



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
**MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF**  
**APPEAL**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 27 March 2025

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Alexia Kobusch and Others v Wendy Whitehead (515/2023) [2025] ZASCA 24 (27 March 2025)*

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Today the Supreme Court of Appeal (SCA) handed down judgment, wherein the appeal was upheld with costs, against an order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court). The high court had upheld an exception on grounds that the appellants' (the plaintiffs in the main action) particulars of claim lack averments necessary to sustain a cause of action.

On or about 18 March 2021, the first and second appellants, Ms Alexia Kobusch and Mr Wayne Kobusch, entered into a racehorse training agreement with the respondent, Ms Wendy Whitehead (the defendant in the main action), a professional racehorse trainer. The terms of the racing agreement were, inter alia, that the respondent would train the appellants' horses for purposes of improving their skill, fitness, speed and anaerobic endurance to race reasonably competitively, within a reasonable period of time. On 21 February 2022, the racing agreement was expressly cancelled by the appellants and sued the respondent for damages allegedly suffered from a breach of a contract, delictual breach of a legal duty to care, damages for the respondent's defamatory remarks, and for payment of restitutionary damages for patrimonial loss of the diminished value of their horses.

The appellants issued summons on 25 April 2022. The respondent filed a notice of intention to defend but failed to deliver a plea which was due to be served by 2 June 2022 as required by rule 22(1) of the Uniform Rules of Court. The appellants then served a notice of bar on 3 June 2022, requiring a plea within five days. The respondent, however, did not comply with the demand and on 9 June 2022, she delivered a notice to remove causes of complaint in terms of rule 23(1)(a), and notice to strike in terms of rule 23(2). She complained that the particulars of claim lacked averments which are necessary to sustain an action. The appellants delivered a notice of an irregular step calling on the respondent to remove the cause of complaint within 10 days, which expired on 7 July 2022. The respondent instead delivered an exception dated 6 July 2022 on 13 July 2022.

The high court held that the respondent's rule 23(1)(a) notice was procedurally irregular because it was delivered out of time. However, it upheld the exception that the particulars of claim lacked averments to sustain a cause of action. The high court granted leave to appeal to this Court, alternatively to the full court of the division. As such order is irregular, this Court proceeded on the basis that the high court intended to grant leave to this Court. The respondent agreed to abide by this Court's decision, provided no costs were awarded against her.

The Court held that the respondent's subsequent service of a rule 23(1)(a) notice did not amount to the filing of a proper pleading but was rather a preliminary step. The Court reasoned that while the notice sufficed to secure her complaint of vague and embarrassing, it did not secure the 'true exception', which was not brought within the time specified for a further pleading under the bar. The Court further held that the appellants, as lessees, were entitled to be in possession and control of the item leased, rejecting the respondents contention that the appellants lacked standing.

As a result, the SCA upheld the appeal with costs and set aside the high court's order dismissing the exception.

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