

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

Case no: 40187/2009

DATE: 19 /10/2010

IN THE MATTER OF:

BINDCO (PTY) LIMITED

FIRST APPLICANT

GERLEZA BELEGGING (PTY) LIMITED

SECOND APPLICANT

JGT VERMAAK

THIRD APPLICANT

NEDINE VERMAAK

FOURTH APPLICANT

AND

TECHNOLOGIES ACCEPTANCES (PTY) LTD

RESPONDENT

JUDGMENT

BAM, AJ

[1] The applicants are the defendants in the main claim in this matter and the respondent is the plaintiff. I will refer to the parties as in the main claim.

[2] On 3 July 2009 the plaintiff issued a summons against the defendants. The summons consisted of the usual formalities and an annexure marked as annexure "A" and Particulars of Claim. Annexure "A" consists of 25 pages. To annexure "A" is attached a set of documents marked "B-G" consisting of a further 22 pages. Both the summons and annexure "A" are signed by J Motobe Incorporated, purportedly the plaintiff's attorneys.

[3] On 28 July 2009 the defendants filed their notice of intention to defend.

[4] The next document filed is entitled "Declaration" and signed by counsel and the attorneys of the plaintiff. That document consists of 33 pages.

[5] The two documents, the "particulars of claim" and the "declaration", seems to have been exactly the same, save for a few minor aspects.

[6] The respondents filed their plea on 8 September 2009. On this document it is formally stated that it is a plea to the plaintiff's particulars of claim. It is common cause that this document was a plea filed in answer to plaintiffs particulars of claim annexed to the summons issued on 3 July 2009.

[7] The plaintiff thereafter filed a document entitled “Kennisgeving van belet”, a notice of bar which was signed on 16 March 2010, in which defendants were notified and required to plea to plaintiffs’ “Declaration” within five days, to avoid a notice of bar.

[8] On the 18th of March a document entitled “Notice in terms of Rule 30” was filed by the defendants objecting to the irregular filing of the notice of bar *“under circumstances where the defendants have already pleaded to the plaintiff’s combined summons and particulars of claim.”* This document was followed up by a notice filed by the applicant opposing the application in terms of Rule 30.

[9] The issue in this application is crisp. It depends upon the question whether applicants’ summons together with the particulars of claim constitute a combined summons as envisaged by Rule 17(3) of the Rules of Court. If it is a combined summons the defendants’ motion in terms of Rule 30 should succeed and this court should consequently find that the filing of the Plaintiff’s notice of bar was an irregular step.

[10] To my mind the plaintiffs’ intention with the suing of the summons combined with the particulars of claim and other relevant documents, referred to in paragraph 3 above, was to, despite the unusual form of the summons, to sue out a combined summons as envisaged by the provisions of Rule 17.

[11] I am satisfied that the said summons together with the particulars of claim, despite the fact that it was not signed by counsel, do indeed comply with the requisites of a combined summons as envisaged by the said Rule 17.

[12] Failure to have the summons signed by counsel as provided for in Rule 18, to my mind, will be excipiable but does not render the summons null and void per se. Such a failure regarding the signing of the combined summons by counsel can in any event be condoned by the court. See in this regard *Plascon Evens (Transvaal) Ltd v Virginia Glass Works (Pty) Ltd* 1983 (1) SA 465 (O). I can add that the rules are made for the court and not the court for the rules.

The defendants were in any event entitled to lodge an application in terms of the provisions of Rule 30, but declined to do so.

Accordingly I find that the plaintiffs' notice of bar dated 16 March 2010 is an irregular step and that it should be set aside. I make the following order:

1. The plaintiffs' notice of bar is set aside:
2. The plaintiff is ordered to pay the costs of the application.

AJ BAM

ACTING JUDGE OF THE HIGH COURT

FOR THE APPLICANTS: ADV. SW DAVIES

INSTRUCTED BY: JW WESSELS & PARTNERS INC.

FOR THE RESPONDENT: ADV. JJ DURANDT

INSTRUCTED BY: JAY MOTHOB I INC, JHB