

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

CASE NO. 4434/2011

In the matter between:

SIVUYILE BUKULA

PLAINTIFF/APPLICANT

and

CLIENTELE LEGAL

DEFENDANT/RESPONDENT

CORAM: NAIDOO, AJ

JUDGMENT BY: NAIDOO, AJ

HEARD ON: 10 NOVEMBER 2011

DELIVERED ON: 17 NOVEMBER 2011

NAIDOO AJ

- [1] This is an application for Summary Judgment. The Plaintiff, who is unrepresented, issued summons against the defendant for “285 Million” (presumably R285 million), which appears to be a claim for damages arising out of the defendant’s repudiation of an insurance contract that the plaintiff had entered into with the defendant. In order to place the matter in context, it

is perhaps useful to set out briefly the facts in this matter before dealing with the application before court. In terms of the insurance contract, the defendant was to have provided legal assistance to the plaintiff, once the relevant conditions were fulfilled, in this case being, amongst other conditions, the mandatory “waiting period” before the insurance cover would take effect.

- [2] The plaintiff who was at the time, employed by the Western Cape Education Department, was charged with several counts of misconduct by his employer. A disciplinary hearing ensued, which the plaintiff refused to attend. The hearing was held in his absence and he was dismissed from his employment. Prior to that, he had requested the defendant for legal assistance, in terms of the insurance policy, in relation to a referral of an unfair labour practise dispute against his employer to the Labour Court. The defendant denied any liability under the insurance contract as the labour dispute pre-existed the insurance policy. With regard to the disciplinary hearing, the defendant’s repudiation was based on the premise that it was not liable to provide assistance in

terms of the policy, as the plaintiff had not exhausted all his internal remedies. The Plaintiff initially enrolled this matter in this Division for various remedies not allowed in terms of the Rules of Court. The applications were dismissed with costs. The plaintiff approached the Supreme Court of Appeal and the Constitutional Court for leave to appeal the ruling of this Division and was unsuccessful on both occasions.

[3] The Plaintiff referred the matter to the Ombudsman for Short Term Insurance, which agreed with the approach adopted by the defendant. The plaintiff subsequently instituted action again in this court.

[4] The defendant served a notice in terms of Section 30(2) (b) of the Uniform Rules of Court pointing out that the plaintiff's Particulars of Claim do not comply with Rule 18 of the Rules in the respects set out in the Notice. The defendant was in effect unable to plead to the summons. The plaintiff did not respond to the Rule 30 Notice until 9 November 2011(a day before the matter was set down for hearing). The plaintiff in any event set

the matter down for the hearing of the Summary Judgment application before the defendant filed its opposing affidavit. The latter was filed on 8 November 2011.

- [5] When the matter came before this court on 10 November 2011, the court was at pains to convince the plaintiff that he should consider obtaining legal representation, especially in view of the technical legal points raised by the defendant, but he was adamant that he would represent himself.

The defendant raised four points *in limine*, in its Opposing Affidavit as follows:

- 5.1 firstly, the plaintiff's claim is not based on a liquid document, is not for a liquidated amount in money, is not a claim for the delivery of specified movable property and is not a claim for ejectment.
- 5.2 secondly, the affidavit accompanying the application for Summary Judgment does not comply with Rule 32(2) of the Uniform rules of court in that it does not verify the amount claimed and does not state that in his opinion the defendant has no bona fide defence to the

action

5.3 thirdly, the defendant's Particulars of Claim constitute an irregular step as pointed out in Defendant's Notice in terms of Rule 30(2)(b), and therefore the plaintiff has not verified a perfected or complete cause of action, and

5.4 fourthly, this court does not have jurisdiction to hear this matter, as the defendant's place of business is in Johannesburg, which is outside this court's jurisdiction, the contract of insurance was concluded in the Western Cape, which is outside this court's jurisdiction, the alleged repudiation of the contract took place outside this court's jurisdiction and any damages the plaintiff might have suffered arose from incidents which occurred in the Western Cape, which is outside this court's jurisdiction.

[6] It is my view that the fourth point *in limine*, dealing with the jurisdiction of this court is fundamental to the present application and falls to be dealt with before any of the other points *in limine* raised by the defendant can be considered.

- [7] Section 19(1)(a) of the Supreme Court Act 59 of 1959, as amended provides that ***“A provincial or local division shall have jurisdiction over all persons residing or being in and in relation to all causes arising and all offences triable within its area of jurisdiction and all other matters of which it may according to law take cognisance...”***

In the commentary to section 19(1)(a), the learned author Erasmus in the work “Superior Court Practice”, at page A1-23 states what is the practice in our courts, namely that the *dominis litis* (in this case the plaintiff) must, in suing a person residing in the Republic, select the court in whose area such a person resides or is in (at the time of issue of summons), or the court where the cause (of action) arises. In the case where a company or juristic person is the defendant, the place where it has its registered office or its principal place of business will determine which court has jurisdiction. It is clear that it is the **defendant’s**, and not the plaintiff’s, place of residence or the place where the cause of action arose which will be taken into account to determine which court has jurisdiction to hear the matter. This was

confirmed in a number of decided cases over the years and is well established in our law. In the case of **John Meinert (Pty) (Ltd) v Reprich and Another 1981(3) SA 272 (SWA)**, the applicant, a publishing company based in Windhoek, (then)South West Africa, entered into a restraint of trade agreement with the first respondent in Johannesburg, South Africa. The first respondent was resident in Bryanston, Johannesburg in the Republic of South Africa and the second respondent was a company registered in South Africa, with its address in Bryanston, South Africa. The applicant alleged that the first respondent breached the restraint of trade agreement and brought an application for an interdict against him in the High Court in South West Africa. The court held that the applicant had failed to establish that that court had jurisdiction. See also **Mdeysha v Minister of Safety and Security and others [2008] 2 All SA 450 (SE)** and **Roberts Construction Co Ltd v Wilcox Brothers (Pty) (Ltd) 1962(4) SA 326 (A)**.

- [8] In the present matter the plaintiff was asked to address the court on whether this court has jurisdiction and his

response was that prior to issuing summons he communicated with the defendant and informed them that he intends suing out of this Division and asked if it had any objection. He received no response and proceeded with his action. Clearly this does not confer jurisdiction upon this court.

[9] . It is therefore clear that this court does not have jurisdiction to hear this matter, which is a claim sounding in money. In the circumstances, I do not consider it necessary to deal with the rest of the points in limine raised by the defendant.

[10] The defendant has indicated that the plaintiff is indebted to it in the amount of R51 466.73, being its taxed costs under the first application which was dismissed by this court. It has further asked that this application be dismissed with costs on an attorney and client scale, and that the plaintiff be barred from proceeding with the main action until such costs have been paid. The scale on which a court awards costs is discretionary and is usually determined by the circumstances of each case.

The grant of costs on the scale of attorney and client is usually punitive and designed to indicate the displeasure of the court. The conduct of the plaintiff in this matter may well be viewed as vexatious, but the court is very mindful of the fact that he is unrepresented and seems to be pursuing this action in the genuine belief that he has the right to do so. While it is unfortunate that he chooses to ignore the court's recommendation that he engage legal representation, I am of the view that it would be unfair to visit him with costs on an attorney and client scale. I am equally of the view, however, that the defendant should not be visited with the obvious prejudice that it is suffering as a result of the plaintiff's relentless and misguided pursuit of his action, and that it should at least enjoy the prospect of being able to recover its costs to date without having to incur further costs as a result of the plaintiff's pursuit of the defendant.

[11] I, accordingly, make the following order:

a) The application for Summary Judgement is

dismissed with costs;

- b) The defendant is given leave to defend the action;
- c) The plaintiff is barred from proceeding with the main action until the costs of the application have been paid.

NAIDOO, AJ

Plaintiff:

In Person

Counsel for the Respondent:

Instructed by:

Adv D. De Kock

Honey Attorneys

Honey Chambers

Northridge Mall

Eufees Road

Bloemfontein