

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 91849/2015

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 22 FEBRUARY 2023

SIGNATURE:

In the matter between:

PETROS FAKAZI ZWANE

Plaintiff

And

SASOL TECHNOLOGY

1st Defendant

SASOL LIMITED

2nd Defendant

JUDGMENT

NYATHI J

Introduction

[1] This is an interlocutory application by the defendants who raises an exception against the plaintiff's particulars of claim, on the ground that it does not disclose sufficient grounds to sustain a cause of action, and/or it is vague and embarrassing leaving the defendants unable to plead thereto.

[2] The grounds on which the exception is based are more fully described in the exception itself. The plaintiff opposes the exception.

[3] The defendants, in pursuing the exception, also seeks to have the particulars of claim set aside in terms of Rule 30, as an irregular step.

[4] The background to the current application is that the current matter is part of a long-standing dispute between the parties. It has its origins in a labour dispute from what can be deduced from the documents filed of record.

Summary of events leading up to application

[5] The plaintiff filed and served an amended particulars of claim in terms of rule 28(5) on 28 November 2020.

[6] Plaintiff then filed and served a notice of bar in terms of rule 26 on 26 January 2021.

[7] Defendants filed a notice of intention to except in terms of rule 23(1) and a notice in terms of rule 30(2)(a) wherein was sought an order setting aside the amended notice of motion as an irregular step.

[8] Plaintiff then filed a notice of withdrawal of notice of bar dated 26 January 2021 and simultaneously filed a notice of bar dated 12 February 2021.

[9] On 5 March 2021, plaintiff filed a further notice of bar.

[10] The defendants' rule 23 and rule 30 application have now been set down on the roll for hearing as a special motion. The plaintiff opposes the application.

[11] At the hearing the plaintiff raised six points in limine as follows:

11.1 The defendant's papers are not before court.

11.2 The court lacks jurisdiction.

11.3 The defendants has refused to apply for condonation as expected by the plaintiff.

11.4 The defendants has not filed heads of argument.

11.5 The defendants' purported exception is in violation of rule 23(3) in that it does not state the grounds of exception clearly, it is vague.

11.6 The defendants have misrepresented the pleaded case because their exception is incompetent and flawed. The exception is targeted at part of the claim and cannot destroy the rest of the claim.

[12] The basis and substantiation of these so-called points in limine were an incoherent rambling. It is unclear what the point of it all was.

The law on exceptions

[13] An exception is a pleading in which a party states his objection to the contents of a pleading of the opposite party on the grounds that the contents are vague and embarrassing or lack averments which are necessary to sustain the specific cause of action or the specific defence relied upon.¹

[14] "An exception is a legal objection to the opponent's pleading. It complains of a defect inherent in the pleading: admitting for the moment that all the allegations in a summons or plea are true, it asserts that even with such admission the pleading does not disclose either a cause of action or a defence, as the case may be. It follows that where an exception is taken, the court must look at the pleading excepted to as it stands..."²

[15] An exception provides a useful mechanism for weeding out cases without legal merit. Be that as it may, an exception should still be dealt with in a sensible and not over-technical manner.³

[16] Thus, an exception founded upon the contention that a summons discloses no cause of action, or that a plea lacks averments necessary to sustain a defence, is

¹ Herbstein and Van Winsen – The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa 5th Ed, 2009 Chapter 22 – p630

² Erasmus *supra* D1-295.

³ *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* [2006 \(1\) SA 461 \(SCA\)](#) at 465H;

designed to obtain a decision on a point of law which will dispose of the case in whole or in part, and avoid the leading of unnecessary evidence at the trial. If it does not have that effect the exception should not be entertained.⁴

[17] The second or alternate leg in exceptions is where the excipient contends that the impugned pleading as it stands, is vague and embarrassing. Should such an exception be upheld, it is the specific pleading that is destroyed but not the entire summons or cause of action gets dismissed.⁵ The unsuccessful party may still apply to amend his or her pleading.

[18] “An exception that a pleading is vague and embarrassing is not directed at a particular paragraph within a cause of action: it goes to the whole cause of action, which must be demonstrated to be vague and embarrassing. The exception is intended to cover the case where, although a cause of action appears in the summons there is some defect or incompleteness in the manner in which it is set out, which results in embarrassment to the defendants. An exception that a pleading is vague and embarrassing strikes at the formulation of the cause of action and not its legal validity.”⁶

[19] An exception to a pleading on the ground that it is vague and embarrassing involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced.⁷ This approach was approved in *Jowell v Bramwell-Jones* 1998 (1) SA 836 (W) at 899-903.

Defendant's grounds of exception and submissions

[20] The plaintiff's amended particulars of claim: -

1) do not contain clear and concise statements of the material facts upon which the plaintiff relies for his claims;

⁴ Erasmus *supra* D1-296

⁵ *Group Five Building Ltd v Government of the Republic of South Africa (Minister of Public Works and Land Affairs)* [1991 \(3\) SA 787 \(T\)](#) at 791H–I; *Group Five Building Ltd v Government of the Republic of South Africa (Minister of Public Works and Land Affairs)* [1993 \(2\) SA 593 \(A\)](#) at 603C–H

⁶ Erasmus *supra* D1-301

⁷ *Trope v South African Reserve Bank* 1992 (3) SA 208 (T) at 210-211

- 2) do not set out any discernible causes of action against any of the defendants.
- 3) it cannot be determined whether and to what extent plaintiff's claim are contractual, delictual, statutory in terms of the Labour Relations Act 66 of 1995 ("LRA"), the Basic Conditions of Employment Act 75 of 1997, the Employment Equity Act 55 of 1998 ("EEA"), the Protected Disclosures Act 26 of 2000, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 or Constitutional or otherwise, in respect of any of the plaintiff's claims.
- 4) the plaintiff does not set out his damages in such manner as will enable the defendants reasonably to assess the quantum thereof.
- 5) the plaintiff appears to assert claims premised upon: - alleged unfair labour practices; the alleged unfair suspension of the plaintiff; and the alleged unfair dismissal of the plaintiff, in respect of which claims the Labour Court has exclusive jurisdiction in terms of the provisions of Section 157(l) of the LRA and the High Court has no jurisdiction;
- 6) the EEA, in particular unfair discrimination in terms of Section 6 of the EEA, in respect of which claims the Labour Court has exclusive jurisdiction in terms of the provisions of Section 40 of the EEA and the High Court has no jurisdiction.
- 7) the plaintiff's particulars of claim are replete with irrelevant evidence. In the circumstances,

7.1 The defendants are prejudiced in that they do not know what case to meet.

7.2 The plaintiff's amended particulars of claim do not comply with Rule 18(3); Rule 18(4); or rule 18(10).

[21] In submissions, Mr. Kohn stated that instead of dealing with the complaints raised by the defendants in the notices in terms of rules 23(1) and 30(2)(a) and

reacting to correspondence from defendants' attorneys, the plaintiff set off the various notices of bar referred to above. As the amended particulars of claim stand, it breaches all the requirement of pleadings as set out in rule 18. It is impossible to fathom from a legal point of view.

[22] The amended particulars of claim are 112 pages long and contains 16 claims.

[23] As an example, paragraph 2 does not set out a claim possible to plead to. It does not contain a discernible cause of action with information to enable one to plead.

[24] Claim 7 which purports to deal with compensation for plaintiff's pensions would have prescribed by 2015.

[25] Claim 8 is for "loss of potential accrued benefits from pension investment derived from pension contributions..." The plaintiff states in his own words that "...The quantum of Claim 8 is unknown;"

[26] Finally, Mr Kohn submits that this is the third amendment filed as there were others before Tuchten J and Fourie J. (I could not trace documentation related to those on CaseLines).

[27] The defendants therefore move for an order setting aside the amended notice of motion as an irregular step and upholding their exception with costs on an attorney and client scale.

Plaintiff's response to the exception and the irregular step application:

[28] The plaintiff's response to the application is to seek its dismissal and for the defendant's attorneys to be mulcted in costs on a punitive scale. He then sets terms on how the litigation between the parties should proceed. He sets forth historical matters pertaining to victimization, hearings at the CCMA and Labour Court judgments.

[29] He seems unable to deal with the issues raised in the application. I cannot conceivably narrate fully the allegations set out in his affidavit, save to say the record and documents filed of record bear testament to the incoherence laid out.

Conclusion:

[30] After considering the facts attendant to this application as well as the legal provisions that regulate pleadings, exceptions and irregular steps as set out earlier in this short judgment, it is clear that there is a case for the exception to succeed.

[31] I accordingly make the following order:

The defendants' exception is upheld and the plaintiff's amended particulars of claim is set aside as an irregular step. The plaintiff to pay defendants' costs of this application.

J.S. NYATHI

Judge of the High Court
Gauteng Division
Pretoria

CASE NUMBER: 91849/2015
HEARD ON: 29 July 2022
DATE OF JUDGMENT: 22 FEBRUARY 2023

FOR THE APPLICANT: Adv. Kohn

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and uploaded on the CaseLines electronic platform.

The date for hand-down is deemed to be 22 February 2023.