

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE :	<u>YES/NO</u>
(2) OF INTEREST TO OTHER JUDGES :	<u>YES/NO</u>
(3) REVISED	
DATE <u>23-10-09</u>	SIGNATURE <u>RL Sutherland</u>

Date: 2009-10-23

Case Number: 55705/08

In the matter between:

CAPTAIN STIRLING INVESTMENTS 51 (PTY) LTD

Plaintiff

and

KOSKAS TUISNYWERHEID CC

First Defendant

JOHANNES NICOLAAS JACOBUS MOUTON

Second Defendant

AAFKE MOUTON

Third Defendant

JUDGMENT

SOUTHWOOD J

- [1] The plaintiff excepts to the defendants' plea and counterclaim on the grounds that they are vague and embarrassing and/or do not disclose a defence or cause of action. The plaintiff gave notice to the defendants in terms of the Rule 23(1) to remove the causes of complaint and the defendants failed to do so. On 29 April 2009 the plaintiff delivered its notice of exception to the defendants' plea and counterclaim.

- [2] On 7 July 2009 the defendants delivered a notice of amendment of their plea and counterclaim but after the plaintiff gave notice of its objection to the amendment sought the defendants did not proceed with an application to amend. The defendants appear to have abandoned their intention to amend.
- [3] The defendants did not indicate that they intended to oppose the exceptions or appear to oppose the exceptions.
- [4] In my view the plea and counterclaim are vague and embarrassing and do not disclose a defence or cause of action and the exceptions should be upheld on the grounds set out in paras 1.1-1.4; 2.1-2.3; 3.1-3.4; 4.1-4.6; 5.1-5.5; 7.1-7.6 and 8.1-8.4 of the notice of exception.

Order

- [5] I The exceptions to the defendants' plea and counterclaim are upheld and the plea and counterclaim are set aside;
- II The defendants are given leave, if so advised, to amend their plea and counterclaim in accordance with Rule 28 within 1 month of the date of this order;

- III The defendants are ordered, jointly and severally, to pay the costs of the exception.


B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT

CASE NO: 55705/08

HEARD ON: 14 October 2009

FOR THE PLAINTIFF: ADV. M. WELZ

INSTRUCTED BY: Waks Silent & Geach Attorneys

DATE OF JUDGMENT: 23 October 2009