

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION,
JOHANNESBURG**

CASE NUMBER: 17/49514

In the matter between:

JAMES AGUMA

Applicant

and

SOUTH AFRICAN BROADCASTING CORPORATION

1 Respondent

SOC LIMITED

SPECIAL INVESTIGATING UNIT

2 Respondent

In re:

SOUTH AFRICAN BROADCASTING CORPORATION

First Plaintiff

SOC LIMITED

SPECIAL INVESTIGATING UNIT

Second Plaintiff

and

LORNAVISON (PTY) LTD

First Defendant

JAMES AGUMA

Second Defendant

JUDGMENT

MODIBA J:

INTRODUCTION

- [1] This is an interlocutory application in which Mr Aguma applies to amend his plea dated 21 September 2018. The plea purports to answer to the Plaintiff's particulars of claim as amended on 24 August 2019.
- [2] The SABC and the SIU have objected to the proposed amendment on two grounds. The first ground is that Mr Aguma incorrectly seeks to withdraw an admission. The second ground is that the paragraphs which Mr Aguma seeks to amend are either not applicable in his plea and/ or Mr Aguma is answering to incorrect particulars of claim and as a result, he is answering to incorrect averments. They contend that the prevailing particulars of claim are as amended on 5 September 2019.
- [3] I deal with the proposed amendments on the basis of the two grounds of objections raised by the Plaintiffs.

THE FIRST GROUND OF OBJECTION

- [4] Whereas in paragraph 2 of his plea, Mr Aguma had admitted the SIU's locus standi to institute the action, he wishes to retract the amendment by deleting the word "admitted" and inserting the word "it is denied that the Second Plaintiff has locus standi to institute the proceedings".

[5] The Plaintiffs object to the amendment on the basis that it impermissibly withdraws an admission of the SIU's locus standi in paragraph 2 of the particulars of claim. In this paragraph, the identity and particularity of the SIU is alleged. This allegation is admitted in paragraph 2 of Mr Aguma's plea. In terms of the proposed amendment Mr Aguma proposes to delete the admission and replace the admission with the allegation that the SIU's locus standi to institute the proceedings is denied.

[6] The legal principles governing the withdrawal of an admission are trite. While the withdrawal of an admission is not outright impermissible, it is not lightly granted because an admission is an unequivocal agreement by one party with a statement of fact by the other, making it unnecessary for the latter party to prove it. It is almost always prejudicial to this party because it saddles it with the burden to prove an averment it did not have to prove. It is for this reason that in the exercise of its discretion to allow the withdrawal of an admission, a full explanation is required regarding why the admission was made and what necessitates its withdrawal. Further, the request must be made in good faith.

[7] For the reasons that follow, Mr Aguma fails to meet all these requirements. As a result, he fails to make out a case for the proposed amendment.

[8] In his founding affidavit, Mr Aguma mainly addresses the second objection to the proposed amendment. The only attempt at meeting this requirement is that if the proposed amendment is granted, the Plaintiff's will not suffer prejudice. Regrettably for him, the withdrawal of an admission is not merely there for the asking. The absence of prejudice by the Plaintiffs' does not give Mr Aguma the blanket right to withdraw the admission of the Plaintiffs' *locus standi*.

[9] The reason inappropriately made in heads of argument filed on Mr Aguma's behalf that the admission was made erroneously does not assist Mr Aguma. It is even undermined by the explanation made during oral argument that the admission was made before the Special Investigating Unit (SIU) intervened as a party in these proceedings. Mr Aguma failed to effect the proposed amendment during the period he was entitled to make consequential amendments to his plea in terms of Uniform Rule 28(8)¹ in the wake of the SIU's intervention. He has offered no explanation why he did not make the amendment then. Therefore, the admission stands.

[10] In the premises, this ground of objection stands to be upheld and the proposed amendment dismissed.

THE SECOND GROUND OF OBJECTION

[11] This objection also stands to be upheld. The concession referenced above, that regarding the particulars of claim dated 5 September 2021 marks an end to Mr Aguma's case in respect of the remaining proposed amendments. A thorough study of Mr Aguma's Rule 28 notice, the Plaintiffs' notice of objection, the Plaintiffs particulars of claim lead no conclusion other than that:

11.1 either the proposed amendments do not apply to the relevant paragraphs in Mr Aguma's plea and/or purport to answer to averments that are not set out in the relevant particulars of claim;

11.2 as a result, the proposed amendments are illogical and if granted, will lead to the adjudication of a dispute on irrational and incorrect pleadings.

¹ *Wendy Machanik Property Holdings CC V Guiltwood Properties (Pty) Ltd* 2007 (5) SA 90 (W)

[12] In the premises, second ground of objection stands to be upheld and the remaining proposed amendments stand to be refused.

ORDER

1. The amendment application is dismissed with costs.

JUDGE L.T MODIBA

APPEARANCES

Counsel for the Applicant: Mr. LD Mantsha

Attorney for the first Applicant: Lungisani Mantsha Attorneys

Counsel for the 1st and 2nd Respondent: Adv. P Cirone

Attorney for the 1st and 2nd Respondent: Ms K Mabaso, assisted by Mr S Dlomo,
Werksmans Attorneys

Date of hearing: 01 February 2022

Date of Judgment: 04 February 2022

Mode of delivery: *this judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading on Caselines. The date and time of delivery is deemed to be 10am on 04 February 2022*