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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH**

Case No: 1661/2014

In the application between:

PUMEZA BONO INC

First Applicant

MARINDA VELDSMAN N.O.

Second Applicant

and

B. S. L.

First Respondent

DR J KWASI NYORKA

Second Respondent

LIFE MERCANTILE HOSPITAL (PTY) LTD

Third Respondent

In re:

B. S. L.

Plaintiff

and

DR J KWASI NYORKA

First Defendant

LIFE MERCANTILE HOSPITAL (PTY) LIMITED

Second Defendant

JUDGMENT

REVELAS J:

[1] In this case, which has a long history marked by numerous postponements, there are two matters requiring determination. The first is an exception and the second is an application brought by an attorney and an advocate seeking leave to withdraw as the legal representatives of the plaintiff, Mr B. S. L.. He is cited as the first respondent in the exception and the application for leave to withdraw. I shall refer to him as the plaintiff herein. The second and third respondents are the two defendants in the action instituted by the plaintiff which is the subject of this judgment. I shall refer to the first and second respondents as the defendants. It is on the second defendant's behalf that the exception was noted.

[2] It is common cause that the plaintiff underwent surgery at the Mercantile Hospital (the premises of the second defendant) on 3 June 2011. The surgery performed was a transurethral resection of the prostate, to alleviate the condition diagnosed as benign prostatic hyperplasia. The surgery was performed by the first defendant. The plaintiff was discharged on 4 June 2011.

[3] During August 2011, the plaintiff visited another urologist, who allegedly concluded that during the operation in question, the plaintiff's "*reproductive system was damaged*" in that he had blood in his urine and he was "*sterile*".

[4] The attorneys initially engaged by the plaintiff to prosecute his claim for damages based on negligence, did not serve him well. Summons was nonetheless issued on 28 May 2014. On 24 March 2015 Makaula J appointed the plaintiff's present attorneys of record and counsel to act on his behalf, *pro bono*. They reported that neither the urologist who suggested that the plaintiff's reproductive system was damaged during the surgical operation, nor any other medical practitioner who examined the plaintiff, was prepared to give evidence in support of a claim based on negligence against the defendants.

[5] On 13 October 2014 the plaintiff's first attorneys withdrew. On 26 May 2015 Goosen J upheld the second defendant's first exception to the plaintiff's particulars of claim, but granted the plaintiff leave to cure the deficiencies in his particulars of claim within ten days. On 28 August 2015 the plaintiff filed its amended particulars of claim.

[6] On 20 October 2015, the second defendant noted a second exception to the amended particulars of claim on the basis that the amended particulars of claim were vague and embarrassing.

[7] The second defendant raised nine grounds of complaint in its notice of exception. I do not intend to deal with any of the grounds in detail save to state that they lack material particularity such as the nature of the plaintiff's injuries or physical cause of complaint. General damages and past loss of medical expenses which are relatively easy to compute, are not set out in any detail. The particulars of claim clearly do not comply with Rule 18(10) of the Uniform Rules of Court. That much has been properly conceded by counsel for the plaintiff. Due to a lack of evidence to support the plaintiff's claim no more particularity can be provided. Hence the defects in the particulars of claim as they currently stand, are not capable of being cured.

[8] The plaintiff appeared in person. Upon questioning him it emerged that he had not been successful in persuading any of the several medical practitioners and urologists who were contacted, to give evidence which would support his claim against the defendants. He has also expressed his misgivings about finding a new doctor and

pursuing his claim as matters stand. In my view, no further purpose would be served by a further postponement in this matter.

[9] On the information before me I am satisfied that the plaintiff's attorney and counsel, despite their best endeavours, are not able to proceed with the matter in good conscience based on the sparse evidence available.

[10] Accordingly the following order is made:

- (a) The second defendant's exception filed on 16 November 2015 is hereby upheld;
- (b) The plaintiff's claim is struck out with costs;
- (c) The first and second applicants are granted leave to withdraw as the plaintiff's attorneys of record;
- (d) The address for service on the plaintiff in all future process and notices in this matter under case no. 1661/2014 shall be his last known address, namely: 42 Eileen Drive, Blue Water Bay, Port Elizabeth.

E REVELAS
Judge of the High Court

Appearances:

For the applicant and first respondent, Adv M Veldsman instructed by
Pumeza Bono Inc, Port Elizabeth

For the first respondent, in person

For the second respondent, BLC Attorneys, Port Elizabeth

For the third respondent, Adv I Bands instructed by Whalley & Van Der
Lith Inc c/o Friedman & Scheckter Inc

Date heard: 20 September 2016

Date delivered: 22 September 2016