

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.:81791/2018
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED,
19/06/2023

In the matter between:

Darren Sampson	Plaintiff/Respondent
and	
Minister of Justice and Correctional Services	First Defendant/Excipient
The Department of Justice and Constitutional Development	Second Defendant/Excipient
Chief Litigation Officer N.O.: Rodney Isaacs	Third Defendant/Excipient
Acting Deputy State Attorney N.O.: Ian Gough	Fourth Defendant/Excipient
Office Manager N.O.: Veronica Kruger	Fifth Defendant/Excipient

JUDGMENT

van der Westhuizen, J

- [1] This matter is reminiscent of the Shakespearian play, a Comedy of Errors. Both parties could interchangeably qualify for the lead role, or that of the protagonist, or that of the antagonist. It is further a situation of the pot calling the kettle black.
- [2] The farcical circumstances arose when the plaintiff issued summons against the defendants during 2018. Defendants took an exception to the set of particulars of claim on the bases that either it did not contain a cause of action or that it was vague and embarrassing. In the intervening period prior to the hearing of the exception, disciplinary proceedings were commenced against the plaintiff. The plaintiff launched an urgent application in an attempt to stall the disciplinary proceedings. At the hearing of the urgent application, the matter was

removed from the urgent roll on the condition that the hearing dates of the disciplinary hearing be rescheduled.

- [3] Despite the pending exception, the plaintiff took various steps frustrating the hearing of the exception. Those included the filing of a notice of bar, and interlocutory applications such for default judgment and setting aside of the first exception.
- [4] On 12 December 2019, Holland-Mutter, AJ., delivered a judgment on the exception upholding the exception and setting aside the particulars of claim. The plaintiff was granted 20 days from the date of the order to file amended particulars of claim.
- [5] The plaintiff, in compliance with the leave to amend the particulars of claim, filed amended particulars of claim. The defendants were of the view that the second set of particulars of claim, the amended particulars of claim, were substantially similar to the original particulars of claim and filed a further notice of exception thereto on the same bases as in the first exception.
- [6] On 27 February 2020, the plaintiff filed in response a further amended set of particulars of claim, the third set of particulars of claim. Being of the view that the third set of particulars of claim suffered the same fate as those set aside by Holland-Mutter, AJ., in December 2019, the defendants again gave notice of an intention to take exception thereto, and on 19 March 2020 the defendants filed their notice of exception to the third set of particulars of claim. The plaintiff failed to respond thereto and consequently the defendants were obliged to set the exception down for adjudication.
- [7] However, on 24 March 2020, the plaintiff filed an application for leave to appeal against the judgment and order of Holland-Mutter, AJ. This was subsequent to the plaintiff filing his amended particulars of claim on 28 February 2020. On 27 April 2020, the plaintiff filed a supplementary application for leave to appeal the 12 December 2019 judgment of Holland-Mutter, AJ. The defendants filed opposing papers

and the applications for leave to appeal were heard on 12 June 2020 and judgment refusing leave to appeal was delivered on 18 June 2020.

[8] While the exception was in the process of being prosecuted, the plaintiff filed a notice in terms of Rule 30/30A on 29 January 2021 wherein the defendants were required to have the latest exception set down for adjudication. In response to the plaintiff's notice in terms of Rule 30/30A, the defendants themselves served a notice in terms of Rule 30/30A taking the view that the plaintiff himself could set the exception down for adjudication. The plaintiff failed to remove the cause of complaint raised in the defendants' notice in terms of Rule 30/30A. Consequently, the defendants were obliged to have their Rule 30/30A set down for adjudication.

[9] On 11 August 2021, the plaintiff continuing with an unorthodox approach to the pending litigation, delivered a notice of bar against the defendants, despite being aware of the pending exception. In response thereto, the defendants filed a second notice of an irregular step having been taken by the plaintiff. The plaintiff failed to remove the cause of complaint and the defendants were obliged to set that application down, which they

failed to do. The defendants were obliged to apply for the condoning of the late set down of their Rule 30/30A notices and third exception. That application, their Rule 30/30A applications and the third exception were now before court. It is to be noted that on 26 September 2022 an order was granted in terms of which the defendants were to file their heads of argument within 10 days from the date of that order.

[10] To add insult to injury, the Covid-19 pandemic struck in 2020. In view thereof, a national lockdown was declared resulting in an interruption of the normal progress of litigation. The pending litigation between the parties were necessarily struck by that impediment. When the easing of the lock down restrictions were initiated, the office of the defendants' attorneys, the State Attorney, returned on a rotational basis as was the case with many other institutions, whether State or private sector. Furthermore, the defendants' attorney tasked to attend to the matter

was involved in a motor vehicle accident and suffered other medical mishaps. Consequently, she was away from work during 2020.

[11] In keeping with his unorthodox approach, the plaintiff commenced litigation proceedings against the first defendant in the Free State High Court. The first and second defendants were obliged to defend those proceedings. A further flurry of notices, *inter alia* relating to discovery, flowed from the plaintiff, causing unnecessary delays.

[12] In my view, the plaintiff was partly to blame for the defendants' delay in the setting down of their Rule 30/30A applications and the third exception. The defendants have adequately explained the lengthy delay in prosecuting their applications and the third exception.

[13] In addition to the requirement of a full explanation when considering an application for the condoning of late filing of process, the prospects of success of the process need to be considered. In the present instance, and against the aforementioned background, the prospects of success would be better considered when the defendants' applications and third exception are considered on their merits.

[14] In this regard, the defendants' first Rule 30/30A notice was directed at the steps taken by the plaintiff on 14 February 2021 and 11 August 2021 being irregular. Those steps related: to the plaintiff's demand, his Rule 30/30A notice, that the defendants set their exception down, alternatively that the defendants plea be struck out. That notice did not conform to the time periods provided for in Rule 6(13) of the Uniform Rules of court. No basis was pled for the truncation of the time periods prescribe in Rule 6(13); and the defendants' notice of bar of 11 August 2020. The latter was submitted to be irregular in terms of the pending exception. In my view, the defendants were correct in their approach in respect of the two instances complained of. The plaintiff suffered no prejudice. Both the defendants' Rule 30/30A notices stand to be upheld.

[15] In respect of the third exception it is to be noted that the plaintiff's claim against the defendants is premised upon a delictual claim for damages.

In respect of the fifth defendant, the allegations were that the fifth defendant's demeanour towards the plaintiff by removing the furniture from the plaintiff's office resulted in the plaintiff being publically humiliated. It was alleged that the fourth defendant was abrasive, abrupt and aggressive towards the plaintiff. The claim against the first, second and third defendants was premised upon the allegation that they, and the fourth and fifth defendants, had a statutory duty to ensure that the plaintiff was not subjected to occupational detriments, such as victimisation, bullying, humiliation, harassment, embarrassment and the like.

[16] It is trite that a claim for damages based on delict is to comply with the requirements for a delict. Those are: wrongfulness; conduct; harm or loss; fault; and causation.

[17] In the third exception the defendants submitted that the plaintiff has failed to plead those requirements, or at least to have pled the alleged circumstances from which those requirements can be deduced.

[18] It is trite that an excipient is obliged to show that every interpretation of the particulars of claim, lacks the necessary allegations to sustain a

cause of action.¹ Failing which, the particulars of claim may yet pass muster. An exception that a set of particulars of claim discloses no cause of action is to obtain a decision on a point of law that will dispose of a claim, in whole or in part, thereby eliminating the leading of unnecessary evidence at the trial.²

[19] The plaintiff's case pled against the fourth and fifth defendants clearly lacked particularity in that, no date, place, *ipsissima verbi*, or individual was identified or pled. Furthermore, there is no particularity of how the amount claimed in respect of damages was calculated. Neither was the entitlement under the pled statutory enactment detailed. The defendants were left to speculate on the foregoing. Consequently, the particulars of claim lack averments to sustain a cause of action.

¹ *Theunissen et al v Transvaal Lewendehawe Koöp Bpk* 1988(2) SA 493 (A) at 500E-F

² *Dharumpal Transport (Pty) Ltd v Dharumpal* 1956(1) SA700 (A) at 706E

[20] Likewise, the claim against the first to third defendants lacked clear particularity. The claim against those defendants allege no date, place, *ipsissima verbi*, and the person to whom the pled allegations were to be contributed to. In similar vein, the plaintiff was remiss in detailing the alleged non-compliance with the pled statutory enactment. The said defendants were left to speculate. Consequently, the particulars of claim in respect of the said defendants lack averments to sustain a cause of action.

[21] It follows from the foregoing criticisms relating to the lack of averments to sustain a cause of action, that the identified lack of particularity clearly renders the plaintiff's particulars vague and embarrassing in respect of all the defendants.

[22] Consequently, the third exception stands to succeed.

[23] It stands to be recorded that the plaintiff is an admitted attorney and had years of experience in litigation and in particular within the State Attorney's offices. He ought to have been aware of the procedures relating to litigation. His recalcitrant attitude and approach to this

litigation should not be countenanced. The plaintiff appeared in court in person and argued his case in person.

[24] The third factor to be taken into consideration when adjudicating upon an application for condonation, is the issue of prejudice. From all of the foregoing, it is clear that the defendants stand to be greater prejudiced than the plaintiff. Consequently, the defendants' application for condonation stands to succeed.

I grant the following order:

1. The defendants are granted condonation for their late set down of their Rule 30/30A notices dated 26 February 2021 and 17 August 2021 and the late set down of their third exception with costs;

2. The defendants' Rule 30/30A dated 26 February 2021 is upheld with costs;
3. The defendants' Rule 30/30A notice dated 17 August 2021 is upheld with costs;
4. The defendants' third exception dated 19 March 2020 is upheld with costs;
5. The plaintiff's third set of particulars of claim dated 27 February 2020 is set aside;
6. The plaintiff is granted leave to file amended particulars of claim, if so advised, within 20 days of the granting of this order.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

On behalf of Applicant:	In Person
On behalf of Respondent: Instructed by:	Adv P Losela State Attorney, Pretoria
Date of Hearing:	26 April 2023
Judgment Handed Down:	19 June 2023