



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

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

19 April 2021

DATE

SIGNATURE

CASE NO: 56266/19

Hearing before Rabie J by way of Zoom conference.

In the matter between:

MINISTER OF DEFENCE AND MILITARY VETERANS

Plaintiff

and

N. NDHLOVU

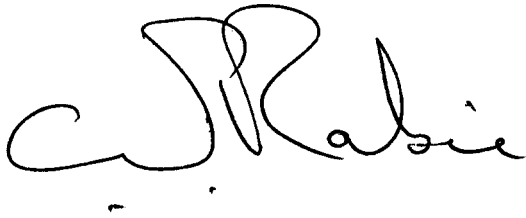
Defendant

JUDGMENT

1. This is an exception to the plaintiff's particulars of claim in an action instituted against the defendant to reclaim monies which had been paid to the defendant as remuneration but to which the defendant was, according to the plaintiff, not entitled.
2. The defendant, as excipient, submitted that the plaintiff failed to make the necessary averments to sustain a cause of action and also that the particulars of claim were vague and embarrassing.
3. On behalf of the plaintiff it was submitted during argument that although the particulars of claim were rather clumsily pleaded, it is nevertheless clear that the plaintiff seeks a repayment of an amount overpaid to the defendant. It was further submitted that difficulties with establishing the case of the plaintiff can be overcome by the process of discovery.
4. The submissions on behalf of the plaintiff are without merit. Firstly, discovery cannot cure defects in a pleading. Secondly, a defendant is entitled to know exactly on which cause of action a plaintiff is relying. The plaintiff *in casu* probably intended to plead a cause of action based on the *condictio indebiti*, and this was confirmed during the hearing before this court. However, the necessary averments to substantiate such a cause of action had not been pleaded.
5. Furthermore, I find the particulars of claim vague and embarrassing. In the particulars of claim the bulk of the paragraphs seek to set out, in chronological

order, the different ranks held by the defendant during his employment with the plaintiff, his promotions and certain designations as well as the remuneration attached to some thereof. However, I find the allegations to be disjointed and not following one upon the other with the result that I find it impossible to understand the plaintiff's case and the relevance of the separate allegations. There is no clarity as to the manner by which the plaintiff arrives at the amount claimed from the defendant. As such the defendant would be embarrassed to plead to the particulars of claim.

6. Consequently the exception must succeed on both grounds submitted by the defendant and the plaintiff should be given an opportunity to amend its particulars of claim.
7. As far as costs are concerned, there is no reason why cost should not follow the event.
8. In the result, the following order is made:
 1. The exception against the plaintiff's particulars of claim is upheld.
 2. The plaintiff is granted leave to amend its particulars of claim within 14 days of date of delivery of this order to the plaintiff or its attorneys of record.
 3. The plaintiff is ordered to pay the defendant's costs of the exception.

A handwritten signature in black ink, appearing to read 'C.P. Rabie'. The signature is fluid and cursive, with the first part being a stylized 'C' and 'P' followed by the name 'Rabie'.

C.P. RABIE

JUDGE OF THE HIGH COURT

19 April 2021

Plaintiff's Attorneys: State Attorney Molwanta/5789/2018/Z59

morenammorele@justice.gov.za

Defendant's Attorneys: Mr Zola Majavu zola@majavuattorneys.co.za