

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 4236/2010

In the matter of:

SIVUYILE BUKULA

Plaintiff

and

CLIENTELE LEGAL

Defendant

HEARD ON: 24 FEBRUARY 2011

JUDGMENT BY: SINGH, AJ

DELIVERED ON: 3 MARCH 2011

INTRODUCTION:

[1] This judgment deals with a number of applications. To avoid confusion the parties are referred to as plaintiff and defendant. There is an application under Rule 30 of the Uniform Rules of the Court to set aside the plaintiff's particulars of claim as an irregular proceeding. The following applications by the plaintiff are also before me:

1. Application to the motion court for settlement judgment dated 25 November 2010.

2. Application for settlement judgment dated 2 December 2010 in terms of Uniform Rule 31 of the court.

The basis of the plaintiff's application for settlement judgment is set out in three paragraphs as follows:

- "1. Based on my responses to the Defendant for the document they gave me dated 24 January 2011, they have withdrawn the action to request for removal of my Summons Amendment document.
2. I believe the case has enough evidence as it is based on clientele legal policy (Summons Amendment document) and the email responses from there personnel to prove all actions taken were against it.
3. I even issue a Notice in terms of rule 35 (as Clientele Legal claim to record all telephone calls and its Manager confirmed it on the meeting we had) for additional information to seal the case, but I believe the case has enough evidence for the above Honourable Court to be able to take a decision in my favour."

The application for settlement judgment goes on to say as follows:

“the plaintiff applies for the settlement judgment as the defendant failed to apply for trial dates; I have settled all the documents they had problems with.”

THE PLAINTIFF’S ACTION:

[2] On the 23rd day of August 2010 the plaintiff, Sivuyile Bukula, instituted an action out of this Court against the defendant, Clientele Legal. The plaintiff’s particulars of claim set out the contents of telephonic discussions between plaintiff and defendant and, further goes on to state:

“A lawyer to attend to my case in Cape Town was never appointed.”

The plaintiff then sets out that he has two policies with the defendant and categorically states further:

“From only R120 a month, you will be entitled R120 000 worth of legal assistance per year, or up to 1,2 million Rand’s worth for life.”

The particulars of claim do not set out who the plaintiff and defendant are, and are not divided into clearly marked

paragraphs. There is no amount claimed nor is there any order prayed.

- [3] It is not clear therefrom what the plaintiff's cause of action or claim against the defendant is. Rule 17(2)(a) of the Uniform Rules of this Court provides as follows:

"In every case where the claim is not for a debt or liquidated demand the summons shall be as near as may be in accordance with Form 10 of the First Schedule, to which summons shall be annexed a statement of the material facts relied upon by the plaintiff in support of his claim, which statement shall *inter alia* comply with rule 18."

Form 10 makes it clear that the particulars of claim must set out the relief claimed by the plaintiff.

Rule 18(4) of the Uniform Rules of this Court provides that:

"Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim with sufficient particularity to enable the opposite party to reply thereto."

IMPROPER PROCEDURES:

- [4] The failure of the plaintiff to set out the material facts on which he relied with sufficient particularity resulted in the defendant's serving a notice on the 20th day of September 2010 in terms of Rule 30(2) of the Uniform Rules of this Court for such non-compliance with Rules 17 and 18. Simultaneously, the defendant also served an exception notice in terms of Rule 23(1) and (3) averring that plaintiff's claim did not disclose a cause of action in terms of the rules of this court.
- [5] Up to this point in the matter the plaintiff was unrepresented. However, on the 5th day of October 2010, Majola Attorneys was instructed to act for the plaintiff. Plaintiff's attorneys then requested time to settle the matter, but nothing transpired between them.
- [6] On the 20th day of October 2010 plaintiff's attorneys served the defendant's attorneys with a notice of withdrawal of the plaintiff's action. On the 3rd day of November the plaintiff's attorneys served a notice of reinstatement of action on defendant's attorneys in which notice they also withdrew the

earlier notice of withdrawal of action. The plaintiff's attorneys then withdrew as his attorneys on the same day. The plaintiff then proceeded to represent himself, sought to amend his original action, and in so doing, served his amendments in the form of a "Summons amendments" document dated 7 November 2010 to which is attached an amended particulars of claim. There is still non-compliance with the rules of this court by the plaintiff in that the amended particulars of claim do not contain a prayer, or set out the material facts relied upon by the plaintiff in support of his claim apart from the fact that there has not been a proper amendment done in terms of Rule 28. The amended particulars of claim read as follows:

- "1. I joined Clientele Legal over the telephone on the 14 April 2010; I have two policies with Clientele legal, policy no. **LE501758049** and **LE501758054**. All the documents were sent to me.
2. My date of commencement is the **1 April 2010**, as I was told and my contract documents reflect that if I paid the first installment at the end of April it will.
3. My probation period was from April to the end of June 2010, as I was told by the sales person and my policy

documents state: **three months.**

4. On **6 July 2010** I received a Charge sheet for the disciplinary hearing from the department where I work; I submitted the charge sheet to Clientele legal on the **6-9 July 2010.**

5. I talked with Ms Boney at Clientele legal, I informed her about clause no. 6 on page 2 of the charge sheet which allow me to use legal representative not the union. I told her that is what I want; I was told Clientele legal will be representing me.

6. On the 3 and 5 August 2010 after the 15-16 July 2010¹ the days of the hearing, I received a letter from Mr. Muwe and Mr. van Shalkwyk (Clientele legal) informing me I will not be getting a lawyer. Saying my matter is pre existing, clause 4.1 of our policy states that:

'A claim is only valid and we will only cover if:- ... the Insurable event occurs after the waiting period has expired'

7. My claim is valid as it have events that happened after the end of June, based on **4.1.2** of clause **4.1** states:

'The Claim is received by us in the manner specified in paragraphs 2.1 and 3.1'

2.1 States:

'For a claim to be valid it must have arisen from ... or be connected to an insurable event...'

8. After I submitted the summons to clientele legal, they terminated my membership without the labour Court deciding on this case as I requested. Letter received from Mr. Muwe.
9. As the results, on the 29 July 2010 I was dismissed from my employment.
10. Clientele legal claim to record telephone calls.

ENTITLEMENT

1. I am claiming **35 Million** for all my damages, I am not a legal expert. I would live it to the Judge to decide, from my career damages to the actions that look deliberate in the side of Clientele legal.
2. After the decision by the high court, terminate my memberships. As I have lost all my trust to them, it is important with my legal representative.”

[7] On the 17th day of November 2010 in response the defendant served a notice in terms of Rule 30(2) stating that the summons amendments sought by the plaintiff are irregular for the following reasons:

“1.

Plaintiff’s attorneys filed a Notice of Withdrawal of action on 21

October 2010 and tendered costs.

2.

Plaintiff's attorneys filed a Notice of Reinstatement of action on 03 November 2010 which does not comply with Rule 41(1) in that an action that was withdrawn cannot be reinstated by way of notice.

3.

Plaintiff filed a 'summons amendments' after the action had been withdrawn and, without giving Plaintiff notice of intention to amend the summons."

The plaintiff was also notified that should he fail to remove causes of complaint within ten days, defendant would apply to this court to have the action set aside.

Without responding to the said notice the plaintiff then served the following documents on the defendant, namely an application to the motion court dated the 25th day of November 2010 for settlement judgment, an application for settlement judgment dated the 2nd day of December 2010 and an application for trial dates dated 2 December 2010. As the pleadings have not closed, an application for trial dates is premature and irregular.

In response to the plaintiff's application for a settlement judgment the defendant's attorneys filed an opposing affidavit on the 21st day of February 2011. In this affidavit the defendant raised two points *in limine* and thereafter dealt with the merits of the action itself.

- [8] The defendant's counsel submitted that if either of the points *in limine* are upheld, the plaintiff is not entitled to judgment and his application falls to be dismissed with costs.

THE FIRST POINT *IN LIMINE*:

- [9] This is to the effect that the plaintiff has not complied with Uniform Rule 31 in that the defendant has not signed a written confession in respect of plaintiff's claim nor is defendant in default of filing a plea as it is not yet so obliged. The defendant's counsel submits further that for those reasons this court does not have jurisdiction to entertain the plaintiff's application.

THE SECOND POINT *IN LIMINE*:

- [10] This is to the effect that the plaintiff's application does not

comply with the provisions of Rule 6 in that, *inter alia*, it is not supported by an affidavit.

[11] It is not necessary to decide the points *in limine* as I am dealing with the merits of the matter.

THE MERITS:

[12] There is no Uniform Rule of this Court which permits the plaintiff to unilaterally reinstate his action as he did on 3 November 2010. Given the facts of **ROUPELL v METAL ART (PTY) LTD AND ANOTHER** 1972 (4) SA 300 (W) which are different to the plaintiff's case in that there is no settlement agreement between the plaintiff and defendant, there is no *lis* between the parties in the matters before me in terms of which the plaintiff may enforce rights against the defendant. There are no exceptional circumstances in plaintiff's case permitting this court to allow reinstatement of the plaintiff's action.

[13] Applying the principles of law to the facts before the court it is clear that every procedural step taken by the plaintiff after the withdrawal of his action, is improper and prejudices the

defendant in the conduct of its defence and, fall to be set aside by the court. The proper course for the plaintiff is to issue his action *de novo* in compliance with the Uniform Rules of this Court. The plaintiff is clearly not qualified to deal with a matter of this complexity and was directed by the court to seek legal assistance.

[14] In the result the following orders are issued:

1. All procedural steps taken by plaintiff after withdrawal of his action are improper and are hereby set aside in whole.
 2. Plaintiff's application for settlement judgment dated 2 December 2010 is dismissed and plaintiff to pay costs of defendant.
 3. Plaintiff's application to motion court dated 25 November 2010 is dismissed and plaintiff to pay costs of defendant.
 4. Defendant's application under Uniform Rule 30 dated 21 December 2010 is upheld and plaintiff to pay costs of defendant.
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S. SINGH, AJ

On behalf of plaintiff: In person

On behalf of defendant: Adv. M.C. Louw
Instructed by:
Honey Attorneys
BLOEMFONTEIN
(Ref. I19062)

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