IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

5 May 2023
DATE

SIGNATURE

CASE NO: 79287/16

In the matter between:-

MMI GROUP LTD Plaintiff

V

PITOUT, CHARLES FREDERIK Defendant

and

CASE NO: 21933/17

In the matter between:-

MMI GROUP LTD Plaintiff

V

BRITZ, DEWALD Defendant

Coram: Mngqibisa-Thusi J et Basson J et Kooverjie J

Heard on: 15 February 2023

Delivered: _____ 2023 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be __H__ on _____ 2023.

SUMMARY: Rule 28 makes provision for an applicant to file a further application for leave to amend. Defence of *res judicata* does not find application. Proposed amendments to respective particulars of claim had not been pleaded with sufficient particularity and remain vague and embarrassing to the extent that the defendants are prejudiced. The proposed amendments render the cause of action unsustainable.

ORDER

It is ordered:-

1. In the matter: MMI Group Ltd v Charles Frederik Pitout, under case number 79287/16, the application for leave to amend is dismissed with costs.
2. In the matter: MMI Group Ltd v Dewald Britz, under case number 21933/17, the application for leave to amend is dismissed with costs.

JUDGMENT

KOOVERJIE J (Mngqibisa-Thusi J & Basson J concurring)

[1] This court is seized with the plaintiff's applications for leave to amend its particulars of claim in both the aforesaid matters. In both instances, the respective defendants filed their notices of objection on the basis that the particulars of claim as amended remain excipiable on the grounds that they lack averments to sustain a cause of action and they are further vague and embarrassing.[1]

[2] For ease of reference, the MMI group are referred to as "the plaintiff", and the defendants as "Pitout" and "Britz". Since the issues for determination are similar in the two matters, same will be dealt with simultaneously.

LITIGATION HISTORY

[3] There is a history of protracted litigation between the parties in both matters. The institution of the respective exceptions and applications for leave to amend have previously been ventilated in this court, resulting in the pronouncements of various orders and judgments.

[1] 0002-4 to 0002-24 (Pitout pleadings)
0006-1 to 0006-18 (Britz pleadings)

[4] The plaintiff in both matters is MMI Group Limited. The defendants, Mr Pitout and Mr Britz, both brokers, previously appointed as independent contractors with the plaintiff. The two matters will respectively be referred to as the "Pitout" and "Britz" matter.

[5] The record for the court's consideration included previous judgments, orders as well as the transcriptions of the proceedings pertaining to both matters, namely:

5.1 On 22 February 2018 the matter: ***MMI Group Ltd v Charles Frederik Pitout, case nr. 79287/2016***, was heard in the Gauteng Division of Pretoria. Sardiwalla J upheld the exception with costs (Pitout matter);

5.2 The plaintiff thereafter attempted to amend its particulars of claim. The defendant objected to the proposed amendments. This caused the plaintiff to institute an application for leave to amend its particulars of claim. On 30 October 2018 the leave to amend was dismissed with costs before Baqwa, J (Pitout matter);

5.4 The plaintiff again sought leave to amend its particulars of claim. It is this application which is before court. The defendant once again objected to the amendments (Pitout matter);

5.4 The ***MMI Group Ltd v Dewald Britz***[2] matter, was previously heard in the Gauteng Division of Johannesburg. The plaintiff filed an exception to the plaintiff's particulars of claim which exception was upheld by Tsoka, J on 19 October 2018 (Britz matter);

[2] Case number 21933/201.

5.5 The plaintiff sought leave to amend and same was objected to by the defendant. Wright, J dismissed the application for leave to amend (Britz matter);

5.6 The plaintiff filed a further application for leave to amend and requested that the said matter be transferred to this court for adjudication. It is this application which is before this court (Britz matter).

[6] This court's attention was also drawn to a matter of a similar nature, namely: ***MMI Group Ltd v Ian Bernadus Marais***[3]**,** where the defendant instituted an exception to the plaintiff's particulars of claim. The exception was dismissed with costs by Van der Schyff J, on 2 November 2018. The plaintiff relied on the reasoning and findings therein. I will return to this decision herein below.

THE FACTS

[7] In brief, the causes of action in both matters are based on Momentum Financial Planner Agreements (the Agreements). The plaintiff is a long term insurer who entered into written agreements with both defendants appointing them as independent contractors (as representatives as defined in the Financial Advisory and Intermediary Services Act, No 37 of 2002, as amended).

[8] By virtue of the agreements, it is pleaded that the defendants were bound by, *inter alia*, the following terms namely:

8.1 the defendants were required to market the plaintiff's products and accordingly procure policies with respective clients;

[3] MMI Group Ltd v Ian Bernadus Marais, case number 62493/2017, Gauteng Division Pretoria. (Marais)

8.2 the plaintiff would pay commission to the defendants in accordance with the annexures set out in the respective agreements;

8.3 the defendants were entitled to their commissions upon the clients paying their premiums;

8.4 the plaintiff, however, could in its discretion advance to the defendants their commissions and renewal commissions before receiving such premiums from the clients;

8.5 where commissions were advanced and the premiums had not been paid as yet, the plaintiff would be entitled to recalculate such commissions, and demand repayment of such advanced commissions[4];

8.6 the certificate signed by the department head of the plaintiff would constitute *prima facie* proof of the total amount due to the plaintiff;

8.7 the amounts which became due to the defendants were to be credited to their commission accounts and deductions and/or amounts due to the plaintiff were to be debited to the defendants' commission accounts. This included not only various disbursements but any other costs the plaintiff or the product houses incurred on the defendants' behalf;

8.8 the defendants would be provided with remuneration statements on a monthly basis.

[9] As a result of the various lapses and/or cancellation of the policies and/or products and the non-receipt of premiums, the plaintiff recalculated the commissions and fees as provided for in terms of the agreements and debited

[4] In terms of the Long Term Insurance Act 52 of 1998 (Regulations) the commissions advanced before the premiums had been received and the premiums not paid for any reason entitled the plaintiff to recalculate such commissions

same to the defendants' commission accounts. Summons against the respective defendants were based on payments due to the plaintiff (repayments).

ISSUES FOR DETERMINATION

[10] In both the said matters, this court has particularly been directed to make determinations on the following aspects:

10.1 the test when considering whether the particulars of claim are vague and embarrassing;

10.2 whether the proposed amendments of the plaintiff's particulars of claim in both matters render them excipiable on grounds that they are vague and embarrassing;

10.3 have the particulars of claim been pleaded with sufficient particularity;

10.4 the *facta probanda* from *facta probantia* had to be identified; and

10.5 lastly was it necessary for the plaintiff to plead the following namely:

(i) the date on which the commissions were paid;

(ii) for which policy the commissions were paid;

(iii) what the nature of the commissions were;

(iv) on what dates had the specific policies lapsed or non-payment of the premiums occurred;

(v) what the reasons for the lapse of the non-payments were and the basis on how were the recalculations for the specific policies arrived at.

[11] The further issue for consideration concerns the *res judicata* point and in particular whether, in the "Pitout" matter, the order of Sardiwalla J had a final effect. I will first deal with this issue.

RES JUDICATA

[12] The argument advanced for the defendant in the "Pitout" matter was that the court could not entertain such application for leave to amend since the issues had already been disposed of in the hearing before Sardiwalla, J. Such order therefore stands, so it is submitted, and the plaintiff failed to comply with such order.

[13] Sardiwalla J, in upholding the exception, specifically ordered the plaintiff to plead the following, namely:

"(1) Amend the particulars of claim to include the following information. The plaintiff must plead to which policies the commission or advances relate or pertain to.

(2) The method applied when calculating the commission advanced and/or which annexures or annexure of the agreement are applicable in calculating such commissions.

(3) The plaintiff must plead the details of the policies allegedly lapsed, when the policies lapsed and the reason for the lapsing of the policies."

[14] This the plaintiff did not do, nor did it appeal such an order although such an order is appealable.[5] The plaintiff therefore had a choice to either comply with the order or appeal same.

[15] Before us, the plaintiff submitted that the said order by Sardiwalla, J has no force and effect in the present proceedings as the present application for leave to amend the particulars of claim differ from the particulars of claim that served before Sardiwalla, J.

[16] Counsel for the plaintiff therefore argued that, in law, it was entitled to institute a *subsequent* application for leave to amend. In referring to the judgment in ***Webber Wentzel v Batstone and another***[6], it was submitted that an order granting or refusing leave to amend does not dispose of a substantial portion of the relief claimed in the main proceedings. Such order merely has an effect on the procedural aspect and does not have final effect.

[17] Once an exception is upheld (as in this instance by Sardiwalla, J) the effect thereof is that the offending pleading is struck out. The rules make provision for the affected party to be given a further opportunity to amend the pleading, provided that it is done within a specific period.

[18] I am in agreement that the effect of exceptions which are upheld, are final in effect. Our courts have ruled that where exceptions are successful, the losing

---

[5] Mankayi v Anglo Gold Ashanti Ltd 2010 (5) SA 137 (SCA)
[6] Webber Wentzel v Batstone and another 1994 (4) SA 334 T

party may appeal the judgment[7] and the effect of such orders affects the pleadings and has a final effect. However, it does not affect the action or defence.[8]

[19] In the instance of Pitout, even though the plaintiff had the option to file an application for leave to appeal to Sardiwalla J's judgment and order, but it elected to rather proceed with a second application for leave to amend.

[20] In my view, the plaintiff is not deterred in any way from proceeding with the leave to amend process.[9] Hence the matter was properly before Baqwa J. Accordingly, the matter is once again before us on the second application for leave to amend. The same principles would apply for the "Britz" matter as well, that is, in respect of Tsoka J's and Wright J's orders.

[21] In the event, the application are not final in effect and, in my view, the *res judicata* issue does not find application. Hence the second application for leave to amend is also properly before us.

FINDINGS AS PER DIRECTIVE

[22] The plaintiff's case in both matters is that it had pleaded all the material facts to sustain the cause of action and argued that the further information the defendants insist upon constitute evidence (*facta probantia*).

---

[7] Mankayi v Anglogold Ashanti Ltd 2010 (5) SA 137A
[8] Group Five Building Ltd v Government of the Republic of South Africa 1993 (2) 593 AD paras 24 to 28; Rex v Diedricks para 13
[9] Constantaras v BCE Food Service Equipment (Pty) Ltd 2007 (6) SA 338 SCA at 348 C

[23] The main focus in this application pertains to the evidence relating to the computation detail of the quantum. The plaintiff submitted that even though it is in possession of the evidence relating to the calculation of the amounts it claims, it is not necessary to plead same at this stage in the proceedings.

[24] It was agreed that one should distinguish these contractual claims (as in this instance) from claims based on damages. A claim for damages would require facts to be pleaded in such a manner that would enable the opposing party to reasonably assess the quantum thereof.[10] This, the plaintiff submitted is not necessary in this particular instance.

[25] The plaintiff further submitted that it was only required to identify the provisions of the respective contracts relevant to its causes of action and not to plead how it calculated the amounts claimed. It therefore is, according to this argument, only necessary to plead that:

25.1 it is a long term insurer who entered into a written agreement with the defendants in terms of which the plaintiff appointed the defendants as authorized representatives;

25.2 in terms of the agreements the plaintiff advanced commissions to the defendants based on premiums it would receive. It did so in advance and prior to it receiving the premiums from the respective clients;

25.3 certain premiums were not received due to the cancellation or lapse of the respective policies;

[10] Grindrod (Pty) Ltd v Delport 1997 (1) SA 342 (W)

25.4 this non-receipt of the premiums resulted in the recalculation of the commissions due. Hence the excess commissions advanced to the defendants had to be repaid to the plaintiff;

25.5 the calculated excess commissions were debited to the defendants' commission accounts. Such debit balances were repayable to the plaintiff upon demand;

25.6 the amounts claimed were thus debit balances reflected on the commission accounts and not necessarily the total of commissions reversed.

[26] The plaintiff further argued that additional facts were pleaded, namely that:

26.1 it would for the duration of the agreements provide monthly remuneration statements to the defendants;

26.2 the certificate of balance signed by the Department Head would constitute *prima facie* proof of the total amount owing;

26.3 the agreements were subject to the provisions of Regulation 3.5(2) under the Long Term Insurance Act, Act 52, 1998 regulating the recalculation of commissions and the repayment of excess commissions advanced to the defendants.

[27] In brief, the plaintiff submitted that the claims in the present matters are relatively simple. They relate to commissions advanced to the defendants but which the plaintiff had not received the premiums. Hence such commissions had to be repaid.

[28] It therefore reasoned that all that was required for it was to plead the contracts, the terms thereto, the events that involve the operation of its terms, and the defendant's breach thereof, which had been pleaded. This position, it was argued, was in line with the ***Marais*** judgment.[11]

[29] The plaintiff submitted that the complexity in this matter is in the calculation of the commission which is a matter for evidence. Moreover the quantum of the claims are set out in the certificate of balance which constitute *prima facie* proof of the amount due and owing. It further submitted that the plaintiff would, in any event, at the appropriate stage of the trial proceedings disclose the records, including the evidence relating to the calculation of the amounts claimed. The argument that the mechanisms, namely discovery and request for further particulars would cure the defect, has no merit. The reality is that the said processes only become available to the defendants once pleadings have closed. It is trite that parties are bound by their pleadings. This argument on behalf of the plaintiffs defeats the very objective of pleadings, which is to fully ventilate the disputes between the parties.

[30] The plaintiff's reasoning is therefore premised on the argument that the allegations now sought by the defendants to be included in the pleadings constitute detail which could be obtained through a request for further particulars for trial. Moreover the information could be made available through later discovery. The essence of this argument that it is therefore that it is not necessary

[11] The plaintiff particularly relied on *Imprefed (Pty) Ltd v National Transport Commission 1993 (3) SA 94 A at 106 B* ("Imprefed") and *Hill N.O. and Another v Strauss (13423/2020 [2021] ZAGPJHC 77 (2 July 2021) 23-24* ("Strauss").

at this stage to plead and prove that the calculations are correct and indisputable. The plaintiff further submitted that the defendants, if they disagree with what is pleaded, are at liberty to deny such allegations.

[31] The defendants disagreed with the plaintiff's take on the pleadings and submitted that the plaintiff failed to plead the type of policy, the basis of the calculation, which annexures to the "Agreements" were relevant when calculating the respective amounts, when such policies commenced, when such policies lapsed and the reason as to why such commissions were repayable in terms of the agreement.

[32] More particularly the defendants objected to the particulars on the basis, that:

32.1 the plaintiff failed to plead which policies the commissions and advances related to;

32.2 failed to plead the method applied in calculating the commissions and/or advances and which annexures of the "Agreements" were applicable when calculating the specific commissions;

32.3 the plaintiff merely alleged that the commissions advanced to the defendants were calculated in accordance with the "Agreements". But, says the defendants, such "Agreements" advanced several possibilities as to the how the commissions should be calculated and which are not pleaded;

32.4 it was material to plead the events which entitled the plaintiff to reclaim advance commissions in terms of the "Agreement";

32.5 the plaintiff further failed to plead which policies lapsed and the reasons therefore. For instance, in "Pitout", it was argued that even though the proposed amendments made reference to annexure 'B1' (constituting a reconciliation statement), it did not include for instance the inception date of the listed policies and which commissions constituted advanced commissions;

32.6 the plaintiff failed to identify which policies were excluded;

32.7 with regard to the amended quantum it was argued that this should have been based on a new cause of action which required the plaintiff to plead with sufficient particularity.

BRIEF OVERVIEW OF THE RELEVANT PRINCIPLES

[33] The principles as to when pleadings are regarded to be vague and embarrassing, have been extensively dealt with by our courts and need not be repeated. Therefore, for the purposes of this judgment, reference will only be made to those principles that have a bearing on the facts before this court.

[34] The test to determine whether a pleading is vague and embarrassing involves a twofold consideration: firstly, whether the pleading lacks particularity to the extent that it is vague and secondly, whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced.[12] The object of pleadings is to delineate the issues to enable the other party to know what case has to be met. It

[12] Trope supra at 211-A-13

is also impermissible to plead one particular issue and then seek to pursue another at the trial.[13]

[35] Pleadings have been found to be vague in, *inter alia*, instances where:

(i) the statements are meaningless or capable of more than one meaning[14];

(ii) the material facts upon which conclusions are based are not stated;

(iii) when pleadings do not contain clear enough expositions of the plaintiff's case;

(iv) when documents are referred to but not attached to the pleadings.[15]

[36] A pleading that is considered to be vague does not necessarily renders it excipiable. It is required that the vagueness must cause embarrassment to the other party.

[37] A defendant would, for example, be embarrassed in instances where it is unable to file an adequate response in the form of a plea and where the vagueness cannot be cured by requesting further particulars for trial or discovery.

[38] Such party would be prejudiced if it is unable to render a meaningful response addressing the merits of the cause of action or is unable to properly prepare to meet the opponent's case. As set out above, the defendants argued that the particular material facts on which the plaintiff grounds its claim are not pleaded.

---

[13] Minister of Agriculture v CM de Klerk (747/2012) [2013] ZASCA 142 (30 September 2013)
[14] Lockhat and others v Minister of the Interior 1960 (3) SA 765D at 777C-D
[15] Erasmus, Superior Court Practice, D1-299

Moreover, these facts constitute *facta probanda* and not *facta probantia* as the claimed by the plaintiff.

[39] The accepted purpose of a pleading is to define the issues between the parties, to confine evidence at the trial to the matters relevant to those issues and to ensure that the trial may proceed to judgment without either party taken by surprise and be placed at a disadvantage by the introduction of matters not reasonably ascertainable from the pleadings. Pleadings should not be formulated in a manner that requires "guesswork" for the opposing party. They are intended to be clear and simple and where, not only the opposing party's intelligence, but that of the court is not presumed.[16]

[40] A "cause of action" is ordinarily used to describe the factual basis, the set of material facts that sustains the plaintiff's legal right of action.[17] In order to disclose a "cause of action", the plaintiff's particulars of claim must set out every fact which would be necessary for the plaintiff to prove. It does not comprise of every piece of evidence which is necessary to prove each fact but every fact which is necessary to be proved.[18] Rule 18(4) requires that pleadings should contain clear and concise statement of material facts upon which the pleader relies for its claim and it should be done so with sufficient particularity to enable the opposition to reply thereto.

---

[16] Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others 1999 (2) SA 279 at 324C
[17] Evins v Shield Insurance Company Ltd 1980 (2) SA 814A at 825F
[18] McKenzie v Farmers' Co-operative Meat Industries Ltd 1922 AD 16 at 23; Trope matter 210 G-H

APPLICATION TO THE PRESENT MATTER

[41] In the present matter, the detail of how the commissions were calculated, are material. Although the basic terms of the "Agreements" were pleaded, it lacked the material facts upon which the *quantum* was derived at. Moreover, the repayments are dependent on specific variables which impacted on the respective calculations and this, according to the defendants, are not pleaded with sufficient particularity to enable them to reply thereto. It is a basic principle that pleadings should be phrased in such a manner that the opposing party can reasonably and fairly plead to. The failure to set out the material facts with sufficient particularity may result in the pleading lacking a sustainable cause of action.[19]

[42] Furthermore, for these pleadings to be sensible, the plaintiff was also required to plead *when* such policies lapsed and reasons therefore. The reason for the lapsing of the policies was most certainly material in determining the defendants' liability. It was necessary for the plaintiff to plead the basis on which it claimed repayment.

[43] It is further necessary to distinguish the type of claims in issue. This is not an instance where the claim/s are based on a single contractual arrangement between parties. In these matters, on every occasion when a policy is procured, a new contract comes into being with a specific client. The commissions earned are dependent on the many variables identified aforesaid.

---

[19] Erasmus, Superior Court Practice Juta at D1-234

[44] It was also pointed out that the defendants were unable to determine how the various calculations set out in annexure 'B1' was arrived at. It was argued that commissions are not repayable as at date of termination of the agreements but on dates the policies lapsed.

[45] It was further argued that there is uncertainty as to whether the plaintiff advanced commissions after the date of the termination of their contracts. Were the calculations based on new policies or were they procured prior to the termination of the agreement?

[46] Notably, on the plaintiff's own version, it was pleaded that the commissions earned and the repayments depended on various factors. If one considers the nature of the contractual relationship with the defendants, the pleadings, as they stand, do not allow the defendants to plead meaningfully.

[47] The plaintiff cannot rely on the fact that apart from the allegations in the summons the defendants have knowledge of the nature of the commissions paid. In other words, they know what case they had to meet. This contention, in my view, is fallacious. The defendants are most certainly entitled to object when a plaintiff's case is not conveyed with reasonable particularity in its pleadings. It must be borne in mind that the summons is for the information of the court as well as of the plaintiff.[20]

---

[20] *Cilliers v Van Biljon* 1925 OPD 4; *Boys v Pident* 1925 25 EDL 23 at 24 - 25

[48] Even if they were able to identify their clients, the anomalies pointed out, such as when the policies lapsed, the reason for the lapsing of such policies, the reason for calculating commissions up to 2018 would not be within the defendants' knowledge. The plaintiff has also not explained why the quantum claimed was reduced in the latest amendment.

CONCLUSION

[49] As the proposed amendments stand, the defendants are invariably embarrassed. At this stage their responses would result in bare denials. This is an instance where the embarrassment is substantial.[21]

[50] Even though clause 10.5 of the "Agreement" stipulated that the "certificate of balance" constituted *prima facie* proof of the total amounts owing to the plaintiff, it is my view that such clause should not be interpreted to mean that the material facts pertaining to how the calculations were arrived at should not be pleaded. At the previous hearing in the Britz matter, Wright J remarked that since the plaintiff had made the necessary calculations there would be no reason why such information cannot be made available to the defendants

[51] Furthermore evaluating prejudice constitutes a factual enquiry. It is a question of degree. It is reiterated that cognisance must be taken of the factors that come into play, namely the nature of the claim, the contractual relationship between the

[21] Nxumalo v First Link Insurance Brokers (Pty) Ltd 2003 (2) SA 620 at 623

parties, the relief sought which in this instance is based on a recalculation of various types of commissions earned by the defendants.[22]

[52] Finally it cannot be gainsaid that the various policies procured with the respective clients attracted commissions that depended on not only the type of policy but other variables which impacted on the calculations.

[53] Previously in the "Britz" matter, in adjudicating the first application for leave to amend, Wright J addressed the prejudice issue with the plaintiff, namely:

"What is not pleaded in much detail contained in the relevant written contract and how and when reversals of commission become due to the applicant in relation to which clauses of the written contract. One example suffices to illustrate the point clause 5.2 sets out a formula, not uncomplicated, dealing with commission reversal. The application of the formula requires the application of percentages under the Long Term Insurance Act, 52 of 1998, which percentages are not stated in the written agreement itself. In my view, the respondent is prejudiced in that he cannot presently know how the claim is calculated in relation to the terms of the contract on which the applicant relies ...."[23]

Wright J further remarked:

"The defence that the calculations are due, and that the pleadings should be restricted to contain only the essential allegations, has no merit. The parties can

[22] ABSA Bank v Boksburg Transitional Local Council 1997 (2) SA 415 (W) at 422 A
[23] transcript of proceedings before Wright J at 10-226

surely not properly plead or prepare for trial. How is one supposed to respond when one does not even know the variables used in the calculations."[24]

The court went on further:

"But he does not know whether he must admit/dispute it. This is the very point. If you set it out for him clearly like he is entitled to know, then he will know this is what you are claiming and how you get it so. He will know I can admit it or deny it ...." [25]

The court again remarked:

"Your claim is very simple. You show that the debit did not go off on a certain date, thereafter the policy lapsed; it is this person, that number, that date; read it against the relevant clause ...."[26]

[54] In conclusion, the plaintiff is hereby once again made aware that its particulars of claim are not only vague and embarrassing but wanting of a sustainable cause of action.

COSTS

[55] The plaintiff submitted that it was due to the conflicting judgments by having regard in particular the **Marais** judgment[27] that the office of the Judge President directed this court to make a determination on the matters in question. It was

[24] 0010-221 of the record, transcript of proceedings before Wright J
[25] 0010-222 of the record, transcript of proceedings before Wright J
[26] 0010-222 of the record, transcript of proceedings before Wright J
[27] *Supra*.

therefore necessary to address the issues once and for all so that a harmonious decision would assist the parties going forward. Consequently, it should not be burdened with an adverse costs order.

[56] The defendants, on the other hand, argued that costs should be awarded in their favour in the event they are successful. Particular regard must be given to the fact that the previous orders and judgments had cautioned the plaintiff of the lacuna in its pleadings.

[57] In exercising my judicial discretion, I am of the view that, since the defendants are substantially successful, there is no reason why costs should not be awarded in their favour.

[58] I am further in agreement that the two days allocated for this matter to be argued is justified. It was envisaged that extensive time was necessary to address the court on the two matters.

ORDER

It is ordered:-

1. In the matter: MMI Group Ltd v Charles Frederik Pitout, under case number 79287/16, the application for leave to amend is dismissed with costs.
2. In the matter: MMI Group Ltd v Dewald Britz, under case number 21933/17, the application for leave to amend is dismissed with costs.

H KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree,

NP MNGQIBISA-THUSI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree,

A BASSON
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the plaintiff:	*Adv HP van Nieuwenhuizen*
Instructed by:	*Gerings Attorneys*
	c/o Herman Esterhuizen Smalman Attorneys
Counsel for the defendants:	*Adv C Spangenberg*
Instructed by:	*WRA Attorneys Inc*
Date heard:	*15 February 2023*
Date of Judgment:	*5 May 2023*