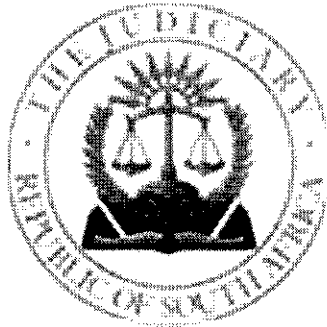


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG, PRETORIA

Case No: 69613/2014

28 / 3 / 2017

DELETE WHICHEVER IS NOT APPLICABLE

1. REPORTABLE:

2. OF INTEREST TO OTHERS JUDGES:

3. REVISED

28 March 2017

DATE

SIGNATURE

In the matter between

ARROW REST SAFARI'S

PLAINTIFF

AND

MZIKI SAFARI LODGE

DEFENDANT

Heard: 23 August 2016

Delivered: 28 March 2017

Heard: 23 August 2016

Delivered: 28 March 2017

JUDGMENT

Molahlehi J

Introduction

[1] The plaintiff in this matter has raised the exception to the plaintiff's claim on the grounds that its particulars of claim lack averments necessary to sustain a valid cause of action, alternatively that they are vague and embarrassing.

[2] The plaintiff's claim is based on the following averments:

"4.1. On or about 19 September 2011, the Defendant through his employees, caused a fire to spread to the Plaintiff and /or the Ramalebane Communal Property Association's property.

4.2. Due to the negligence of the Defendant, the fire caused damage to the Plaintiff's and/ or the Ramalebane Community Property Association's property in the amount of R691 804, 20."

[3] The claim arose in the context where the plaintiff, a private company has leased the property in question from the Ramalebane Communal Property Association (the CPA), the owner of the property. The claim is also, as it would appear, based on the

provisions of the lease agreement which specifically provides at clause 32 thereof that

"The Lessee shall be liable for any damages on the Property or elsewhere, cause by fire, which occurs on the Property and shall be liable to compensate the Lessor for such damages and indemnifies the Lessor against claims for damages resulting from such fire. The Lessee shall make fire-breaks and fire-belts on the boundaries between the Property, were adjoining properties as well as within the boundaries of the Property, where necessary, to protect the Property against the internal fire."

[4] The essence of the main complaint of the defendant is that it is unable, from the plaintiff's particulars of claim to discern the case it has to meet. The other complaint of the defendant is that the particulars of claim are vague and embarrassing. It is trite that in order to succeed in an exception the excipient needs to persuade the court that upon every interpretation the particulars of claim bears no cause of action or does not disclose a cause of action.

[5] Rule 18 (4) of the Uniform Rules of the Court (the Rules) requires that every pleading should contain a clear and concise statement of material facts upon which the pleader relies on for his or her claim with sufficient particularity to enable the defendant to answer to thereto. This means that the facts upon which the plaintiff relies on for his or her claim must be concise, logical and be in an intelligible form so

as to enable the defendant to be able to reply thereto. (See Put in another way the particulars of claim must be such that the other party is not taken by surprise.

[6] The critical averment as would appear to critical in the context of the alleged negligence would be for the plaintiff to indicate in what capacity the employees of the defendant caused the fire to spread. The question in this respect is, did they cause the fire to spread in the cause and scope of their duties? This is lacking in the plaintiff's particulars of claim. It is also unclear whether the employees were themselves the cause of the fire or caused it spread. I agree with the defendant that the particularity in regard to this is lacking of the necessary averment for the purpose of letting the defendant to know what case he is to meet.

[7] Even if it was to be assumed that the employees were acting in the cause and scope of their duties as employees of the defendant, it is not clear in what way are they alleged to have acted negligently in causing the spread of the fire.

[8] In the particulars of claim, the plaintiff describes itself as the "First Applicant."

Although in the heads of argument it contends that it is the only plaintiff in this matter it is not clear in the pleadings as to who the owner of the property is. Paragraph 32 of the lease agreement between the plaintiff and the CPA does not assist in clarifying the issue of the ownership in relation to how the pleadings have been formulated.

[9] In light of the above, the contention that the claim of the plaintiff is vague and embarrassing is sustained.

Order

[10] In the premises the following order is made:

1. The exception is upheld.
2. The plaintiff's particulars of claim are struck out.
3. The plaintiff is granted leave to amend its particulars of claim and should do so within 15 days of the date of this order.
4. The plaintiff is to pay the cost of the suit.



E Molahlehi

Judge of the High Court

Johannesburg.

APPEARANCE:

PLAINTIFF: Langehoven, Pistorius & Partners

RESPONDENT: Norton Rose Fulbright South Africa