



IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 2399/2017

IN THE MATTER BETWEEN:

MOKHEMISA NTHABELENG GLADYS

OBO RETHABILE VANESSA MOKHACHANE

Applicant

and

MEMBER OF THE EXECUTIVE COUNCIL

FOR HEALTH, FREE STATE PROVINCE

Respondent

JUDGMENT BY: MPAMA, AJ

DATE HEARD: 13 OCTOBER 2022

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII

on 26 January 2023. The date and time for hand-down is deemed to be 26 January 2023 at 11h00.

- [1] This is an application in terms of Rule 21 of the Uniform Rules for the respondent to furnish the applicant with proper and complete reply to her request for further particulars.
- [2] In the main action, the parties are embroiled in a legal battle since 2017 when the applicant instituted proceedings against the respondent for the payment of damages arising from the respondent's failure to provide adequate medical care to the applicant and her child in respondent's hospital, resulting in the applicant's child suffering from cerebral palsy.
- [3] The respondent amended its plea. On its amended plea the respondent pleaded, inter alia, that the State health facilities are able to, will attend to and provide the minor child with whatever medical, associated services and items the minor child will require at the same standard at least as those sourced from private health care provider. Furthermore, that it intends to request the court to develop the common law in order to make provision for an order that the respondent be ordered to supply and provide future medical interventions as well as items related thereto.
- [4] The aforesaid, amendment prompted the applicant to file a request for further particulars for trial on 28 April 2021. A response was filed by the respondent on 1 October 2021. On 22 June 2022, the applicant dissatisfied by the response from the respondent filed an application to compel the respondent to provide her with proper and complete reply to her request for further particulars.

[5] The application is opposed by the respondent on the basis that the respondent has adequately responded to the request and the particulars being requested by the applicant are not necessary for the purposes of preparing for trial.

[6] Rule 21(2) and (4) of the Uniform Court Rules provides:

“(2) After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within ten days of receipt thereof.”

“(4) If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.”

[7] The purpose served by further particulars for trial has been stated as follows in the matter of **VISSER N.O and OTHERS v VAN NIEKERK and OTHERS [2021] ZAFSHC 187 at para 23:**

- “(a) to prevent surprise
- (b) that the parties should be told with greater precision what the other party is going to prove to enable his opponent to prepare his case to combat counter allegations and
- (c) having regard to the above nevertheless not to tie the other party down and limit his case unfairly at the trial.” (Footnote omitted)

[8] A party is not entitled to elicit details of evidence that would be canvassed at trial as this could be construed as abuse of process.

[9] Again in **VISSER N.O and OTHERS v VAN NIEKERK and OTHERS** in an application of a similar nature the following was said at para 23:

“...It should not be allowed to become a so-called fishing expedition whereby a party attempts to obtain all that he can from his opponent prior trial and so force his opponent to play all his or her cards beforehand. Trials are adversarial by nature and no party is entitled to every piece of evidentiary information which his opponent intends to utilise at trial”.

[10] It is so that a party cannot be required to give particulars in relation to a mere denial. See **RUSLYN MINING & PLANT HIRE (PTY) LTD v ALEKOR LTD [2012] 1 ALL SA 317(SCA)**.

[11] The applicant filed a lengthy request for further particulars. I do not intend to overburden this judgment by repeating the particulars requested by the applicant and the respondent's response to the request. Generally, the applicant on its request for particulars requires the respondent to provide particulars or specific details as to how it intends to treat and offer support to the applicant's child and to disclose the nature of resources it has to support children with a condition like the applicant's child. To give an indication as to the nature of further particulars requested I quote paras 3 and 4 of the request of further particulars:

“[3] Insofar as the defendant contends that the Free State Province Department of Health (or other provinces) is in a position to render and will render and tenders to the minor medical services in the future, the defendant is required to state:

3.1 The identity of each one of the State health facilities by name including hospitals and clinics that can provide the services and items to be purchased;

3.2 The location of each of the State health facilities

3.3 With specific reference to each one of the state health facilities, which the defendant has identified as aforementioned:

3.3.1 Whether it is equipped to provide, render and supply medical and related services and items required to treat, care and manage

specifically cerebral palsy patients. Copies of all protocols are required.

3.3.2 Which systems, procedures and protocols, if any, are in place and available to treat, care for and manage specifically cerebral palsy patients?

3.3.3. How many cerebral palsy patients have been treated, cared for and provided with medical services and items over the past five (5) years?"

"[4] 4. In light of the aforesaid, the defendant is required to state, with reference to each and every one of such health facilities which the defendant intends to rely on in respect of allegation in its plea, with full and particularity:

4.1 Whether the medical care, treatment and services provided, specifically cater for cerebral palsy patients:

4.1.1 Whether the following medical care, treatment and services are provided specifically catering for cerebral palsy patients:

4.1.1.1 Paediatric neurological treatment;

4.1.1.2 Neurological treatment;

4.1.1.3 Neuropsychological treatment

4.1.1.4 Psychiatric and/or psychological treatment

4.1.1.5 Optometric therapy;

4.1.1.6 Audiological treatment;

4.1.1.7 Speech therapy".

[12] The respondent on its reply (belated reply) to the request responded by filing some affidavits from the doctors responsible for treatment of children with cerebral palsy and attached protocols at place for the treatment of these patients. As a way of illustration this is how they responded to the aforementioned request for further particulars:

"Ad Para 3

3.1 The Universitas Academic Hospital and Pelonomi Tertiary Hospital referred to as the Pelonomi/ Universitas Hub.

3.2 Bloemfontein

3.3 In respect of this sub-paragraph, the defendant replies as follows:

3.3.1 Yes. The balance of the enquiry is too vague to respond to meaningfully

3.3.2 The defendant refers the plaintiff to-

3.3.2.1 The expert reports of the healthcare practitioners from the two hospitals referred to that have been filed by the defendant; and

3.3.2.2 The treatment plan which was devised for Rethabile, annexure LP7 to the affidavit of Louise Peens in the application for an interim payment; and”.

“Ad Para 4

4.1 Yes

4.1.1 Yes, the medical care, treatment and services are provided at one or the other of the two hospitals to the extent set out in the various medical reports filed of record by the defendants medical experts and in the affidavits put up by the defendant’s medical experts and in the affidavits put up by the defendant in the application for an interim payment.”

[13] Before me it was argued that the responses offered by the respondent were inadequate. In addition the applicant lambasted the manner in which the respondent responded to the request. It was argued by the applicant that a request for further particulars was a pleading, the format in which the respondent responded falls short of a pleading and does not comply with the court’s rules. On an affidavit filed in support of this application the following is said at para 11.3:

“It is with respect humbly submitted that it cannot be expected of the applicant to delve through expert reports and affidavits and annexures thereto in other legal proceedings to ascertain what the respondent’s case is and to prepare for it. By the very nature of these reports they contain opinions. There is no reason why the

respondent cannot properly reply fully to these requests..... The particulars requested are in general terms in respect of cerebral palsy patients and not specifically what the respondent plans to do in respect of this specific patient.”

The same averments are repeated in paras 13 and 18 of the applicant’s affidavit; that the applicant cannot be obliged to trawl through the various medico legal reports furnished by the respondent.

- [14] The respondent’s counsel contended that it was incorrect that a request for further particulars is a pleading. In amplification, respondent’s counsel argued that the rules are clear that this request is made after the close of pleadings and therefore not a pleading. Respondent’s counsel in addition argued that whether it is a pleading or not they have adequately responded to the request and were even over-generous by providing particulars that were not necessary for the preparation of trial.
- [15] Firstly, request for further particulars for trial and answer thereto are not pleadings. The opportunity to request them only arises strictly after the close of pleadings (Uniform Rule 21(2)).
- [16] Further particulars are limited to obtaining information only for the purposes of preparing for trial. In my view some of the particulars required are not necessary for the preparation of trial. The respondent’s amended plea as well as the particulars furnished by the respondent affords the applicant more than enough particularity for the applicant to prepare for trial.
- [17] The applicant further argued that in the absence of adequate answers from the respondent, the applicant is placed in a disadvantaged position and will not be able to have a proper consultation with expert witnesses. I am in disagreement with these submissions. It is my view that that it is clear from the protocols and affidavits filed by the respondent how the respondent

intends to pursue his case. It cannot be said that the applicant will be caught by surprise during trial as to what the respondent's case is. The respondent has furnished the applicant with enough particulars to enable the applicant to prepare for trial, including preparing expert witnesses.

[18] Therefore the application for a request for further particulars must fail.

[19] In the circumstances, I make the following order:

19.1 The application is dismissed with costs.

L. MPAMA, AJ

On behalf of the plaintiff:

Adv JC Coetzer

Instructed by:

Lovius Block Inc.

Bloemfontein

On behalf of the defendant:

Adv. DR Thompson

Instructed by:

Raynard & Associates Inc

Bloemfontein