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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 6309/2017

In the matter between:

STANDARD BANK OF SOUTH AFRICA	FIRST APPLICANT
THE SHERIFF INANDA DISTRICT TWO	SECOND APPLICANT

and

THOMPSON CAINE	FIRST RESPONDENT
PRINCESS CAINE	SECOND RESPONDENT
BYRON KEVIN CAINE	THIRD RESPONDENT
URSULA ANDREA CAINE	FOURTH RESPONDENT

In re

THOMPSON CAINE	FIRST PLAINTIFF
PRINCESS CAINE	SECOND PLAINTIFF
BYRON KEVIN CAINE	THIRD PLAINTIFF
URSULA ANDREA CAINE	FOURTH PLAINTIFF

and

THE STANDARD BANK OF SOUTH AFRICA	FIRST DEFENDANT
THE SHERIFF INANDA DISTRICT TWO	SECOND DEFENDANT

SISHI J

[1] The first applicant, Standard Bank of South Africa, made an application in terms of Rule 30(1) of the rules of court wherein it sought an order in the following terms:

- (1) Setting aside the particulars of claim filed under case number 6309/2017;
- (2) Affording the respondents a period of 15 days following service of the order on the respondents to deliver their amended particulars of claim;
- (3) Authorising the applicants' attorneys of record to attend to the delivery of the order on the respondents;
- (4) That first to fourth respondents be ordered to pay the costs of the rule 30 application, jointly and severally, the one paying the other to be absolved.

[2] In respect of the second applicant, the Sheriff Inanda District Two, two matters served before this court namely:

- (a) Exception to the plaintiff's particulars of claim.
- (b) The rule 30 application, in respect of the plaintiffs' "purported notice" to amend.

[3] Before I proceed with this matter, I may as well mention that on the day of the hearing of these opposed applications there were no appearances by or on behalf of the respondents. It is clear from the documents that notices of set down were properly served on the addresses chosen by the respondents. Counsel for the first applicant in the exception mentioned that his instructing attorney received a copy of a sick note on behalf of the first respondent. The document did not properly indicate the first respondent's ailment. The first respondent did not notify the court through the registrar or in any other way that he would not be able to attend the proceedings. The names of the second, third and fourth respondents were called and there was no appearance by or on their behalf.

[4] It became clear that the respondents were all aware of the date of the opposed application. The notices of set down of the matters on the opposed roll were served on the address chosen by the respondents. It is also clear from the

reading of the papers that the respondents drafted their own papers and that they have not been legally represented right through these proceedings.

[5] Counsel, for the first and second applicants, applied that the matter proceeded despite the absence of the respondents. The application was accordingly granted and the court proceeded with the matter in their absence.

[6] The respondents contend that the first applicant instituted action against Ms Van Zyl under case number 2824/2014. The respondents complain that the summons, and other documents were not served by the second applicant, the sheriff, and that the property at issue (owned by and in the name of Van Zyl) was listed to be sold. As a result the respondents' claimed damages exceeding R62 millions.

[7] On the 2 June 2017 the first to fourth respondents caused summons to be issued again the first and second applicants. Subsequent to receipt of the summons on 7 July 2017 and 28 July 2017 both first and second applicants served upon the respondents notices in terms of rule 23 calling upon the respondents to remove various causes of complaints.

[8] On 4 August 2017 the first to fourth respondents served their responses to the first and second applicants' notices to remove the causes of complaint.

[9] On 30 August 2017 and in consequence of the first to fourth respondents' failure to remove the causes of complaint, the first applicant served on the respondents its notice of exception. The second respondent, the sheriff, also served his notice of exception, objecting to the notice of amendment, dated 24 May 2017 and stating that it does not comply with Uniform Rule 28 and that it is irregular.

[10] On 10 June 2014 Madam Justice Moodley granted a judgment sounding in money against Melanie Nannie Van Zyl, the first and second respondents' daughter.

[11] On 11 August 2014 Mr Justice Koen granted an order against Melanie Nannie Van Zyl, in favour of the first applicant declaring the mortgaged property described as Erf [...] Newlands (Extension 16) specially executable.

[12] Notwithstanding that the respondents claim is founded on the orders that were granted by Judge Moodley and Judge Koen, Melanie Nannie Van Zyl is not cited as a co-plaintiff in the action instituted by the respondents against the applicants.

[13] On 27 November 2017 the first to fourth respondents served a notice of amendment citing Melanie Nannie Van Zyl as a first plaintiff and Ursula Andrea Caine as a fourth plaintiff in the main action and seeking to effect certain amendments to its particulars of claim.

[14] Insofar as the first applicant's rule 30 application is concerned, it contended that on 28 July 2017, Jason Michael Smith Incorporated Attorneys, the applicant's erstwhile attorneys of record, served a joint notice in terms of rules 23(1) and 30(1) on the respondents, and allowed the respondents 15 days within which to remedy the causes of complaints set out in the notice. The notice is annexed to the application in terms of the rule 30 as RT1 and contains 24 causes of complaints.

[15] The 15 day period within which the respondents were afforded to cure the defects in the particulars of claim has lapsed yet the respondents have still not rectified the causes of complaint set forth in the notice to date. It has been contended on behalf of the applicant in the rule 30 application that it is prejudiced in the running of the matter due to the respondents' failure to address the causes of complaint.

[16] Having considered all the above, in my view, there is no reason why the order sought in the notice of application cannot be granted.

[17] On 11 December 2017 the second applicant caused a notice in terms of Uniform Rule 30(2) of the rules of court to be served upon the respondents and filed it with registrar of this court on the same day. The notice is annexure "A" to the

founding affidavit in support of the second applicant's application in terms of rule 30(2). The second applicant in the main application identified the causes of complaint as irregular steps by the respondents as follows:

"1. On 27 November 2017, the respondents caused a notice of amendment of the Respondents' particulars of claim to be served upon the second applicant (which notice is dated 24 November 2017), in which the respondents inform the second applicant that "...the respondents hereby amend the particulars of claim to read as follows... "

2. The said notice of intention to amend the respondents' particulars of claim does not comply with Rule 28(2) which regulates proposed amendments to pleadings.

3. In addition to the foregoing, the existing respondents purport to join a new plaintiff as first plaintiff by means of the aforementioned irregular notice of intention to amend. No application for joinder of the first plaintiff, as provided by the rules has been made."

[18] The notice indicated that the respondents herein took irregular steps in delivering a notice of intention to amend their particulars of claim which was not compliant with the rules of this court. This notice of intention to amend sought to introduce a new party without complying with the rules and procedures of this court. The respondents were called upon to remove the causes of complaint, and the irregular steps within 10 days of delivery of notice. The 10 day period in the notice expired on 27 December 2017. The respondents failed to remove the causes of complaint or irregular steps either timeously or at all.

[19] It was submitted, correctly in my view, on behalf of the second applicant that the claim against the second applicant is excipiable for the following reasons:

"1. No cause of action: There are no allegations to support any legal duty or obligation owed by the "plaintiffs" who were not the owners of the property and were not party to the impugned action and processes served thereunder. The "plaintiffs" are complete legal strangers to that action and those processes. The respondents advance no averments as to why they are suited to advance the claims.

2. No cause of action - fourth plaintiff: The fourth plaintiff is a minor and there

are insufficient allegations to confer *locus standi* on the fourth plaintiff.

3. No cause of action/vague and embarrassing: the respondents rely on the "family unit" and non-service on "the family". The legal nature of the family unit and the family is unclear and not pleaded.

4. No cause of action/vague and embarrassing: In paragraph 32(iii) of particulars of claim the respondents refer to paragraph 33(ii) but there is no such paragraph.

5. Vague and embarrassing: the particulars of claim are replete with general references to corruption, court capture and so on. None of these are linked to any cause of action against the second applicant. Their inclusion renders the claim vague and the second applicant is embarrassed in pleading."

[20] Furthermore the allegations in the following paragraphs of the particulars of claim are irrelevant: 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 33, 34, 36, 38 and 39. The second respondent is and will be prejudiced if these allegations remain. They stand to be struck out. It is further contended that the "further particulars" do not cure the complaints.

[21] In an undated response, the respondents opposed the applicants' exceptions and the motion to strike out certain averments in the particulars of claim. Their response mainly contains denials of the averment made on behalf of the applicants and refers to the corruption and capture of the courts and accuses the courts of making rulings based on fraudulent documents.

[22] I have considered the document filed on behalf of the respondents in response to the applicants' exceptions and the motion to strike out. I am satisfied that the issues raised as causes of complaint by the applicants have not been addressed by the respondents in their response.

[23] In my view there is no reason why the second respondent's exception should not be upheld.

[24] On 27 November 2017, the respondents delivered a "notice of amendment" dated 24 November 2017. In this notice the respondents sought to introduce Van

Zyl as the first respondent. This notice does not comply with Uniform Rule 28 of the rules of court and stands to be set aside as irregular.

[25] In my view there is no reason why this notice should not be set aside.

Costs

[26] On the issue of costs both counsel argued that their applications should be upheld with costs. In my view there is no reason why the costs should not follow the result.

[27] In the result I make the following order:

1. The first and second applicants'/defendants' exceptions to the respondents/plaintiff's particulars of claim are upheld.
2. The respondents/plaintiffs are afforded a period of 15 days to deliverer their amended particulars of claim.
3. If the respondents/plaintiffs fail to amend their particulars of claim in accordance with above paragraph, the applicants/defendants are given leave to set the matter down without notice to the respondents/plaintiffs for an order striking out the respondents'/plaintiffs' particulars of claim and granting the judgment in favour of the applicants/defendants with costs.
4. The following paragraphs of the respondents'/plaintiffs' particulars of claim are struck out: 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 30, 33, 34, 36, 38 and 39.
5. The respondents'/plaintiffs' "notice of amendment" dated 24 November 2017 is set aside as an irregular step and shall be of no force or effect.
6. The respondents/plaintiffs jointly and severally, the one paying the other to be absolved, are ordered to pay the costs occasioned by the exceptions, the rule 30 application and the opposed motion.



SISHI J

Appearances

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Date Judgment Reserved

27 March 2018

Date of Judgment

25 April 2018