

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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

..... 17 JANUARY 2024
SIGNATURE DATE

CASE NO: 56221/2021

In the matter between

BARBARA ANN RADMORE

Applicant

and

JACOBA ALETTA DE WET

First Respondent

THOMAS ARNOLDUS DE WET

Second respondent

JUDGMENT

WANLESS AJ

Introduction

[1] This is an opposed interlocutory application instituted by one Barbara Ann Radmore (*“the Applicant”*) against Jacoba Aletta De Wet, adult female (*“the First Respondent”*) and Thomas Arnoldus De Wet, adult male (*“the Second Respondent”*) to compel the First Respondent and Second Respondent to deliver sufficient particulars to the Applicant’s earlier request for further particulars in terms of subrule 21(2).

[2] The Applicant is the Plaintiff in an action (*“the action”*) under case number 56221/2021 in this Court whilst the First Respondent and Second Respondent are the First Defendant and Second Defendant therein, respectively. The First and Second Respondents will be referred to hereafter in this judgment, for ease of reference, collectively as *“the Respondents”*.

[3] Regrettably, as so often occurs in opposed applications which find their way onto this Court’s opposed roll, the matter is not confined to the central issue as set out above. In addition thereto, there were a number of other interlocutory applications, including, *inter alia*, the following:

3.1 the Applicant sought an order striking out the Answering

Affidavit of the Respondents;

3.2 the Respondents raised a point *in limine* that the Applicant should not have proceeded by way of rule 30A but by way of subrule 21(4); and

3.3 raising other “*skirmishes*”, including the filing of further supplementary affidavits and costs arising therefrom (requested on various scales, including that of attorney and client and *de bonis propriis*).

[4] At the commencement of the argument in this matter, this Court entered into a fairly lengthy discourse with both Counsel for the Applicant and the Respondents in respect of the foregoing. During the course thereof, this Court (once again) expressed its displeasure at the continued practice of certain legal practitioners in this Division to (a) take technical points which did not play any practical part in resolving the real issues of the litigation but only resulted in causing delays; increasing costs for the parties and burdening the Court’s already onerous workload; and (b) entering the arena and becoming involved in the litigation on a personal rather than a professional level which, apart from the fact that it was not befitting of the practice of the profession of practising the law, only prejudiced the clients by increasing further and

unnecessary legal costs. Arising therefrom, by consent, this Court made an order (in general terms) that there were a number of supplementary affidavits filed (or sought to be filed) and a number of interlocutory applications all of which were of no real consequence to this Court deciding the real issue in this application. In the premises, it was further agreed, by consent (and was so ordered), that this Court would take no cognisance thereof and no cost orders would flow therefrom. In light of the fact that this order has already been handed down by this Court it will not be repeated at the end of this judgment.

[5] It was always the intention of this Court to deliver a written judgment in this matter. In light of, *inter alia*, the onerous workload under which this Court has been placed, this has simply not been possible without incurring further delays in the handing down thereof. In the premises, this judgment is being delivered *ex tempore*. Once transcribed, it will be “*converted*”, or more correctly “*transformed*”, into a written judgment and provided to the parties. In this manner, neither the quality of the judgment nor the time in which the judgment is delivered, will be compromised. This is particularly so in the present matter where the judgment in this matter has already been delayed and would only be further delayed having regard to the time of the year giving rise to the lack of clerical staff and back-up support available to this Court. This

Court is indebted to the transcription services of this Division who generally provide transcripts of judgments emanating from this Court within a short period of time following the delivery thereof on an *ex-tempore* basis.

Pleadings

[6] The relevant pleadings in this matter are the following:

6.1 on or about the 30th of November 2021 the Applicant instituted the action in this Court under case number 56221/2021;

6.2 on or about the 22nd of February 2022 the Applicant amended her particulars of claim ("*POC*") and filed various annexures therewith;

6.3 on or about the 28th of March 2022 the Respondents filed their Plea ("*the Plea*");

6.4 on or about the 5th of April 2022 the Applicant filed her Replication to the Plea ("*the Replication*");

6.5 no further pleadings were filed and, in the premises, the pleadings in the action were closed in terms of subrule 29(1)(b) of the Uniform Rules of Court ("*the Rules*");

6.6 during May 2022 the Applicant delivered to the Respondents a document entitled “PLAINTIFF’S REQUEST FOR FURTHER PARTICULARS AND ADMISSIONS”. This document was dated the 10th of May 2022 and dealt with the Plea; the Particulars of Claim and the Replication; and

6.7 the Respondents replied thereto by delivering a document bearing the heading “DEFENDANTS’ RESPONSE TO THE PLAINTIFF’S REQUEST FOR FURTHER PARTICULARS AND ADMISSIONS”.

[7] The Applicant, dissatisfied with the sufficiency of the responses by the Respondents, requested the Respondents to deliver sufficient particularity. The Respondents declined to do so and invited the Applicant to institute an application therefor. In the premises, the Applicant has instituted the present application before this Court. This has resulted in a “full blown” opposed application being heard by this Court with the filing of a full set of affidavits.

The relief sought

[8] The Applicant, in her Notice of Motion, seeks the following relief, namely:

1. *Ordering the Respondents to deliver within five days of this order, a sufficient response to paragraphs 2 to 28 of the particulars requested by the Applicant in its notice dated 10 May 2022 failing which,*
2. *The Applicant is given leave, in the event of the Respondents failing to comply with the order in prayer 1 above, to approach this court on the same papers, supplemented if necessary, for an order striking out the Respondents' defence.*
3. *Ordering the respondents to pay the costs of this application.*
4. *Further and/or alternative relief.*

[9] As clearly noted earlier in this judgment the relief sought by the Applicant is opposed, in its entirety, by the Respondents. The Respondents seek an order that the application be dismissed with costs.

The law

[10] Subrule 21(4) of the Rules reads as follows:

"If the party requested to furnish any particulars as aforesaid fails to deliver

them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.”¹

[11] Subrule 21(2) of the Rules reads:

“After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within 10 days after receipt thereof.”²

[12] Neither party, either in their Heads of Argument, or during the course of argument, referred this Court to any recent body of authority dealing with the interpretation of the foregoing subrules of the Rules. Not only does this illustrate that the interpretation thereof are straightforward but shows that there was no real or material dispute between the parties pertaining thereto.

The Applicant's case

[13] In broad summary, it is the Applicant's case that whilst the

¹ *Emphasis added.*

² *Emphasis added.*

Respondents allege that they did not start the fire nor were they the cause of it, they refuse to provide particularity as to who they allege started the fire or was the cause of it. So, it was submitted on behalf of the Applicant, the Applicant is crippled in preparing for a vital element of her cause of action and rebutting the defence of the Respondents.

[14] It was further submitted, on behalf of the Applicant, that whilst the Respondents allege that the Applicant did not mitigate her damages in that she *“did not take reasonable steps to prevent herself from suffering damage”* the Respondents refuse to provide particularity as to what they deem such reasonable steps to include, thereby preventing the Applicant from knowing what case she has to meet at trial.

The Respondents’ case

[15] Dealing with the case of the Respondents in broad summary, it is clear that the Respondents oppose the relief sought on two (2) general grounds, namely (1) that the Applicant has instituted the action against the incorrect party; and (2) insofar as it was necessary for the Respondents to plead to the POC the further particularity requested by the Applicant constitutes evidence and is not strictly necessary to enable the Applicant to prepare for trial in

terms of subrule 21(2).

The merits

[16] At the outset, it is noteworthy that the Applicant only seeks further particularity in respect of the Plea and not in respect of the POC and the Replication.

[17] As already set out earlier in this judgment, a party may request only such particulars that are *strictly* necessary for preparation for trial. It is fairly trite (and was common cause between the parties) that the Applicant is only entitled to such particulars as are necessary to put her in a position to prepare for trial and to prevent her from being taken by surprise due to evidence against her that she could not have reasonably anticipated would be produced by the Respondents.

[18] Accordingly, for the Applicant to be successful in this application, when considering the pleadings the Applicant must have a reasonable apprehension that the Respondents are going to lead evidence that is likely to surprise the Applicant; or the Respondents have made certain statements of which the information is not accessible to the Applicant or that cannot be

established through cross-examination at the trial.

The defence raised by the Respondents that the Applicant has instituted the action against the incorrect party

[19] As was correctly pointed out by Counsel for the Respondents the Applicant was clearly alerted, in the Plea, that the Respondents are not the owners of the immovable property adjacent to that of the Applicant's and therefore that the Applicant has instituted the action against the incorrect party. Why this portion of the Plea is not properly framed as a Special Plea remains a mystery to this Court and was not raised during the course of argument.

[20] Not content with simply denying ownership of the adjacent land to that of the Applicant's (one of the "*requirements*" of the Applicant's cause of action for a fire starting on another property and causing damage to the Applicant's property) the Respondents pleaded that the actual owner of the land is the ARCO Beleggings Trust ("*the Trust*").

[21] Insofar as the Applicant had pleaded that, in addition to, or in the alternative to, the Respondents being the owners of the land

where the fire started the Respondents were in control of the portion of the land where the fire had started, this was denied by the Respondents and it was stated, in the Plea, by the Respondents that the portion of the land on which the fire started is leased from the owner by L and N de Koning. This information had been made available by the Respondents to the Applicant either by way of the Plea itself or by way of discovery or both.

[22] Despite the foregoing the Applicant persists with her claim that she is being prejudiced in her preparation for trial. This cannot be so. The Applicant has been made fully aware of the defence to be raised by the Respondents at trial. In addition thereto the complaints of the Applicant that she has been unable to establish the identity of the Trustees of the Trust cannot hold weight. Not only is the Deed of Trust a public record but a copy thereof in the Respondents' possession has been provided to her by the Respondents. If she is dissatisfied therewith she should avail herself of the remedies available to her in terms of rule 35 and call for better discovery from the Respondents.

[23] In light of the foregoing the application cannot succeed in relation to the further particulars already provided in respect of ownership of the land and control thereof where the fire started.

The opposition raised by the Respondents that the further particularity requested by the Applicant constitutes evidence and is not strictly necessary to enable the Applicant to prepare for trial in terms of subrule 21(2)

[24] In the Respondents' reply to the Applicant's request for further particulars the Applicant has advised that the land is used as grazing land for animals. The Applicant does not accept this and seeks further particularity in respect of the animals grazing there on the basis that the Applicant alleges she requires to establish the mitigatory effect of the grazing animals.

[25] On behalf of the Respondents it was submitted that the Respondents do not have intricate knowledge regarding the exact type and number of animals grazing on the land since the animals do not belong to them and are not under their control. It was further submitted that the Applicant was once again seeking further particularity from the incorrect party.

[26] Finally, on this point, Counsel for the Respondents submitted

that the Respondents can only state that which they have observed, being that the grass is short as a result of the animals grazing on the Eastern portion of the land. The type and number of animals will be established during oral evidence led by the owners/controllers of the animals. At trial the Applicant will have her opportunity to test the veracity of these allegations during cross-examination and is therefore not deprived of such opportunity because the Respondents cannot provide further information in this regard.

[27] The Applicant alleges that the Respondents refuse to provide further particulars about what is meant when the Respondents allege, in the Plea, that the Applicant had a duty to secure her property. As pointed out on behalf of the Respondents the Respondents refer to the responsibilities/obligations imposed by the relevant provisions (chapters 4 and 5) of the *National Veld and Forest Fire Act 101 of 1998*.

[28] With regard to the information sought by the Applicant in respect of “*firebreaks*”, it is clear from the Plea that the Respondents rely upon the existence of a six-foot precast wall along the Eastern boundary of the Property as an effective firebreak which prevented the fire from spreading. It was therefore submitted

that the foregoing constituted sufficient particularity to enable the Applicant to prepare for trial.

[29] Finally, the Applicant alleges that the Respondents refuse to provide information about the steps the Applicant should have taken to prevent herself from suffering damages as alleged. The Respondents once again refer the Applicant to subparagraphs 18.1 and 18.2 of the Plea and submit that these are sufficiently descriptive for the Applicant to prepare for trial. This judgment will not be burdened unnecessarily by this Court simply repeating the contents thereof.

Conclusion

[30] Having considered the pleadings in this matter; the Applicant's request for further particulars; the Respondents reply thereto; the Applicant's application for full and better particulars; the Respondents' response thereto and the applicable legal principles in respect of an application of this nature, this Court holds that the Applicant is not entitled to the relief sought.

[31] In coming to this finding (and, in the premises, agreeing with most, if not all, of the submissions made on behalf of the Respondents and as set out earlier in this judgment) this Court

holds that the application must fail on two basic premises. Firstly, the Applicant has, as correctly submitted on behalf of the Respondents, *ex facie* the pleadings, instituted the action against two natural persons whereas the action should have been instituted against the Trust. Moreover, the Applicant is advised that another party was in control of the land where the fire started and is provided with the identity thereof. In the premises, from the outset, any request for further particulars must be curtailed or restricted thereto.

[32] Secondly, the Applicant seems to have overlooked the onus upon her to prove not only her cause of action but also her damages. Arising therefrom is the fact that she is only entitled to those particulars which are *strictly* necessary for her to prepare for trial. None of those requested by her in the present application fall within this ambit. She will not be prevented from preparing for trial in the event of not receiving any further particularity. This is so, particularly since she has other remedies available to her.

[33] In the premises, it must follow that the application should be dismissed.

Costs

[34] It is trite that the issue of costs falls within the general discretion of the court. Further, it is trite that, unless unusual circumstances exist, costs should normally follow the result. In this particular matter no such unusual circumstances were brought to the attention of this Court. There was one particular aspect that *may* have had a bearing on costs and that was whether it was even necessary, despite the reference to “*apply*” in subrule 21(4), for the Applicant to have gone by way of Notice of Motion and filed a Founding Affidavit. This was raised by this Court during the course of the argument³ and, in light of the fact that neither Counsel were in a position to deal therewith, it was agreed that both Counsel would provide concise supplementary Heads of Argument to assist this Court decide this point. Regrettably, neither Counsel has done so. At the end of the day, this point is now moot in light of the fact that (a) the application is to be dismissed and (b) the Applicant is to be ordered to pay the costs of the application.

Order

[35] This Court makes the following order:

³ At pages 15 and 16 of the record of proceedings.

1. The application is dismissed;

2. The Applicant is to pay the costs of the application.



**B.C. WANLESS
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Date of hearing:	28 August 2023
Date of <i>ex tempore</i> judgment:	14 December 2023
Date of revised (written) judgment:	17 January 2024

Appearances

On behalf of the Applicant:	Adv. R. Blumenthal
Instructed by:	NVDB Attorneys
On behalf of the Respondents:	Adv. E. Coleman
Instructed by:	Marie de Jager Attorneys