

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 5571/2010

In the matter between:-

ALETTA JOHANNA BRUWER

Applicant

and

LODEWYK STEPHANUS JACOBUS STOLS

Respondent

HEARD ON: 23 JUNE 2011

DELIVERED ON: 4 AUGUST 2011

JUDGMENT

H.M. MUSI, JP

[1] The application herein was argued on 23 June 2011 and I granted an order in terms of prayers 1, 2 and 3 of the Notice of Motion, as well as awarding the costs of the previous appearance on 9 June 2011 to the applicant. I indicated that reasons for the order would be provided upon request in terms of the Rules. The respondent has now requested such reasons in terms of Rule 49(1)(c). This judgment is in response to such request.

- [2] At the outset I wish to correct an error in paragraph 1 of the order which reads as follows:

“Respondent antwoord op Applikant se Kennisgewing in terme van Reël 35(14) en wel binne vyf dae vanaf datum van verlening van hierdie bevel, alternatiewelik binne die tydperk bepaal deur die Agbare Hof.”

- [3] The phrase starting with “alternatiewelik” should be deleted from the order and the registrar will be directed to issue an amended order to reflect this.

- [4] Rule 35(14) stipulates that after a notice of intention to defend has been filed, any party to an action may, for purposes of pleading, require the other party to the action

“to make available for inspection within five days a clearly specified document or tape-recording in his possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof”.

- [5] Commenting on this Rule, Erasmus in **Superior Court Practice** says at B1-262A:

“The sub-rule was designed for the situation where a party to an action requires, for purposes of pleading, the production of a specific document of which he has knowledge and which he or she can describe precisely. The sub-rule does not provide a mechanism whereby a party, by making use of generic terms, can cast a net with which to fish for vaguely known documents.”

[6] In my view, it cannot be said in this case that the applicant has cast a wide net with which to fish for vaguely known documents. The documents that the applicant requires to inspect are alluded to in the respondent’s counterclaim and the applicant wishes to inspect them for purposes of pleading to the counterclaim. The respondent does not dispute the existence of the requested documents nor does it say that it does not know which documents are requested. There is simply no dispute about which documents are requested.

[7] The respondent’s objection to the Rule 35(14) notice is contained in the letter annexed to its opposing affidavit and marked “LS”. The letter states *inter alia* that the documents are in the possession of the respondent’s auditors and that the auditors say it will take about three months to sort them and that this would cost between R30 000,00 and R40

000,00 and that the applicant must carry such costs.

Paragraph 3 thereof reads:

“U moet onthou dat die dokumente en kwitansies ensovoorts sedert 2007 bestaan, so die sistematisering daarvan gaan ‘n tydjie neem.”

[8] In my view, the objections raised by the respondent are not valid. The applicant does not require to be furnished with copies of the documents. Its request is that the documents be made available to it to inspect and for it to be allowed to make copies thereof. It stands to reason that the applicant will make copies at its own expense.

[9] In my view, the applicant needs to have sight of these documents if it is to file a plea that complies with the requirements of Rule 22. The counterclaim is for a substantial amount of money which far exceeds the claim in convention and massive expenditure is detailed in the counterclaim which can only be based on documents. The respondent's argument that the applicant does not require the documents for purposes of pleading is tantamount to

saying that the applicant must file a plea amounting to a bare denial, which is untenable.

[10] For those reasons I gave the order compelling the respondent to comply with the request in terms of Rule 35(14) and it speaks for itself that the costs should follow the cause.

H.M. MUSI, JP

On behalf of applicant:

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Instructed by:
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On behalf of respondent:

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