

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 47070/17

In the matter between:

THEMBI NKOSI HENRY MGOBOZI

Plaintiff

and

MINISTER OF POLICE

Defendant
(Excipient)

JUDGMENT

Brand AJ

- [1] The Plaintiff claims a sum of R30 000 000 from the Defendant. The Defendant (hereafter Excipient) excepts to the Plaintiff's particulars of claim in terms of Uniform Rule 23(1) on the grounds that the particulars of claim lack averments to sustain a cause of action and are vague and embarrassing. In the alternative the Excipient applies for an order setting aside the particulars of claim as an irregular step in terms of Uniform Rule 30.
- [2] In its particulars of claim the Plaintiff states that the SAPS issued an advertisement in the press for ex-members of the SAPS (as the Plaintiff is) to apply for re-appointment in the SAPS. The Plaintiff duly filled in and submitted the required forms and was invited for and completed psychometric testing. Shortly after the psychometric testing he was called and informed he had passed the psychometric testing and on strength of that was invited to attend an interview. He attended the interview and was shortly afterward again

called, told that he had passed the interview and should collect a medical form from the SAPS and attend a doctor to be examined and have the form filled out. He did so and submitted the completed form by hand to officials at the SAPS' Supply Chain Management Centre. They examined the form in his presence and assured him that it was in order. They then told him he was fit to assume duty as a member of the SAPS; that he should terminate whatever other employment he was engaged in; and that he should then wait to be contacted about when to assume duty, but that it would be before 1 November 2016. Not hearing anything by that date, the Plaintiff then contacted the Supply Chain Management Centre to enquire, but was told to stop bothering them. He then instructed an attorney to write the SAPS on his behalf, which approach elicited the response that he had failed the psychometric test and was consequently not fit to be appointed. An attempt to meet and engage with the SAPS was rebuffed – this the Plaintiff interprets as a repudiation of the purported contract. On this basis the Plaintiff then claims payment of a sum of R30 million.

- [3] The Excipient claims that the particulars of claim are to be excepted both because they disclose no cause of action and because they are vague and embarrassing. On the first count the Excipient points out that although the existence of a contract is pleaded, the terms of that contract in general and in particular those that were allegedly breached are not. The pleadings also do not disclose a causal link between the Excipient's alleged conduct and any damage that might have accrued to the Plaintiff.
- [4] On the second count the Excipient points out that the pleadings do not specify whether the claim arises from contract, or from delict or from both. In addition, the alleged damages are simply stated as a lump sum, without any attempt to show how the amount was arrived at.
- [5] I must agree with the Excipient on both counts. It is indeed unclear from the particulars of claim whether the claim arises from contract or delict. At times the Plaintiff seems to plead a negligent misrepresentation; elsewhere breach of contract. This leaves the excipient unable to determine what case it is

required to meet. Were the claim founded in delict, essential elements of such a claim – such as the existence of a duty of care – are not pleaded. Were it founded in contract, in turn, the terms of the alleged contract and the nature of the breach are not pleaded. No particulars whatsoever are provided of the quantification of damages.

[6] In short, the particulars of claim leave the Excipient unsure of what case is pleaded. In this light it becomes unnecessary to deal with the submission that the particulars of claim fall to be set aside as an irregular step.

[7] Accordingly I order as follows:

1. The exception is upheld.
2. The Plaintiff is given leave to amend its particulars of claim within twenty days of the date of this order.
3. In the absence of any amendment as referred to in paragraph 2, the order in paragraph 1 upholding the exception operates as an order dismissing the Plaintiff's claim against the Defendant with costs.
4. The Plaintiff is to pay the costs of the exception.



JFD BRAND

Acting Judge of the High Court

Date of Hearing : 29 October 2018

Date of Judgment : 09 November 2018