

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION :MTHATHA**

Case No.: 5479/2018

Date heard : 17 October 2019

Date delivered : 22 October 2019

In the matter between:

THEMBAKAZI NTANGAZANA

Plaintiff

and

**MEMBER OF THE EXECUTIVE COUNCIL
FOR THE DEPARTMENT OF EDUCATION,
EASTERN CAPE PROVINCE**

Defendant

JUDGMENT

BENEKE, A.J.:

[1] This matter involves an exception which the Defendant took against the Plaintiff's particulars of claim.

[2] The Defendant's notice of exception alleges only that the Plaintiff has failed to plead whether or not the claim for damages arises either out of a *delict* or a *contract* or out of *both*. The Defendant further alleges that, irrespective of whether or not the claim is based in *contract* or *delict* or *both*, there are insufficient allegations to sustain a cause of action or to quantify the damages

claimed. The Defendant does not allege that it is impossible to determine *any other cause of action* or the sufficiency of the allegations in respect thereof.

[3] The onus is on the Defendant to prove that the pleading under attack is excipiable on every interpretation that can reasonably be attached to it.¹ However, in this regard, the Defendant is obliged to confine the complaint to the stated grounds of the exception.² Accordingly, if the claim does not fall within contract or delict, the exception must fail.

[4] During argument, the attorney for the Plaintiff submitted that the claim was based neither in contract nor in delict, but rather in labour law. This is supported by the contentions in the Plaintiff's heads of argument and supplementary heads of argument. He submitted further that sufficient allegations were contained in the particulars of claim to make out a case based in labour law. He argued that the appropriate action for the Defendant, if it was of the view that the High Court lacked the requisite jurisdiction to determine a labour matter, was to raise the point in the plea.

[5] From the particulars of claim the following is apparent:

- a. The Defendant issued an advertisement to recruit an administrative clerk;
- b. The applicants for the positions should meet certain requirements;
- c. The Plaintiff applied for the position and was shortlisted for an interview;
- d. The Plaintiff met more requirements than the person appointed;
- e. After a dispute was raised the Plaintiff was eventually appointed;

¹ *Stewart v Botha* 2008 (6) SA 310 (SCA) at 313E-F.

² *Feldman NO v EMI Music SA (Pty) Ltd; Feldman NO v EMI Music Publishing SA (Pty) Ltd* 2010 (1) SA 1 (SCA) at 5A.

- f. The Plaintiff claims loss of income as a result of the delay in appointing her, which delay was occasioned by the conduct of the Defendant's employees in not properly applying the requirements.

[6] The allegations are sufficient to suggest, albeit no more than that, that the claim does not found its basis in either contract or delict, but rather in some form of labour law claim. I am, however, not called upon to decide whether or not these allegations are sufficient to meet any claim purportedly based in labour law. I have, therefore, not dealt with the sufficiency or otherwise of those allegations herein.

[7] Given that the Defendant has not sought to except on grounds other than insufficiency in relation to *contract* or *delict*, I am constrained to find in favour of the Plaintiff.

[8] In light of what I set out above, the following order shall issue:

1. The exception is dismissed;
2. The Defendant shall pay the costs of the exception.

M BENEKE
JUDGE OF THE HIGH COURT (ACTING)

Appearances:	For the Plaintiff	: Mr M Pangwa
	On the Instructions of	: Caps Pangwa and Associates
	For the Defendant	: Mr F Pretorius
	On the instructions of	: Changfoot van Breda Inc.
		: c/o Potelwa & Company