



## **WANLESS AJ**

### **Introduction**

[1] In this matter, NDIVHUWO LIFAMISA, adult male (*"the First Plaintiff"*); MELUSI ZWANE, adult male (*"the Second Plaintiff"*); GEZANI BALOYI, adult male (*"the Third Plaintiff"*) and THOKOZANI DLADLA, adult male (*"the Fourth Plaintiff"*) instituted an action in this Court against ESKOM HOLDINGS SOC LIMITED (*"the Defendant"*). For ease of reference the First to Fourth Plaintiffs inclusive will simply be referred to as *"the Plaintiffs"* in this judgment. It is noted that in the Plaintiffs' Particulars of Claim ESKOM HOLDINGS SOC LIMITED is cited therein as the "Second" Defendant. Whilst this is clearly an error and nothing material turns thereon since there is only one defendant in the action, mention is made thereof since it is indicative of the lack of care taken in the pleading of the case on behalf of the Plaintiffs.

[2] The Defendant has taken exception to the Plaintiffs' Particulars of Claim on the basis that these Particulars of Claim are vague and embarrassing and/or lack averments which are necessary to sustain a cause of action. The first complaint is in respect of subparagraphs 7.1 to 7.5 inclusive of the Particulars of Claim in that they do not set out the

Plaintiffs' cause of action purportedly based in delict. The second complaint by the Defendant is that the Plaintiffs' claim for damages, as set out in subparagraph 7.6 of the Particulars of Claim are vague and embarrassing and/or lack averments necessary to sustain a cause of action. Put simply, the defendant avers it is unable to plead thereto.

- [3] It was always the intention of this Court to deliver a written judgment in this matter. In light of, *inter alia*, the onerous workload under which this Court has been placed, this has simply not been possible without incurring further delays in the handing down thereof. In the premises, this judgment is being delivered *ex tempore*. Once it is transcribed, it will be "converted", or more correctly "transformed", into a written judgment and provided to the parties. In this manner, neither the quality of the judgment nor the time in which the judgment is delivered, will be compromised. This Court is indebted to the transcription services of this Division who generally provide transcripts of judgments emanating from this Court within a short period of time following the delivery thereof on an *ex tempore* basis.

**The law**

[4] The principles of law applicable to the excipiability of pleadings and pleadings in general are fairly trite and will not be set out in this judgment in any detail. To do so would be to simply burden this judgment unnecessarily. Moreover, there was no material dispute between the parties as to the nature of the principles which this Court should apply when considering whether to uphold the Defendant's exception to the Plaintiffs' Particulars of Claim.

**The grounds of the exception****The first ground of complaint**

[5] At the outset, Counsel for the Defendant conceded (correctly in this Court's opinion) that the Defendant's exception in this regard could not succeed on the basis that the Plaintiffs' Particulars of Claim were vague or embarrassing. In the premises, the Defendant's submissions were restricted to the fact that the averments set out therein were not sufficient to sustain a cause of action.

[6] The relevant subparagraphs of the Plaintiffs' Particulars of Claim essentially consist of pleading a narrative. As such, they plead evidence. Once again, this judgment will not be burdened by simply repeating same. Nor will this judgment be burdened unnecessarily by setting out the essential elements of delict. Those are also trite.

[7] In the Defendant's Notice of Exception, it is correctly noted that, in delict, a Plaintiff is compensated for loss that was caused for an unlawful act. *Ex facie* the Particulars of Claim the Plaintiffs have failed to allege:

7.1 That the Defendant committed an act or actionable omission.

7.2 The act or actionable omission committed by the Defendant is wrongful. Furthermore, the Plaintiffs have failed to identify the legally recognisable interests that have been infringed upon and whether such recognised interests were infringed upon wrongfully or in an unreasonable manner.

7.3 That the Defendant was at fault in the form of intention or negligence. In other words, whether the Defendant can be blamed for its conduct.

7.4 The harm caused by the conduct of the Defendant.

7.5 Whether there is a causal connection between the Defendant's conduct and the damage allegedly suffered. In other words, whether the conduct caused the damage.

[8] As is clear therefrom, subparagraphs 7.1 to 7.5 of the Plaintiffs' Particulars of Claim lack averments which are necessary to sustain a cause of action and the Defendant is unable to plead thereto.

#### **The second ground of complaint**

[9] In subparagraph 7.6 of the Particulars of Claim the Plaintiffs allege:

*"As a result of the above, our clients have suffered damages for R4 000 000 (Four million rand) comprising of a loss of income and damages to their reputation and good name."*

[10] The Defendant avers that the Plaintiffs have failed to set out those damages in such a manner that will, *inter alia*, enable the Defendant to reasonably assess the quantum thereof. It would also seem that the point taken by the

Defendant that the Plaintiffs appear to have confused the *Aquilian* action and the *actio iniuriarum* is a good one. At the end of the day, it is clear that there has been no compliance by the pleader with the provisions of subrule 18(10) of the Uniform Rules of Court.

[11] In the premises, it is clear from the foregoing that the contents of subparagraph 7.6 are both vague and embarrassing and do not contain the necessary averments to sustain a cause of action. Arising therefrom, the Defendant is unable to plead thereto.

### **Conclusion**

[12] Following thereon, the Defendant's exception must be upheld. As to costs, there is no reason as to why the Plaintiffs should not be ordered to pay the costs of this application. Indeed, no reasons have been placed before this Court as to why this Court should exercise its general discretion in respect of costs so as not to follow the normal order that costs should follow the result.

**Order**

[13] In the premises, this Court makes the following order:

1. The Defendant's exception is upheld;
2. Subparagraphs 7.1 to 7.6 of the Plaintiffs' Particulars of Claim are struck out;
3. The Plaintiffs are given leave to amend their Particulars of Claim within fifteen (15) days of the date of this order, failing which the Defendant is given leave to apply for the dismissal of the Plaintiffs' action under case 2021/34798;
4. The Plaintiffs are ordered to pay the costs of this application, jointly and severally, the one paying the others to be absolved.

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**B.C. WANLESS  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION  
JOHANNESBURG**



Date of hearing: 1 August 2023

Date of judgment: 25 August 2023

**Appearances**

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On behalf of the Plaintiff: Mrs I. R. Molope-Madonda

Instructed by: Molope-Madondo Attorneys

On behalf of the Defendant: Adv. L. Siyo

Instructed by: Dlamini Attorneys