

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 399/2012

In the matter between:-

PIONEER HI-BRED RSA (PTY) LTD

Plaintiff

and

JOHANNES PETRUS CORNELIUS DU TOIT

Defendant

HEARD ON: 22 MARCH 2012

JUDGMENT BY: EBRAHIM, J

DELIVERED ON: 26 APRIL 2012

[1] This is an application for summary judgment based on a simple summons for payment of R415 200,00 in respect of goods (maize seed) sold and delivered during November 2001 by plaintiff to the defendant as per its delivery note and agreement, annexure "D" to the summons.

[2] The defendant has opposed the application on the ground that procedurally the simple summons is defective. Firstly, documents which have been annexed to the simple summons, do not support the claim and secondly, the affidavit in support of the application for summary judgment

verifies the amount claimed as being an amount in arrears and not a principal claim based on a sale agreement.

[3] The defendant has argued that where documents are annexed to a simple summons, it must be clear from the summons itself what the purpose of these documents are by giving a description of each in general terms. To merely annex the document to the simple summons as the plaintiff has done in this case, is to render the summons vague and embarrassing. This the defendant contends is a *bona fide* defence to the application for summary judgment, which should on that account alone be refused.

[4] A simple summons has to be couched as near as may be in accordance with form 9 in the First Schedule to the Uniform Rules of the High Courts. All that the form requires is that the summons be couched in concise terms setting out the cause of action. A general indication of the claim amounting merely to a label is all that is required. See **ICEBREAKERS NO 83 (PTY) LTD v MEDICROSS HEALTH CARE GROUP (PTY) LTD** 2011 (5) SA 130 (KZD). A simple summons may contain a claim which was utterly vague and even defective, but may still be pronounced upon. (**TRANS-AFRICAN**

INSURANCE CO LTD v MALULEKA 1956 (2) SA 273 (A))

In **MALULEKA'S** case Schreiner JA held that technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits.

- [5] In my view the plaintiff's summons adequately sets out the basis of the cause of action and the case which the defendant is called upon to meet. The fact that documents, "analogous" to the transaction upon which the claim is based, have been annexed to the simple summons, does not detract from the validity of the summons and its compliance with form 9 of the First Schedule to the Rules. The law reports are replete with decisions in which judgment has been granted on a simple summons, for a debt or liquidated demand where the summons has been couched in less concise terms. Provided the "label" is clear, the summons stands. In the present case the label is abundantly clear – an amount is claimed in respect of a sale agreement entered into for the sale of mealies between the plaintiff and the defendant during November 2010. I can hardly follow what

can be clearer than this. The fact that the plaintiff refers to the amount as “arrears” in his affidavit in support of this application, is to me a matter of semantics for the money is owing, whether it is a principal claim or a balance outstanding.

- [6] On the merits the defendant does not argue that the amount claimed is not owed or that the goods were not delivered. This is common cause. What he says is he did not purchase the goods in terms of the actual order placed with the plaintiff. As a basis for his defence, he refers to an agreement which he entered into with a co-operative entity called Farmsecure, in terms of which he alleges he was an independent contractor for Farmsecure. He would conduct farming activities on his farm for and on behalf of Farmsecure and be remunerated in return. In terms of this agreement he would procure seed and any other farming commodity needed for the purposes of planting maize and sunflower. Farmsecure would be liable for the costs associated with any such purchase. His affidavit opposing summary judgment makes it clear that in his personal capacity he at no time at all concluded any kind of sale agreement with the plaintiff in the 2009 and 2010 harvest

season, although he admits that Farmsecure did purchase seed from the plaintiff during this time and that the seed was delivered to his farm.

- [7] The plaintiff's case is that it has delivered seed to the defendant in terms of an agreement with defendant concluded in 2010. It is not and was not a party to defendant's agreement with Farmsecure, who is a third party. The plaintiff relies on clause 8.3 of the contract between the defendant and Farmsecure which provides as follows:

“Die kontrakteur sal op sy eie koste verantwoordelik wees vir die verskaffing en voorsiening van alle arbeid, trekkers, implemente, masjinerie en toerusting, brandstof, kunsmis en ander grondstowwe, saad en plaagbeheermiddels om die gewas te plant, te onderhou, te oes en te lewer en ook vir die berging van die grondstowwe, die onderhoud en beskerming van die toerusting wat gebruik word in die boerdery aktiwiteite, vir welke koste die kontrakteur die ooreengekome vergoeding ontvang.”

- [8] This effectively sounds the death knell to the defendant's case for it is directly in conflict with his version. He has disclosed no *bona fide* defence to the plaintiff's claim and

summary judgment is accordingly entered for the plaintiff for the sum of R415 200,00 together with interest thereon calculated at the rate of 15,5% per annum *a tempore morae* from 26 October 2011 (being the date of demand) to date of payment and costs.

S. EBRAHIM, J

On behalf of plaintiff: Adv. S.J. Reinders
Instructed by:
McIntyre & Van der Post
BLOEMFONTEIN

On behalf of defendant: Adv. S. Grobler
Instructed by:
Wessels & Smith
BLOEMFONTEIN

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