

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 038392/2023

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES:
YES/NO
(3) REVISED.

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DATE

In the matter between:

PRIMROSE NOKUTHULA MAZIBO

Plaintiff/Respondent

And

KHOSI MAHLANGU

1st Defendant/ 1st Excipient

GAUTENG DEPARTMENT OF EDUCATION

2nd Defendant/ 2nd Excipient

JUDGMENT

MAKUME, J:

- [1] This is an application by the first and second Defendants (now the Excipients) in terms of Rule 23 (1) of the Uniform Rules of Court to declare the Plaintiff's particulars of claim as lacking the necessary averments to sustain a cause of action alternatively that the particulars of claim are vague and embarrassing.

[2] On the 11th July 2023 the Excipients delivered a Notice in terms of that Rule pointing out to the Respondent in what respects the Particulars of Claim do not disclose a cause of action and are thus vague and embarrassing. In the notice the Respondent was afforded an opportunity to remove the cause of complaint within 15 (fifteen) days.

[3] By the 15th August 2023 the Respondent had not heeded the request to remove the cause of complaint instead the Respondent embarked on a futile exercise by filling a replication and a Rule 30A notice instead of amending and correcting the obvious and glaring defects in the particulars of claim.

[4] Rule 18 of the Uniform Rules of Court is headed “Rules relating to pleadings generally.” The learned writer Harms in “Amler’s Precedents of Pleadings” ninth edition describes the purpose of pleadings as follows:

“A party must define its cause of action and defence in the appropriate pleadings in the Court of first instance to inform the other parties to the matter of the case they must meet and of the relief sought against them in that Court. This is a fundamental principle of fairness in the conduct of litigation, which promotes the parties’ rights to a fair hearing guaranteed by Section 34 of the Constitution.”

[5] It is therefore not surprising that Rule 18 (4) and Rule 18(10) have been drafted in the manner to precisely meet that requirement of clarity of cause. Rule 18(4) reads as follows:

“Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim defence or answer to any pleading as the case maybe with sufficient particularity to enable the opposite party to reply thereto.”

[6] Rule 18(10) reads as follows:

A Plaintiff suing for damages shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof provided that a Plaintiff suing for damages for personal injuries shall specify his date of birth, the nature and extent of the injuries and the nature and the effects and duration of the disability alleged to give rise to such damages and shall as far as practicable state separately what amount if any is claimed for:-

(a) medical costs and hospital and other similar expenses and how these costs and expenses are made up.

(b) pain and suffering, stating whether temporary or permanent and which injuries caused it.

(c) disability in respect of:

i) The earning of income (stating the earnings lost to date and how the amount is made up and the estimated future loss and the nature of the work the Plaintiff will in future be able to do.

ii) Enjoyment of amenities of life and stating whether the disability concerned is temporary or permanent, and

(d) disfigurement, with full description thereof and stating whether it is temporary or permanent.

[7] It is trite law that pleadings must be lucid and logical and in an intelligible form the cause of action must appear clearly from the factual allegations. Mc Creath J in **Trope v South African Reserve Bank and Another 1992 (3) SA 208 at 211 B** concluded as follows:

“An exception to a pleading on the ground that it is vague and embarrassing involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. The second is whether the vagueness causes embarrassment of such a nature that the Excipient is prejudiced.”

[8] In the particulars of claim the Plaintiff alleges that “on the day in question” she collapsed and had a miscarriage on the school premises and that the first Defendant obstructed medical personnel by refusing entrance of the ambulance into the school premises.

[9] This allegation is vague as it fails to allege the date, time and year on which the incident occurred. This is prejudicial to the Excipient as it is unable to determine whether a claim if any has prescribed or not or some other possible defence open to a defendant.

[10] The particulars of claim which in my view are badly drawn up allege that before the Plaintiff’s husband could arrive at the school premises the first Defendant gave instructions that no one should attend to the Plaintiff by not giving her water. The Plaintiff fails to indicate when did this take place and to whom the first Defendant gave such instructions.

[11] All these allegations set out in the lumped up particulars of claim are so vague and embarrassing and do not comply with the provisions of Rule 18(4).

[12] The next aspect is Rule 18(10). This subrule stipulates the minimum particulars to be furnished by the Plaintiff with regard to personal injuries to enable the Defendant reasonably to estimate the quantum of the Plaintiff’s damages and plead thereto.

[13] The Plaintiff has failed to comply with the requirements of subrule 18(10) in the following respects:

a) Her date of birth is not indicated.

- b) Failed to state the nature and extent of any injury she sustained.
- c) The R40 million claim in paragraph 16.1 is said to be for general damages, being loss of life, wrongful death, funeral expenses, ritual expenses, damages to her good name, loss of dignity and psychological shock.

[14] This prayer in paragraph 16 is so vague and embarrassing as it does not say and detail how much is to be allocated to each class of injury being claimed everything is lumped up together and this results in the Defendant not being able to ascertain whether or not the Plaintiff's assessment of the quantum is correct.

[15] Makgoka J as he then was in **Living Hands v Ditz 2013 (2) SA 368 at 374 G** set out the general principles in exception proceedings as follows:

15.1 In considering an exception that a pleading does not sustain a cause of action the Court will accept as true the allegations pleaded by the Plaintiff to assess whether they disclose a cause of action.

15.2 The object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw, but to dispose of the case or a portion thereof in an expeditious manner or to protect oneself against embarrassment which is so serious as to merit the costs.

15.3 The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties if the exception is not taken for that purpose an Excipient should make out a very clear case before it would be allowed to succeed.

- 15.4 An Excipient who alleges that the summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim no cause of action is disclosed.
- 15.5 An over technical approach should be avoided because it destroys the usefulness of the exception procedure which is to weed out cases without legal merits.
- 15.6 Pleadings must be read as a whole, and an exception cannot be taken to a paragraph or a part of the pleading that is not self-contained.
- 15.7 Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars.

[16] The particulars of claim in this matter are so badly drawn up that they will not survive amendment. In my view upon any construction of the particulars of claim no cause of action is disclosed against any of the Defendants. In the result I make the following order:

ORDER

- a) The Exception Is upheld.
- b) The Plaintiff's particulars of claim are vague, embarrassing and do not disclose or sustain a cause of action and are accordingly struck off.
- c) The Plaintiff/ Respondent is ordered to pay the costs of this application on a party and party scale.

Dated at Johannesburg on this day of February 2024

**M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearances

Date of hearing : 28 February 2024

Date of Judgement : February 2024

For Excipient : Adv Ntshangase

Instructed by : Office of the State Attorney

For Respondent : Att Hadebe

Instructed by : Messrs TS Hadebe