGNATURE

In the matter between:

LANELE GROUP (PTY) LTD

Applicant

and

TRANSNET SOC LIMITED

Respondent

In re:

LANELE GROUP (PTY) LTD

Plaintiff

and

TRANSNET SOC LIMITED

Defendant

JUDGMENT

Mahosi, J

[1] The central issue in the main matter is the liability for damages of the respondent, Transnet Soc Limited ("Transnet"), to the applicant, Lanele Group (Pty) Ltd ("Lanele"), who allegedly suffered loss because of the repudiation of a development and commercial lease agreement concluded between the parties on 7 December 2017 ("the lease"). Lanele filed an exception against the plea and counterclaim, in which Transnet raises the question of whether a repudiation of an agreement procured through a "corrupt scheme" can be wrongful in the delictual sense, and whether it can reclaim money it paid to Lanele under the lease based on unjust enrichment

[2] The material terms of the lease agreement provided, *inter alia*, that the Lanele would develop the leased premises by constructing a gantry and a liquid storage facility valued at R2 billion for the benefit of Transnet. In consideration of Lanele's development obligations, Transnet agreed to contribute R75 million, exclusive of VAT, toward the costs incurred by Lanele in obtaining all necessary development rights, as well as any other expenses associated with the planning of the development or the property generally, to render the premises capable of development.

[3] A special condition of the lease imposed two concurrent obligations on Lanele to be fulfilled within 36 months of the commencement date. Firstly, Lanele was required to commit and incur full cost contribution to ensure the premises were developable and that Transnet could acquire the requisite rights, including, but not limited to, planning, zoning, regulatory, and environmental approvals. Secondly, Lanele was obliged to secure additional development funding from a financial institution to finance the construction of the proposed development. The lease further provided that the 36 months could be extended by written agreement by the parties should additional time be required to complete the development, acquire the necessary rights, or secure the requisite funding. Upon fulfilment of these conditions, the lease was to endure for 30 years from the commencement date.

[4] In its particulars of claim, Lanele contends that Transnet repudiated the said agreement. In support thereof, it relies on two distinct grounds. First, Lanele pleads that on 12 March 2020, Transnet objected to its application to the National Energy

Regulator of South Africa (NERSA) for a construction licence, which is a prerequisite for developing the property under the lease agreement. Secondly, Lanele pleads that Transnet instituted a self-review application seeking to set aside its own decision to conclude the lease agreement. Arising from the alleged repudiation, Lanele elected to accept the same and cancel the agreement. Consequently, it claims damages from Transnet, comprising the alleged lost revenue in the amount of R1 752 455 000.00 and a lost rental rebate in the amount of R88 000 000.00, together with interest and costs of suit.

[5] Transnet's defence is two-fold. Firstly, it pleaded that the official who represented it, Mr. Zakhele Lebelo ("Mr. Lebelo"), lacked authority. Secondly, it pleaded that the lease was procured through corruption and is therefore illegal, unconstitutional, and invalid. In this regard, it is alleged that the parties who were involved in the "corrupt scheme were Mr. Lebelo, Mr. Phathutshedzo Brighton Mashamba ("Mr. Mashamba"), Superfecta Trading 209 (Pty) Ltd ("Superfecta"), Abipa Investment Holdings ("AIH"), and Red Lip Communications (Pty) Ltd ("Red Lip").

[6] Regarding Mr. Lebelo, Transnet pleaded as follows:

- "7. Mr. Lebelo was an employee of Transnet until his resignation on 28 November 2018. Prior to his resignation, Mr. Lebelo:
 - 7.1 was the Chief Executive Officer of Transnet Property, which position he held from 18 August 2014 until his resignation on 28 November 2018;
 - 7.2 played an important role in the acts that led to the lease being concluded, more particularly, Mr. Lebelo:
 - 7.2.1 addressed to the plaintiff ("Lanele") a letter dated 14 August 2017 (attached as Annexure "T1"), notifying Lanele that Transnet accepted its expression of interest and would hold the lease property available for a period of three (3) months for Lanele to conduct its due diligence and detailed feasibility studies with a view to concluding the lease with Transnet;

- 7.2.2 addressed a letter dated 28 September 2017 to Lanele (attached as Annexure "T2"), formally offering on behalf of Transnet to conclude the lease with Lanele;
- 7.2.3 received Lanele's letter dated 2 October 2017 (attached as Annexure "T3"), in which Lanele proposed several material amendments to the offer of Transnet in its letter of 28 September 2017 (Annexure T2);
- 7.2.4 received Lanele's letter dated 4 October 2017 (attached as Annexure "T4"), in which Lanele requested R75 million in funding from Transnet to address alleged site constraints of the leased property;
- 7.2.5 addressed a letter dated 5 October 2017 to Lanele (attached as Annexure "T5"), responding on behalf of Transnet to Lanele's counteroffer letter of 2 October 2017 (Annexure T3), by presenting a revised offer from Transnet to Lanele;
- 7.2.6 on or about 20 October 2017, compiled the memorandum (attached as Annexure "T6"), ultimately approved by the then Group Chief Executive Officer of Transnet, Mr Siyabonga Gama ("GCE") of Transnet on 27 October 2017, in which he recommended *inter alia* that:
- 7.2.6.1 Transnet concludes a 30-year lease with Lanele;
- 7.2.6.2 Transnet approve landlord capital development costs of R75 million "to pay for site limitations in order to make it investment ready, the landlord capital development cost to be treated as enterprise development";
- 7.2.6.3 Transnet delegates authority to him to implement the approval if granted and to sign all documents necessary to conclude the lease with Lanele;
- 7.2.7 addressed a letter dated 7 November 2017 to Lanele (attached as Annexure "T7"), confirming on behalf of Transnet that

Transnet had accepted Lanele's lease application and had approved capital development costs of R75 million; and

7.2.8 purported, on behalf of Transnet, to conclude the lease with Lanele by signing the lease on or about 7 December 2017.”

[7] In relation to Mr. Mashamba, Transnet pleaded that he is its former employee who was dismissed on 23 August 2022. Further, prior to his dismissal, he:

- “8.1 Held the position of Regional Manager: Carlton Management Department from 1 June 2014 to 31 October 2018;
- 8.2 Played an important role in the acts that led to the lease being concluded, more particularly, Mr. Mashamba:
 - 8.2.1 generally served as "Transaction Lead" for Transnet in relation to the conclusion of the lease;
 - 8.2.2 met with Lanele in July 2017, to discuss Lanele's proposal to conclude a lease with Transnet in respect of the leased property;
 - 8.2.3 was copied by Mr Lebelo on his letter dated 14 August 2017 to Mr Mtshali of Lanele (Annexure T1), notifying Lanele that Transnet accepted its expression of interest letter dated 28 June 2017 and would hold the lease property available for a period of three (3) months for Lanele to conduct its due diligence and detailed feasibility studies with a view to concluding the lease with Transnet;
 - 8.2.4 was copied by Mr Lebelo on his letter dated 28 September 2017 to Lanele (Annexure T2), formally offering on behalf of Transnet to conclude the lease with Lanele;
 - 8.2.5 was copied by Lanele on its letter dated 2 October 2017 addressed to Mr Lebelo (Annexure T3), in which Lanele proposed several material amendments to the offer of Transnet in its letter of 28 September 2017 (Annexure T2);

- 8.2.6 was copied by Lanele on its letter dated 4 October 2017 (Annexure T4), in which Lanele requested R75 million in funding from Transnet to address alleged site constraints of the leased property;
- 8.2.7 was copied by Mr Lebelo in his letter to Lanele of 5 October 2017 (Annexure T5), responding on behalf of Transnet to Lanele's counter offer letter of 2 October 2017 (Annexure T3), by presenting a revised offer from Transnet to Lanele;
- 8.2.8 was copied by Mr Lebelo on his letter dated 7 November 2017 to Lanele (Annexure T7), confirming on behalf of Transnet that Transnet had accepted Lanele's lease application and had approved capital development costs of R75 million; and
- 8.2.9 after conclusion of the lease, purported, on behalf of Transnet, to oversee the implementation of the lease."

[8] In relation to corporate structures, Transnet pleaded as follows:

- "9. Superfecta Trading 209 (Pty) Ltd ("Superfecta") is a private company with limited liability and registration number 2018/231813/07, incorporated in terms of the laws of South Africa. Prior to its conversion into a private company on or about 4 April 2018, Superfecta was a close corporation which had been incorporated on or about 24 June 2002 in accordance with the laws of South Africa.
 - 9.1 At all material times, Mr Patrick Mphephu ("Mr Mphephu") and his wife, Mrs Abigail Mphephu ("Mrs Mphephu") were members of Superfecta when it was a CC and directors of Superfecta after it had been converted into a private company;
 - 9.2 At all material times from June 2002 to at least 16 November 2017, Mr Thabiso Eric Khoncha ("*Mr Khoncha*") was a member of Superfecta.
 - 9.3 Mr Khoncha purported to resign from Superfecta on or about 16 November 2017.

10. Abipa Investment Holdings ("AIH") is a private company with limited liability and registration number 2017/463237/07, incorporated in terms of the laws of South Africa on or about 16 October 2017.
 - 10.1 At all material times after the incorporation of AIH, Mr Mphephu was a director of AIH.

11. The Abipa Family Trust ("the Abipa Trust") is a trust with registration number IT9498/2004, which was founded by Mr. Mphephu and Mrs. Mphephu.
 - 11.1 Mr. Mphephu and Ms. Mphephu were founder trustees of the Abipa Trust.
 - 11.2 Mr. Mphephu, Mrs. Mphephu, and their children are the named beneficiaries of the Abipa Trust.
 - 11.3 Mr. Khoncha was added as a trustee of the Abipa Trust at a date unknown to Transnet but prior to January 2016.

12. The Lebelo Family Trust ("the Lebelo Trust") is a trust with registration number 980/2012, which was founded by Mr Lebelo and his wife, Ms Aletta Mokgoro Mabitsi ("Ms Mabitsi") on 17 February 2012.
 - 12.1 Mr. Lebelo and Ms. Mabitsi were the founder trustees of the Abipa Trust.
 - 12.2 Mr. Lebelo and Ms. Mabitsi are the income beneficiaries of the Lebelo Trust; and
 - 12.3 The children of Mr. Lebelo and Ms. Mabitsi are the capital beneficiaries of the Lebelo Trust.

13. Red Lip Communications (Pty) Ltd ("Red Lip") is a private company with limited liability and registration number 2017/463237/07, incorporated in terms of the laws of South Africa on or about 16 October 2017.
 - 13.1 At all material times, the sole director and shareholder of Red Lip was Mrs. Mathlodi Phillicia Mashamaba ("Mrs. Mashamba"), the wife of Mr. Mashamba.

[9] In pleading the "corrupt payments" made by Lanele to AIH, Transnet stated the following:

- “14. Lanele made the following payments to AIH (“the corrupt payments to AIH”):
- 14.1 a payment of R1 596 000.00 made on or about 29 December 2017,
 - 14.2 a payment of R1 653 000.00 made on or about 6 January 2018,
 - 14.3 a payment of R2 865 960.00 made on or about 26 March 2018,
 - 14.4 a payment of R1 265 000.00 made on or about 16 April 2018,
 - 14.5 a payment of R870 000.00 made on or about 18 April 2018,
 - 14.6 a payment of R1 437 615.00 made on or about 8 August 2018,
 - 14.7 a payment of R1 142 750.00 made on or about 18 August 2018, and
 - 14.8 a payment of R1 132 750.00 made on or about 8 September 2018.
- 14A. At all material times, Mr. Mphephu and Mr. Khoncha were business partners and, as mentioned in paragraphs 9 and 11 respectively, co-members in Superfecta and co-trustees in the Abipa Trust; alternatively, former members and former co-trustees.
- 14B. Mr Lebelo and Mr. Mashamba used their respective roles at Transnet, described at paragraphs 7 and 8 above, to help secure the lease for Lanele.
- 14C. Lanele, Mr. Mphephu and Mr. Khoncha acted in concert in a corrupt scheme, in that:
- 14.1C Lanele made the payments mentioned in paragraph 14 below to the bank account of AIH, which was under the direction and control of Mr. Mphephu.
 - 14.2C AIH transferred these payments into Mr Mphephu's bank account, and/or Mr Khoncha's bank account, and/or the Abipa Trust's bank account, which was under the direction and control of both Mr Mphephu, alternatively, both Mr Mphephu and Mr Khoncha. Mr Mphephu, Mr Khoncha and the Abipa Trust, utilised the money received from AIH to make the payments in the below mentioned Rosebank Properties Transaction and Diepsloot Farm Transaction.

14.3C Alternatively to 14.2B, Mr Mphephu, Mr Khoncha and the Abipa Trust utilised monies that were already in their bank accounts, and equivalent in rand value to the amounts received from AIH, to make the payments in the below mentioned Rosebank Properties Transaction and Diepsloot Farm Transaction.

14.4C Mr Mphephu, Mr Khoncha and Abipa Trust made the payments in the manner stated in the Rosebank Properties Transaction and Diepsloot Farm Transaction, as a money laundering transaction in order to disguise the fact that Lanele was a source of the payments and that it made these payments as gratification to Mr Lebelo and Mr Mashamba for their role in securing the lease for Lanele.”

[10] Regarding the properties involved in the alleged “corrupt scheme”, Transnet pleaded as follows:

“The Rosebank Properties Transaction

15. In or around November 2017, Mr. Mphephu, acting on behalf of the Abipa Trust, purported to sell to the Lebelo Trust for R 4,7 million, properties comprising Units 407, 408 and 511 and the exclusive use area of Balcony 83 at The Capital on Bath, situated at 72 Bath Avenue, Rosebank, Johannesburg. These properties are referred to as “the Rosebank properties”.
16. In January 2018, Mr Khoncha, paid the full purchase price and the transfer costs for the Rosebank properties to the conveyancing attorneys for the transaction, Edelstein, Farber and Grobler (“EFG”), in two payments made to EFG from Mr Khoncha's bank account for the benefit of the Lebelo Trust:
 - 16.1 a payment of R4 700 000.00 made on 17 January 2018, and
 - 16.2 a payment of R400 000.00 made on 18 January 2018.
17. The aggregate amount of R5 100 000.00 paid by Mr Khoncha derived from a payment of R5 200 000.00 from the Abipa Trust to Mr Khoncha on 15 January 2018.

18. The payment of R5 200 000.00 from the Abipa Trust to Mr Khoncha on 15 January 2018 was a money laundering transaction designed to disguise the corrupt payments to AIH which were intended by Lanele *inter alia*:
 - 18.1 to contribute to the payment of the purchase price and the transfer costs for the Rosebank properties that were transferred to the Lebelo Trust, *alternatively*:
 - 18.1.1 to contribute to the payment of the purchase price and the transfer costs for the Rosebank properties, and
 - 18.1.2 to reimburse other corrupt parties linked to AIH for their contribution to the payment of the purchase price and the transfer costs for the Rosebank properties; and
 - 18.2 thereby to provide a gratification to Mr Lebelo for his corrupt role is securing the lease for Lanele.
19. The corrupt payments to AIH:
 - 19.1 contributed to the payment of the purchase price and the transfer costs for the Rosebank properties that were transferred to the Lebelo Trust, *alternatively*:
 - 19.1.1 contributed to the payment of the purchase price and the transfer costs for the Rosebank properties, and
 - 19.1.2 reimbursed other corrupt parties linked to AIH for their contribution to the payment of the purchase price and the transfer costs for the Rosebank properties; and
 - 19.2 thereby provided a gratification to Mr. Lebelo for his corrupt role in securing the lease for Lanele.

The Diepsloot Farm Transaction

20. On or about July 2018, Red Lip purported to purchase the property Portion 490 of the Farm Diepsloot No. 388 JR ("the Diepsloot Farm") from Royal Anthem Investments 95 (Pty) Ltd for the purchase price of R 2 300 000.00.

21. On or about 30 July 2018, Mr Khoncha paid R2 000 000 towards the purchase price and transfer costs for the Diepsloot Farm to the conveyancing attorneys for the transaction, Tonkin Clacey Attorneys ("TC"), for the benefit of Red Lip.
22. The payment of R2 000 000.00 paid by Mr Khoncha to TC for the benefit of Red Lip derived from a payment of R2 090 000.00 from AIH to Mr Khoncha on 26 July 2018.
23. The payment of R2 090 00000. from AIH to Mr. Khoncha on 26 July 2018 was a money laundering transaction designed to disguise the corrupt payments to AIH which were intended by Lanele *inter alia*:
 - 23.1 to contribute to the payment of R2 000 000.00 towards the purchase price and the transfer costs for the Diepsloot Farm that was transferred to Red Lip, *alternatively*:
 - 23.1.1 to contribute to the payment of R2 000 000 towards the purchase price and the transfer costs for the Diepsloot Farm that was transferred to Red Lip, and
 - 23.1.2 to reimburse other corrupt parties linked to AIH for their contribution to the payment of R2 000 000.00 towards the purchase price and the transfer costs for the Diepsloot Farm that was transferred to Red Lip; and
 - 23.2 thereby to provide a gratification to Mr. Mashamba for his corrupt role in securing the lease for Lanele.
- 24 The corrupt payments to AIH:
 - 24.1 contributed to the payment of R2 000 000.00 towards the purchase price and the transfer costs for the Diepsloot Farm that was transferred to Red Lip, *alternatively*:
 - 24.1.1 contributed to the payment of R2 000 000.00 towards the purchase price and the transfer costs for the Diepsloot farm that was transferred to Red Lip, and

24.1.2 reimbursed other corrupt parties linked to AIH for their contribution to the payment of R2 000 000.00 towards the purchase price and the transfer costs for the Diepsloot Farm that was transferred to Red Lip; and

24.2 thereby provided a gratification to Mr. Mashamba for his corrupt role in securing the lease for Lanele.”

[11] In its counterclaim, Transnet seeks to recover R85 683 800.00 paid to Lanele under the lease, on the basis of unjust enrichment, alleging that the payments were made pursuant to a contract vitiated by corruption.

[12] Lanele filed this application and contends that Transnet’s plea is vague and embarrassing and lacks the averments necessary to sustain a defence. Regarding the counterclaim, Lanele alleges that it does not disclose the cause of action.

[13] Rule 23(1) of the Uniform Rules of Court provides for an exception to be taken on the grounds that a pleading is "vague and embarrassing" or that it "lacks averments which are necessary to sustain an action or defence". The purposes of these grounds are distinct. The SCA in *Luke M v Tembani and Others v President of the Republic of South Africa and Another*¹, summarised the approach to be adopted in adjudicating exceptions as follows:

“Whilst exceptions provide a useful mechanism ‘to weed out cases without legal merit’, it is nonetheless necessary that they be dealt with sensibly. It is where pleadings are so vague that it is impossible to determine the nature of the claim or where pleadings are bad in law in that their contents do not support a discernible and legally recognised cause of action, that an exception is competent. The burden rests on an excipient, who must establish that on every interpretation that can reasonably be attached to it, the pleading is excipiable. The test is whether on all possible readings of the facts no cause of action may be made out; it being for the excipient to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put upon the facts.”

¹ (Case no 167/2021) [2022] ZASCA 70 (20 May 2022), at para 14.

[14] It is apparent from the above authority that an exception will only be competent in two specific instances. Firstly, where the pleading is “vague and embarrassing”, meaning it lacks the particularity required to enable the opposite party to discern the case they are required to meet. Secondly, where the pleading discloses “no cause of action”, signifying that the factual averments, even if proven, do not sustain a legally recognized claim.

[15] The burden to persuade the court that the pleading is indeed excipiable rests squarely on the excipient. The test is whether, upon every reasonable or possible interpretation that the facts pleaded can bear, no cause of action is established. If the allegations are susceptible to any interpretation that might, at trial, support a conclusion of law in favour of the plaintiff, the exception must fail. In essence, the excipient must demonstrate that the plaintiff’s claim is fundamentally and incurably flawed, irrespective of how generously the pleading is construed.

[16] In the current matter, Lanele’s exception comprises seven complaints, which I will address in turn, applying the aforesaid legal principles governing exceptions.

First Exception (Lack of particulars of the “corrupt scheme”)

[17] In the first exception, Lanele complains that Transnet pleads in paragraph 14C that Lanele, Mr. Mphephu, and Mr. Khonkha “acted in concert in a corrupt scheme” but fails to plead any material facts or particulars of the alleged “corrupt scheme” such as its terms, when and where it was concluded, and the precise roles of the participants. It contends that without these details, the plea and counterclaim are vague, embarrassing, and lack the necessary averments to support a defence or cause of action, making it impossible for it to respond meaningfully.

[18] Transnet dismissed this exception as lacking merit. It contends that it is unrealistic to expect parties involved in unlawful conduct to document their criminal intentions or coordination in a manner accessible to their victims. It asserts that public policy would be severely undermined if a State entity could not escape a contract procured by bribery unless such granular details were provided. Furthermore, Transnet submits that Lanele has framed its complaint as a vague and

embarrassing exception under Rule 23, but, in substance, it attempts to assert a Rule 30 irregularity based on insufficient particularity under Rule 18.

[19] In paragraph 14C of its plea, Transnet alleges that Lanele, Mr. Mphephu, and Mr. Khoncha acted in concert in a corrupt scheme, wherein Lanele effected certain payments into the bank account of AIH, an entity under the direction and control of Mr. Mphephu. Subsequent thereto, it pleads that AIH disbursed these funds into bank accounts held by Mr. Mphephu, Mr. Khoncha, and/or the Abipa Trust; the latter being an entity under the joint direction and control of Mr. Mphephu and Mr. Khoncha. It further alleges that these recipients utilised the funds derived from AIH to effect payments in the Rosebank Properties and the Diepsloot Farm Transactions.

[20] As an alternative to direct utilisation, Transnet alleges that Mr. Mphephu, Mr. Khoncha, and the Abipa Trust employed funds already credited to their accounts, valued at the amounts received from AIH, to fund the aforementioned transactions. It argues that the payments were structured in this manner as a money-laundering operation to conceal Lanele's true origin as the source of the funds, which constituted unlawful gratification to Mr. Lebelo and Mr. Mashamba in exchange for their roles in securing the lease for Lanele.

[21] While Lanele seeks the kind of formal particulars one might find in a lawful agreement, the nature of an alleged clandestine bribery scheme is such that parties do not typically record their criminal intentions in a form accessible to the public. The plea, read as a whole, shows that Transnet has pleaded the core components of the alleged corrupt scheme with sufficient particularity for this stage of the proceedings, which includes: (a) the identities of the officials allegedly influenced, that is, Mr Lebelo and Mr Mashamba; (b) the mechanism of the scheme being corrupt payments from the Lanele; (c) the method of laundering the payments, through the Abipa entities and Mr Khoncha; and (d) the form and destination of the gratification, properties transferred to the Lebelo Trust and Red Lip. The plea provides a coherent and detailed factual matrix from which Lanele can understand the case it must meet, namely that it made payments that were ultimately used to reward Transnet officials for their assistance in obtaining the lease. This level of detail provides Lanele with a clear and identifiable case to meet.

[22] Transnet correctly distinguishes between a Rule 23 exception and a Rule 30 application for particulars, and Lanele has chosen the wrong procedural vehicle if further particulars are sought. Lanele is bound by the terms in which its exception is framed and by the issues which it raises.² I agree with Transnet that the complaint of the absence of particulars in the pleading of the alleged corrupt scheme by its victim does not make out a case that a pleading is vague and embarrassing. Thus, Lanele's complaint that it cannot respond is not justified on the facts as pleaded. This exception must, therefore, be dismissed.

Second Exception (Failure to properly plead the basis to implicate Mr. Lebelo and Mr. Mashamba)

[23] This exception is predicated on an alleged internal inconsistency within Transnet's plea and counterclaim. It contends that while Transnet alleges in paragraph 14.4C that payments constituted money laundering to disguise gratification paid to Mr. Lebelo and Mr. Mashamba for securing a lease, it simultaneously avers in paragraph 14B that these individuals merely performed routine, unimpeached functions within their official remit at Transnet. Consequently, Lanele argues that, in the absence of any pleaded factual or legal basis establishing that the conduct described in paragraphs 7 and 8 was improper or unlawful, the foundational premise of the alleged corrupt scheme is rendered untenable, rendering the pleadings defective.

[24] A fair reading of the plea dispels this. Paragraph 14B explicitly alleges that Mr. Lebelo and Mr. Mashamba "*used their respective roles at Transnet, described at paragraphs 7 and 8 above, to help secure the lease for Lanele.*" The subsequent paragraphs, which deal with the Rosebank property and Diepsloot farm transactions, detail the alleged money flows culminating in property acquisitions for the benefit of Mr. Lebelo and Mr. Mashamba. The clear implication, expressly pleaded, is that the payments from Lanele were gratifications to these officials for their roles in securing the lease agreement for Lanele. Where officials receive multi-million-rand properties from a company in return for their roles in securing a lease for that company from

²See *Jowell v Bramwell-Jones And Others* 1998 (1) SA 836 (W) at 899 B-C

their employer, they are not only beneficiaries of a corrupt scheme but also parties to it. As such, no contradiction or vagueness arises from the plea in this regard. The second exception is thus without merit.

Third Exception (Reference to Superfecta)

[25] Lanele objects to the pleading of details about Superfecta in paragraph 9 of the plea, arguing it is mentioned nowhere else and serves no purpose, rendering the plea vague. The reading of the plea does not support this proposition. Paragraph 14A of the plea establishes a business connection between Mr. Mphephu and Mr. Khoncha. It alleges that they were, at all material times, co-members and subsequently co-directors of Superfecta, and co-trustees of the Abipa Trust, which was allegedly central to the corrupt money-laundering scheme.

[26] Even if Superfecta were mentioned only once in the plea, that would not make the plea vague or embarrassing, as an exception must address the entire cause of action, not an isolated paragraph. At best, as contended by Transnet, the reference might be an irrelevant averment and subject to a Rule 23(2) application to strike out, an option Lanele has not pursued. Having proceeded under Rule 23(1), Lanele must stand or fall by that choice. For the above reasons, this exception fails.

Fourth Exception (Timing of corrupt payments)

[27] Lanele contends that since all the alleged corrupt payments were made after the lease was signed on 7 December 2017, they could not logically have "procured" it, making the plea vague and embarrassing.

[28] This complaint confuses the legal and factual issues. A contract can be procured by corruption even if the bribe is delivered after the contract is formally concluded, fulfilling the prior corrupt bargain. The timing of the payment depends on the evidence and merits of the allegation, not on the validity of the pleading. The plea adequately alleges a causal link between the officials' actions and the subsequent gratification. Whether this can be proven is a matter for trial. The fourth exception is dismissed.

Fifth Exception: Alleged Contradictions in the Rosebank and Diepsloot Transaction

[29] The fifth exception raises various complaints against paragraphs 15 to 19 of the plea (incorporated into the counterclaim) relating to Rosebank Properties. In the first instance, Lanele contends that the plea and counterclaim are inconsistent, rendering them vague and embarrassing, in that Transnet alleges that the sale of the Rosebank properties was "*purported*" but, in the same breath, that the properties were indeed transferred.

[30] In the second instance, Transnet pleads that the amount of R5.2m that was paid in respect of the Rosebank properties was a "*money laundering transaction*" designed to "*disguise*" the allegedly corrupt payments that the plaintiff had made to AIH without pleading any facts showing how a transaction between parties A and B (Abipa Trust to Mr Khoncha) might constitute money laundering or disguise allegedly corrupt payments between parties C and D (the plaintiff to AIH). In the third instance, it contends that Transnet is inconsistent by firstly alleging that the payment toward the Rosebank properties was derived from Abipa Trust and later alleging that it was derived from AIH.

[31] In the fourth instance, Lanele contends that Transnet pleads the allegedly corrupt payments it made to AIH were intended, *inter alia*, to reimburse "other corrupt parties linked to AIH for their contribution to the payment of the purchase price and the transfer costs for the Rosebank properties" without pleading any particularity whatsoever concerning those other allegedly corrupt parties or how they might have been involved in the non-pleaded corrupt scheme, at AIH's behest or indeed otherwise. In the fifth instance, Lanele complains that Transnet alleges that Mr. Lebelo had an alleged "*corrupt role*" but fails to plead any factual basis whatsoever for that averment.

[32] Transnet correctly contends that none of the complaints, in this regard, have merit. The plea characterizes the sale transaction as a sham, asserting that it constitutes a "purported sale" devoid of legitimate commercial substance. In essence, it allegedly serves as a vehicle for laundering illicit payments. The fact that the property was duly registered at the Deed Office does not contravene this assertion. Rather, it is alleged to be the very mechanism through which the concealed gratification was effectuated. This represents a coherent legal allegation, rather than

a contradiction. As a result, the plea is articulate and sufficiently discloses a viable defense.

[33] The plea alleges that the payment of R5 200 000.00 from the Abipa Trust to Mr Khoncha on 15 January 2018 was a money laundering transaction designed to disguise corrupt payments to AIH. It asserts that the purpose of these corrupt payments was to contribute to the purchase price and transfer costs of the Rosebank properties transferred to the Lebelo Trust, and to reimburse other corrupt parties linked to AIH for their contributions to those same costs. Further, it alleges that the ultimate objective of this scheme was to gratify Mr. Lebelo for his corrupt role in securing the lease for Lanele.

[34] The plea's alternative averments regarding the source of funds, Abipa Trust versus AIH, and the purpose, direct contribution versus reimbursement of others, reflect Transnet's case based on the information currently available to it, acknowledging the opaque nature of money laundering. Pleading in the alternative is permissible and does not, in this context, render the pleading vague or embarrassing. The core allegation that Lanele's funds were used to finance properties for the officials' benefit is clear.

[35] In addition, the plea outlines a detailed chain of entities and payments from Lanele to AIH, to related parties, and to conveyancers, to support its money-laundering allegation. It is not required to plead the exact mechanics of how each step "disguised" the source, as that is a matter for evidence and argument. The identities of "other corrupt parties" may be within Lanele's knowledge or may emerge through discovery. Their absence from the plea at this stage is not fatal.

[36] Finally, the roles of Lebelo and Mashamba are pleaded with sufficient particularity in paragraphs 7 and 8, detailing their specific actions in advancing the lease process for Lanele. Coupled with the allegation that they received multi-million rand properties shortly thereafter, a clear case of corrupt conduct is outlined. This exception is dismissed.

The sixth exception: Alleged Contradictions in the Diepsloot Transaction

[37] In the sixth exception, Lanele contends that Transnet's case concerning the Diepsloot Farm Transaction is vague and, in any event, contradictory in that the plea refers to the Diepsloot Farm Transaction as "purported", while at the same time acknowledging that the property was transferred, thereby undermining its own claim.

[38] Lanele criticizes Transnet for alleging that the R2.090 million payment for the Rosebank properties constituted a "money laundering transaction" intended to "disguise" corrupt payments made by the plaintiff to AIH without provide any concrete evidence to substantiate how a transaction between Mr. Khoncha and Tonkin Clancey Attorneys, for the benefit of Red Lip, could be characterized as money laundering, or how it could obscure the alleged corrupt payments between AIH and Mr. Khoncha.

[39] Moreover, Lanele alleges that Transnet has not established: (1) any factual basis for the claim that the allegedly corrupt payments made by the plaintiff to AIH achieved the objectives outlined in paragraphs 23.1, 23.2, 24.1, and 24.2 of its plea; (2) any specific details regarding the other allegedly corrupt parties or their roles in the un pleaded corrupt scheme at AIH's direction or in any other capacity; and (3) any factual basis to support the allegation in paragraph 24.2 concerning Mr. Mashamba's purported "corrupt role in securing the lease" for the plaintiff.

[40] These complaints mirror the objections made in the fifth exception regarding the Rosebank transfer and, for the reasons set out above, are meritless.

Seventh Exception (Failure to plead basis for denial of authority)

[41] Lanele contends that Transnet's bare denial of Mr Lebelo's authority in paragraph 3 of the plea, without a factual basis, is vague and embarrassing, especially as paragraph 7 of the plea details Mr Lebelo's extensive actions. Transnet submits that, as Lanele is relying on a contract, it bears the burden to plead and prove the agent's authority. Accordingly, it argues that Transnet is entitled to deny such authority without setting out a factual basis, and its plea is therefore not excipiable.

[42] While it is true that a Lanele bears the ultimate burden of proving an agent's authority, Transnet cannot merely baldly and unsubstantially deny authority. In terms of Rule 22(2), "*the defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent and shall clearly and concisely state all material facts upon which he relies.*" A plea must contain a factual basis for a denial. Thus, a simple denial of authority, without any indication of the basis for that denial, constitutes a "bare denial" and fails to inform Lanele of the specific case it must meet to address this issue. It follows that this exception ought to be upheld.

[43] It is apparent from the above that the plea and counterclaim, while complex, provide a sufficiently clear and detailed factual narrative of the alleged corruption to enable Lanele to understand the case it must meet and to plead a replication and plea to the counterclaim. However, Rule 22(2) requires Transnet to *clearly and concisely state all material facts upon which it denies Mr Lebelo's authority to conclude the lease*. As such, only one of Lanele's seven exceptions is well-founded.

[44] Transnet sought costs on an attorney-and-client basis, arguing that the exceptions are frivolous and designed to delay. While Lanele's six exceptions were found to be without merit, I am not persuaded that they are so frivolous or vexatious as to warrant a punitive costs order at this stage. Besides, Lanele was partly successful in its application. In the circumstances, it would be appropriate to order each party to pay its own costs for this application.

Order

[45] Accordingly, the following order is made:

1. The applicant's first to sixth exceptions are dismissed.
2. The applicant's seventh exception is upheld.
3. The respondent is granted 15 days from the date of this order to amend its plea to plead the material facts upon which it bases its denial of Mr. Lebelo's authority.

4. Each party is to pay its own costs for this exception.



D. Mahosi
Acting Judge of the High Court
Gauteng Division, Johannesburg

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The hand-down date is deemed to be 26 February 2026.

Appearances

For the applicant: Advocates A Subel SC and J J Meiring

Instructed by: Stein Scop Attorneys Incorporated

For the respondent: Advocates M Chaskalson SC and PJ Daniell

Instructed by: Motsoeneng Bill Attorneys Incorporated