



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no:5364/2023

In the matter between

VUSIMUSI MOSES COPISO

PLAINTIFF

and

THE MINISTER, CORRECTIONAL SERVICES

1st DEFENDANT

THE NATIONAL COMMISSIONER,

CORRECTIONAL SERVICES

2nd DEFENDANT

THE REGIONAL COMMISSIONER

CORRECTIONAL SERVICES

FREE STATE & NORTHERN CAPE

3rd DEFENDANT

Bench: MOLITSOANE, J

Heard: 13 MAY 2024

Delivered: 18 JULY 2024

ORDER

1. The application is dismissed.
2. There is no order as to costs.

JUDGMENT

Molitsoane J

[1] In this interlocutory application the defendants essentially seek that this court grant relief to the effect that the step taken by the Plaintiff is irregular within the ambit of rule 30, read with rule 18(12) as it lacked the necessary particulars as required by rule 18(14) and/or rule 18(10).

[2] The issues for determination are numerous, namely, that the defendant's application was not supported by affidavit; that it was out of time; and that the defendants have not made out a case for an irregular step as the particulars of claim have been amended. It is unnecessary to deal with all issues raised as it will be apparent later in this judgment.

[3] The plaintiff issued summons against the Defendants based on a claim for alleged unlawful, wrongful assault, torture and detention against the defendants. He claims damages in the amount of R5 000 000.00. The defendants entered appearance to defend after which the defendants on 25 January 2024 caused a Notice in terms Rule 30(2)(b)¹ to be served on the plaintiff. This is the first rule 30 notice filed by the defendants. The plaintiff in the said notice averred that the plaintiff's particulars of claim was an irregular step within the ambit of rule 30(1) as read with rule 18(12) because it lacks the necessary particulars as required by rule 18(4) and/or rule 18(10).

¹ See pages 24-28 of the indexed and paginated record.

[4] Simply put, the defendants contend as follows: a) On a claim for personal injury, the plaintiff failed to provide the nature and duration of the disability alleged; b) On a claim for pain and suffering, the defendant did not plead whether the pain and suffering was temporary or permanent; c) On the claim for loss of amenities of life the plaintiff did not give the full particulars of such and also failed to indicate whether the disability was temporary or permanent; and d) On the claim for loss of future medical costs, the plaintiff did not plead how the loss of future medical expenses is made up.

[5] On 13 February 2024, the plaintiff then served a notice of Intention to amend the particulars of claim. The said notice was intended to address the issue raised above. The said notice did not afford the defendants the opportunity to object to the amendment as envisaged in rule 28(2). On 26 February 2024, the defendants served and filed with the Registrar the second notice in terms of rule 30 styled 'Irregular step'.² This notice is dated 23 February 2024.

[6] The record indicates that there is a document termed 'Amendment of Particulars of Claim' dated 28 February 2024 from the plaintiff's attorneys³ in the court file (the first 'amendment'). How this document found its way into the court file is unclear. This document does not appear to have been signed or filed as it bears no proof of service or even the stamp of the Registrar. It is also not signed by the plaintiff's attorneys as required by the rules. The second rule 30 notice was later withdrawn by the defendants on 4 March 2024. The next day, 5 March 2024, the plaintiff purported to affect the amendment by filing what he termed 'Amendment of the Particulars of Claim'⁴ (the second 'amendment').

[7] On 3 April 2024 the defendants served a third document in terms of Rule 30 styled '*Irregular Step*' on the plaintiff⁵. While it appears to have been served on 3 April 2024 on the defendants' attorneys, the stamp of the Registrar indicates that it was filed at court on 11 March 2024. From this, one can only speculate that it was filed at court before it was served. This third rule 30 notice, while filed at court on 3 April 2024, is dated 29 February 2024. The defendants then enrolled the matter for hearing.

² See pages 33-36 of the indexed and paginated record.

³ See page 40-47 of the indexed and paginated record.

⁴ See pages 54- 57 of the indexed and paginated record.

⁵ See pages 48-51 of the indexed and paginated record.

[8] About 70 years ago, in *Trans-African Insurance Company v Maluleke*⁶ the court sounded the following concern with reference to slack when it comes to court rules:

'No doubt parties and their legal advisors should not be encouraged to become slack in the observance of the Rules, which are an important element in the machinery for the administration of justice. On the other hand technical objections to less than perfect procedural steps shall not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible inexpensive decision of cases or their merits.'

[9] The legal representatives of the parties on both sides have displayed a nonchalant attitude in the way that they handled this matter. This can clearly be seen in filing of unnecessary documents and the time when they were served and/or filed. This is prejudicial to the interests of their clients. An interlocutory application that should have been dealt with a long time ago has been on the roll with no end in sight. The notice of intention to defend in this matter was served on 6 November 2023. Nothing happened thereafter until 25 January 2024 when the defendants served the first notice of an irregular step. The fact that the defendants entered appearance to defend on 6 November 2023 clearly indicates that they had received the summons by then and were aware of its contents. The complaints raised in their rule 30 notice were clearly discernible by then. Rule 30 affords a party to a cause of action in which an irregular step has been taken by any other party to apply to court to have it set aside. Uniform rule 30(2)(b) however provides, *inter alia*, that such application may only be made if 'the applicant has, within 10 days of becoming aware of the step, by written notice afforded his opponent the opportunity of removing the cause of complaint within 10 days.' This first Rule 30 notice was served outside of the 10 days prescribed by the rules.

[10] This first notice of an irregular step was not accompanied by any application for condonation. Any application based on it would not be properly before court. On 13 February 2024 the plaintiff served a Notice of Intention to Amend his particulars of claim. It is clear from the said notice and the purported amendment filed later that it was intended to cure the complaint referred to in the first Notice of an Irregular step. The Notice of Intention to Amend was defective. It made no provision for the defendants to object to the amendment as envisaged in rule 28(2). Apparently, the defendants then decided to serve the second Notice of Irregular step which they withdrew. Because the said notice was withdrawn, nothing turns on it. The plaintiff then purported to effect an amendment.

⁶ *Trans-African Insurance Company v Maluleke* 1956 (2) SA 237 (A).

by filing amended particulars of claim on 28 February 2024.

[11] As indicated above, another Notice of Irregular Step was served on 3 April 2024. At the end of the day, one wonders which 'Notice of Irregular Step' was set down for hearing, Is it the one served on 25 January 2024 or the one of 3 April 2024. Both have not been withdrawn. Both raise the same issues and are replicas of each other. In my view, this application stands to be dismissed on this point alone.

[12] The granting of costs lies in the discretion of the court. From the above it is clear that all parties were to blame in the way the litigation unfolded in this case, especially with regard to the belated complaint of the defendants. In his quest to cure the source of the complaint, the plaintiff also brought his share of the blame in the way he attempted to effect the amendment of the pleadings. He flouted Rule 28. I hold the view that none of the parties are entitled to costs.

Order

[13] In the result:

- 1 The application is dismissed.
- 2 There is no order as to costs.



P.E. MOLITSWANE, J

For the Applicant:

Instructed by:

Adv. SE MOTLOUNG

The State Attorney

BLOEMFONTEIN

For the Respondent:

Instructed by:

Adv. P Dube

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