

**(IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case number: A324/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED. YES

DATE: 11/4/2023

SIGNATURE:

In the matter between:

**THE HEALTH PROFESSIONAL COUNCIL OF
SOUTH AFRICA**

Applicant/Appellant

and

HONOURABLE MAGISTRATE L MAKOLOMAKWE

First Respondent

HENRY ELI HAYNES

Second Respondent

JUDGMENT

NEUKIRCHER J:

- 1] This is an appeal against the judgment and order handed down by the court a *quo* in which the appellant's (HPCSA) Special Plea of jurisdiction was dismissed with costs. The appeal before us was argued solely on that basis and the merits of the matter were not before us.

BACKGROUND

- 2] In April 2019 the 2nd respondent (Haynes) issued out summons against the HPCSA in the Regional Court of Gauteng, Pretoria in which he claimed:
- a) damages in regards to a claim of malicious prosecution as follows:
 - (i) R200 000 in regards of damage to his *fama* and *dignitas* (ie general damages);
 - (ii) R71 900 in regards of legal expenses and;
 - (iii) R300 000 for loss of income;
 - b) damages in regards to a claim based on defamation in the amount of R200 000.
- 3] The HPCSA then pleaded over on the merits. On 3 August 2021 the HPCSA filed a Rule 55A in which it sought to amend the plea (dated 19 June 2019) and introduce a Special Plea of jurisdiction. No objection was made and accordingly the amendment was effected and no argument on this issue was presented either before the court *a quo* or on appeal before us.
- 4] The Special Plea of jurisdiction, in brief, is the following:
- a) that Haynes' claim in regards of malicious prosecution is for a total amount of R571 900;
 - b) that in terms of s29(1)(g) as read with s29 (1A) of the Magistrates Court Act 32 of 1944¹ (the MCA), the monetary jurisdiction of

¹ As read with GN217 in GG37477 of 27 March 2014 (MCA)

the Regional Court, is R400 000;

- c) that, therefore, the court lacks jurisdiction in terms of s29 of the MCA as claim 1 exceeds the jurisdiction of the court;
- d) furthermore, the claim in respect of malicious prosecution and the claim in respect of defamation combined also exceed the monetary jurisdiction of s29 of the MCA.

5] In dismissing the Special Plea of jurisdiction, the court a quo found that, given the provisions of s43 of the MCA "*... makes it possible to bring before Magistrates' Courts claims aggregating on unlimited amount provided that no claim or claims together exceeding the amount of jurisdiction depend upon the same cause of action,*" and that based on this, a claim for malicious prosecution, loss of income and legal costs are each different causes of action and plaintiff is required to prove "different legal requirements" in respect of each claim in order to succeed. She therefore concluded that the total amount claimed by Haynes is immaterial and that as there is no single globular amount claimed that exceeds the amount of R400 000, the Special Plea of jurisdiction falls to be dismissed.

THE APPEAL

- 6] It is settled law that a court of appeal will be slow to interfere with the findings of a Court a *quo* unless there was a material misdirection. This is precisely the case here.
- 7] Haynes' argument has followed the lines of the judgment of the Court a *quo* - unsurprisingly so as this was the argument that led to his initial success - with one exception as he states that there is only "*one cay_se of action with three independent damages claims*".

8] But the argument is fatally flawed.

THE LEGAL POSITION

9] On 27 March 2014 the Minister of Justice and Correctional Services set the monetary limit in regards of the Regional Courts in the amount of R400 000. Thus, causes of action instituted in those court are limited. In this regard, s29(1)(g) of the MCA reads as follows:

"Subject to the provisions of this Act and the National Credit Act, 2005 (Act 34 of 2005), a court in respect of causes of action, shall have jurisdiction in-

(g) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed the amount determined by the Minister from time to time by notice in the Gazette."

10] Section 29(1)(g) of the MCA states:

(1) Subject to the provisions of this Act and the National Credit Act (Act 34 of 2005), a court in respect of causes of action, shall have jurisdiction in -

(g) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed the amount determined by the Minister from time to time by notice in the Gazette."

11] Section 43(1) of the MCA provides

"(1) If two or more claims, each based upon a different cause of action, are combined in one summons, the court shall have the

same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action ..."

- 12] The question thus is whether in the claim for malicious prosecution, the claims for general damages, legal expenses and special damages constitute three separate causes of action for purposes of s29(1)(g) and s43 of the MCA. If they do, then the question is whether that claim together with the claim for damages in regards of defamation, exceeds the jurisdiction of the Regional Court. If they do, then the Special Plea of jurisdiction should have been upheld and the appeal must succeed.

- 13] In **Lampert-Zaklewicz v Marine and Trade Insurance Company Limited**² the court stated:

"... it seems clear from cases like Schnellen v Rondalia Assurance Corporation of SA Ltd., 1969 (1) SA 517 (W), and Custom Credit Corporation (Pty) Ltd v Shembe, 1972 (3) SA 462 (AD) at page 472, that a plaintiff who claims compensation for bodily injury under the Act has but one cause of action. The various items that make up his claim for example in regards of loss of earnings, do not constitute separate claims or separate causes of action..."

(my emphasis)

- 14] In **Magnum Simplex International (Pty) Ltd v MEC Provincial Treasury , Provincial Government of Limpopo**³ the defendant (appellant in the appeal) sought to amend its counterclaim by increasing the amount claimed. The court *a quo* refused the amendment. In upholding the appeal, the SCA, finding that the defendant's claim was one of damages, stated:

² 1975 (4) SA 597 (C) at 601 C-E

³ (556/2017) [2018] ZASCA 78 (31 May 2018)

"[10] *In my view the proposed amendment does not introduce separate causes of action, or any new cause of action. It merely seeks to add further items of damages arising from the same cause of action. Differently put, the appellant is only revising the quantification of the original claim. The original claim remained the same and unaffected by a plea of prescription. Therefore, the argument that the appellant should have instituted a separate claim because the licence fees are paid annually in advance and when each anniversary of the claim falls due is misplaced. It is unconscionable to expect the appellant to institute separate claims for each year of the default under different case numbers. The contemplated amendment adds nothing to the case originally pleaded in the counterclaim. The original averments stood unaltered. Strictly speaking, the amendment sought is merely arithmetic. The proposed amendment is clearly distinct from an amendment introducing a new cause of action.*"

15] It is clear that the line of reasoning follows the "once and for all" principle emphasized in **Custom Credit Corporation (Pty) Ltd v Shembe**⁴

"The Jaw requires a party with a single cause of action to claim in one and the same action whatever remedies the Jaw accords upon such cause."

16] And in **MSM on behalf of KBM v Member of the Executive Council for Health, Gauteng Provincial Government**⁵ it was stated:

⁴ 1972 (3) SA 462 (A) at 472

⁵ 2020 (2) SA 567 (GJ) at par [202]

"There is some obvious overlap between the common-law rule that delictual compensation should sound in money, and the rule that a plaintiff in a delictual case must claim in one action all of their damages, both accumulated and prospective. The ancillary rule is that the monetary compensation must be paid in one lump sum."

THE CLAIMS

17] Both claims are for damages. The first is based on malicious prosecution as the cause of action; the second is based on defamation as a cause of action. Each cause of action has its own set of unique elements which must be proven for a plaintiff to succeed in his/her claim. In **Blue Chip 2 (Pty) Ltd t/a Blue Chip 49 v Ryneveldt and Others** ⁶ the SCA stated:

"[12] The meaning of the expression 'cause of action', when the identically worded predecessor to s28(1)(d) was in operating, was authoritatively laid down in McKenzie v Famers' Co-Operative Meat Industries Limited⁷ where the definition of 'cause of action', adopted from Cook v Gill (L.R., 8 C.P. 107), was held to be '...every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.' "

18] The argument proffered by Haynes is that **Evins v Shield Insurance Co Ltd**⁸ is support for the argument that a delictual claim of this nature has different *facta probantia* required to prove each claim and thus different causes of action that arise from one incident. But in my

⁶ (499/15) (2016] ZASCA 98 (3 June 2016); 2016 (6) SA 102 (SCA)

⁷ 1922 AD 16 at 23

⁸ 1980 (2) SA 814 (A)

view that is not a correct interpretation of the majority judgment in **Evins** which was summarized in **Blue Chip** (supra):

"[13] One of the issues in Evins v Shield Insurance Co Ltd was whether claims for bodily injuries and loss of support constituted two separate rights of action under the common law and the Compulsory Motor Vehicle Insurance Act 56 of 1972 respectively when flowing from the same set of facts. In dealing with that question, the court found it necessary to refer to the term 'cause of action'. At 838 D-F, Corbett JA, writing for the majority of the court adopted the approach as set out in McKenzie, quoting the definition of 'cause of action' referred to in para 12 above. In the same matter, Trollip JA, writing for the minority, stated at 825 E-H:

*'I still remain somewhat uncertain whether appellant's claims for her bodily injuries and her loss of support constitute two separate rights of action under the common law and the Compulsory Motor Vehicle Insurance Act 56 of 1972 ("the CMVI Act"). I prefer to use the term "right of action" to "cause of action" because, I think, the former is strictly and technically more legally correct in the present context (cf Mazibuko v. Singer **1979 (3) SA 258** (W) at 265 O-G). "Cause of action" is ordinarily used to describe the factual basis, the set of material facts, that begets the plaintiff's legal right of action and, complementarily, the dependant's "debt", the word used in the Prescription Act⁹. The term, "cause of action"; is commonly used in relation to pleadings or in statutes relating to jurisdiction or requiring prior written notification of a claim before action thereon is commenced'...*

[14] The definition of 'cause of action' as set out in McKenzie has stood the test of time and almost one hundred years on, has not been altered in any way. There is no compelling argument why it should

⁹ Emphasis added

now be changed."

- 19) Haynes' first cause of action is based on malicious prosecution and his second on defamation. He is required to prove every fact which is necessary for him to succeed on each. He has claimed various heads of damages within his cause of action for malicious prosecution, but neither of these constitutes a separate cause of action for purposes of s43 or s29 of the MCA. In **Inter Maritime Management SA v Companhia Portuguesa De Transportes Maritimos EP**¹⁰ the SCA has stated that a "claim" ¹¹ is a continuous process commencing when the claim is instituted and continuing until judgment is finally given during which time the elements making up the claim could change. However, a "claim" refers to an amount and not the constituent elements making up the amount.
- 20] In my view the above encapsulates the argument on this issue: Haynes first cause of action and claim is one founded on malicious prosecution. The claimed amount is R571 900 comprising the "constituent elements" of the claim being general damages, special damages and legal expenses.
- 21] As a result, the court a quo misdirected itself in failing to uphold the Special Plea of jurisdiction, and the appeal must succeed on this ground.

ORDER

- 21] Thus the order that is made is the following:

1. The appeal is upheld with costs.

¹⁰ 1990 (4) SA 850 (A)

¹¹ In terms of section 5(4) of the Admiralty Jurisdiction Regulation Act 105 of 1983

2. The order of the court a quo is set aside and replaced with the following:

"1. The Special Plea in respect of jurisdiction is upheld with costs."

B NEUKIRCHER
JUDGE OF THE HIGH COURT GAUTENG DIVISION,
PRETORIA

I agree
NV KHUMALO JUDGE OF THE HIGH COURT GAUTENG DIVISION,
PRETORIA

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 11 April 2023

Appearances:

On behalf of Appellant/Applicant: Advocate V Mabuza

Instructed by: Diale Mogashoa Attorneys

On behalf of 2nd Respondent: Advocate J Holland-Muter SC

Instructed by: Taute Bouwer & Cilliers Inc

Heard on 14 February 2023