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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO: **1139/2023**

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

C[...] R[...] P[...]

PLAINTIFF

and

**THE MEMBER OF THE EXECUTIVE COUNCIL
FOR HEALTH: NORTHERN CAPE PROVINCE**

DEFENDANT

Heard on	:	23 May 2025
Delivered on	:	26 September 2025
Coram	:	Olivier AJ
Summary	:	<i>Application to declare particulars of claim an irregular step – Application in terms of Rule 30(1) read with Rule 18(12) of Uniform Rules of Court – Claim based on alleged medical negligence – Claim technical – More particularity required in particulars of claim.</i>

ORDER

In the result, the following order is made:

1. The particulars of claim is declared to be an irregular step in the sense that paragraph 12 thereof does not comply with Rule 18(4) of the Uniform Rules of Court;
2. The plaintiff is directed to amend paragraph 12 of the particulars of claim in order to comply with the provisions of Rule 18(4) within 20 (twenty) days from date of this order; and
3. The costs of this application are to be costs in the cause.

JUDGMENT

OLIVIER AJ

1. The plaintiff is C[...] R[...] P[...], a major female residing in Galeshewe, Kimberley, Northern Cape Province and the defendant is the Member of the Executive Council responsible for health in the Northern Cape Province in his official capacity.

For purposes hereof the parties will be referred to as “*the plaintiff*” and “*the defendant*” respectively.

2. The defendant approached this Court by way of application for an order in essentially the following terms:
 - 2.1 That the particulars of claim dated 22 June 2023 filed by the plaintiff under the above case number (“*the particulars of claim*”), be declared to be an irregular step in terms of the provisions of Rule 30(2)(b) of the Uniform Rules of Court (herein after referred to as “*the Rules*”);
 - 2.2 That the particulars of claim be set aside;

- 2.3 That the plaintiff be directed to amend the particulars of claim to comply with the provisions of Rule 18(4) of the Rules within 20 (twenty) days from date of the order applied for; and
- 2.4 That the plaintiff is to pay the costs of the application.
- 3. The application was opposed and counsel for both parties filed comprehensive heads of argument, for which I am thankful.
- 4. It should be stated from the outset that Mr. Jaga SC, who appeared for the defendant, conceded during argument that in the event of the Court finding in favour of the defendant, it might be problematic to grant an order to the effect that the particulars of claim should be amended if an order is simultaneously granted for the particulars of claim to be set aside.

Mr. Jaga indicated that, should the Court agree with the defendant in this matter, the defendant will not be moving for an order for the setting aside of the particulars of claim, but only for an order to the effect that the particulars of claim be amended in order to bring same in line with the provisions of Rule 18(4) of the Rules.

- 5. The plaintiff issued summons out of this Court on 22 June 2023 claiming the total amount of R2 150 000.00 (Two Million One Hundred and Fifty Thousand Rand) from the defendant, which claim is based on the death of R[...] R[...] S[...] P[...] (*“the Child”*) who passed away on 8 July 2020.
- 6. The plaintiff claims that she is the biological mother of the child, a fact that was not disputed during argument, and that the child passed away whilst being admitted to hospital and whilst being in the care of medical practitioners, nurses and other medical personnel who were, at all material times, employed by the defendant.

7. The defendant filed a notice of intention to defend the action, and on the same day served a notice in terms of Rule 30(2)(b) of the Rules (herein after referred to simply as “*the Rule 30(2)(b) notice*”) on the attorneys for the plaintiff wherein the defendant alleges that the particulars of claim fails to comply with the provisions of Rule 18(4) of the Rules and that the particulars of claim therefore constitutes an irregular step.

The plaintiff was invited to remove the defendant’s causes of complaint within 10 (ten) days, failing which the defendant indicated that an application would be made in terms of Rule 30(1) of the Rules.

8. The plaintiff did not react to the abovementioned notice by the defendant which ultimately lead to this application being lodged on 11 August 2023.

The application became opposed and was eventually set down on the opposed roll of 23 May 2025 for argument and determination.

9. The relevant parts of the particulars of claim read as follows:

“4. *At all times material hereto, the medical practitioners, nurses and other medical personnel (‘the professional staff’) who administered medical and nursing services and/or other care to the child (their duties), were employed by the defendant/Department, in the alternative, were duly authorised agents of the defendant/Department, acting in the furtherance of the defendant’s/Department’s obligations, and were acting within the course and scope of their employment with the defendant/Department, which aforementioned functions were performed by the aforementioned professional staff at the De Aar Hospital...*

5. *At all material times:*

- 5.1. *The defendant was responsible for the Department and the professional staff's contractual and delictual liabilities;*
- 5.2. *The defendant was consequently nominally and vicariously liable for the conduct and/or omissions of the professional staff...*
- 5.3. *The De Aar hospital fell under the authority of and was controlled and operated by the Department;*
- 5.4. *The defendant was under a legal duty to ensure that reasonable medical and services were provided to the public and more particularly to the plaintiff and the child, in that:*
 - 5.4.1. *the defendant held out to the public, more particularly to the plaintiff, that the Hospital is a place where reasonable medical care, treatment and advice is rendered; and*
 - 5.4.2. *...*

6. ...

7. ...

- 8. *As a consequence of the professional staff of the defendant, whose full and further particulars are unknown to the plaintiff, accepting the plaintiff's child as a patient, a special professional relationship of doctor and patient arose and was in existence at all times material thereto.*
- 9. *The special professional relationship as pleaded in the paragraph above, were formed, inter alia, as a result of an oral agreement (the agreement) entered into between the plaintiff, acting personally, and the defendant, duly*

represented by its employees (the professional staff) ... in the alternative formed part of the defendant's legal duty towards the child.

10. *The following were the material express, implied or tacit terms of the agreement, alternatively formed part of the defendant's legal duty towards the child:*

10.1. *That the defendant and/or hospital would employ sufficient and suitably skilled and experienced professional staff so as to provide reasonable medical care and supervision to the plaintiff's child during his admissions to the hospital;*

10.2. *In so doing the professional staff would care for, monitor and generally perform their professional duties in relation to the plaintiff's child with the level and skill as is reasonable for professionals in the respective fields; and*

10.3 *That the defendant would ensure that reasonable sufficient medical equipment and facilities were available so as to provide the child with reasonable medical care, supervision and the treatment and that such equipment and facilities would be reasonable maintained so as to be in good working order when required.*

11. *In particular, but without derogating from the generality of the foregoing reasonable level of care and skill attributed to the defendant's professional staff, as pleaded in the paragraph above, the defendant was obliged, by way of the professional staff so employed at the hospital to:*

11.1. *Examine and diagnose the child;*

11.2. *Provide the child with the correct and adequate medication;*

- 11.3. *Timeously provide the child with the correct and adequate medication;*
- 11.4. *Regularly monitor all physiological functions of the child;*
- 11.5. *Ensure that all the relevant equipment of the hospital is in good working order;*
- 11.6. *Ensure that the hospital's equipment is so utilized to monitor all physiological functions of the child;*
- 11.7. *Ensure that the relevant professional care be provided to the child;*
- 11.8. *Ensure that in the event of the hospital being inadequately equipped to care for the child, that the child be timeously transferred to a facility where the relevant and adequate care can be provided to the child;*
- 11.9. *Ensure that the professional staff so employed by the defendant are adequately trained to be able to care for the child;*
- 11.10. *Ensure that a sufficient number of professional staff are available to attend to the child; and*
- 11.11. *Ensure that all the care, monitoring and examinations performed on the child whilst in the care of the hospital be documented.*
- 12. *The professional staff, the hospital and/or the defendant breached the agreement, alternatively legal duty, by acting negligently in one or more of the following respects, and in particular, but without derogating from the*

generality of the foregoing, the professional staff of the defendant at the hospital failed to:

- 9.1. Correctly examine and diagnose the child;*
- 9.2. Timeously or at all provide the child with the correct and adequate medication;*
- 9.3. Ensure that the child be regularly monitored as to his physiological condition;*
- 12.4. Ensure that medical equipment at the hospital was functional and able to be utilized to monitor the child;*
- 12.5. Ensure that nursing and professional staff and doctors regularly and timeously attended to the child to examine and monitor the child;*
- 12.6. Ensure that the child be provided with expert care, in the event of the child not being able to be cared for by the professional staff of the hospital;*
- 12.7. Ensure that the well-being of the child not be further compromised by, inter alia, nursing staff hitting the child on his bum to endeavor to stop him from crying;*
- 12.8. Ensure that the correct procedures be followed when the child was placed on oxygen by, inter alia, failing to ensure that oxygen flow to the child was not in excess of the correct quantity;*
- 12.9. Ensure that the child be timeously transferred to Kimberley in order to be provided with adequate care;*

12.10. *Ensure that written records be kept relating to the examination, monitoring and medication provided to the child;*

12.11. *Allow the plaintiff's and her child's private physician, Dr Tron, access to the hospital and the child on 8 July 2020, despite the plaintiff's request; and*

12.12. *In general, to comply with the reasonable level of care and skill attributed to the defendant's professional staff as pleaded in paragraphs 12, 12.1 to 12.11 supra.*

13. *As a result of the defendant's professional staff's negligent conduct at the hospital, as pleaded supra, the child passed away on 8 July 2020 at approximately 12h00." (My omissions).*

10. The gist of the defendant's complaints about the contents of the particulars of claim is that it does not comply with the provisions of Rule 18(4) of the Rules in the sense that it fails to state in a clear and concise manner the material facts upon which the claim is based with sufficient particularity with the resultant effect that the defendant is not able to reply thereto.

The defendant raises two primary grounds of complaint and mainly takes aim at paragraphs 11, 12 and 13 of the particulars of claim as set out above.

11. Under the heading "*FIRST GROUND OF COMPLAINT*", and with specific reference to paragraph 12 of the particulars of claim, the defendant alleges as follows:

- “3. *The plaintiff has failed to state in which way or manner the defendant’s staff has failed to correctly examine and diagnose the child as alleged in paragraph 12.1 of the Particulars.*
4. *The plaintiff has failed to allege what the diagnoses made by the staff of the defendant was and why it was incorrect.*
5. *The plaintiff has further failed to allege what the correct diagnosis of the child should have been.*
6. *The plaintiff has not stated any facts regarding the allegation in paragraph 12.2 of the Particulars that the defendant’s employees failed to timeously provide the child with the correct or adequate medication.*
7. *The plaintiff has furthermore failed to allege what the correct or adequate medication was that should have been given to the child nor has she stated what medication was in fact given to the child by the defendant’s employees.*
8. *There are no allegations in the Particulars of when the correct or adequate medication should have been given to the child and how this was causative of his death.*
9. *The plaintiff has failed to state any facts in support of the allegation that the defendant’s employees failed to regularly monitor the child, more particularly when they should have monitored him and why is it alleged that this constitutes a cause of his death.*
10. *The plaintiff further failed to state any facts in support of the allegation in paragraph 12.4 of the Particulars that the medical equipment at the hospital was not functional and could not be used to monitor the child.*

11. *The Particulars do not contain any facts indicating that the allegation in paragraph 12.5 of the Particulars that the nursing and professional staff did not regularly and timeously attend to examining and monitoring the child.*
12. *The plaintiff has not stated any facts supporting the alleged failure by the nursing and professional staff causally contributed to the minor child's death.*
13. *There are no averments in the Particulars that expert care was required by the minor child, as alleged in paragraph 12.6 thereof nor what circumstances warranted the provision of such expert care.*
14. *The plaintiff makes no averment in the Particulars of what the correct procedures were to be followed when the minor child was placed on oxygen as averred in paragraph 12.8 thereof.*
15. *The plaintiff has furthermore not alleged facts of what the correct quantity of oxygen was that had to be given to the minor child nor what the quantity was which the defendant's employees had given him.*
16. *There are no allegations made in the Particulars of the circumstances which necessitated the transfer of the child to Robert Mangaliso Sobukwe Hospital (RMSH) or why the failure to do so was negligent.*
17. *The plaintiff has failed to make any factual averments in the Particulars on what basis the grounds of negligence pleaded in paragraph 11 thereof causally contributed to the child's death.*
18. *The plaintiff has failed to state or plead in a clear and concise manner the material facts on which her claim is based with sufficient particularity to enable the defendant to reply thereto.*

19. *The plaintiff has accordingly failed to comply with the prescripts of Rule 18(4) as she has not pleaded or stated any material facts regarding the allegations of negligence in paragraphs 11 of the Particulars are based on which she relies for the grounds of negligence pleaded herein."*
12. Further to the above and under the heading "SECOND GROUND OF COMPLAINT" and with specific reference to paragraph 13 of the particulars of claim, the defendant alleges as follows:
- "22. *The plaintiff has failed to state what the child's cause of death was.*
23. *The plaintiff has furthermore failed, in the Particulars to allege how the conduct of the defendant's professional staff caused the child's death.*
24. *The plaintiff has failed to state or plead in a clear and concise manner the material facts on which her claim is based with sufficient particularity to enable the defendant to reply thereto.*
25. *The plaintiff has accordingly failed to comply with the prescripts of Rule 18(4) as she has not pleaded or stated any material facts regarding the allegations of negligence in paragraphs 11 of the Particulars are based and on which she relies for the grounds of negligence pleaded therein."*
13. It is trite that a party to a cause in which an irregular step has been taken, may approach the Court with an application to have it set aside.¹

Rule 30(2) of the Rules states that an application for the setting aside of the irregular step must be made on notice to all parties setting out the specifics in respect of the irregularity or the impropriety alleged and further states that such an application may only be made if:

¹ Rule 30(1) of the Rules.

- “(a) the applicant has not himself taken a further step in the cause without knowledge of the irregularity;*
- (b) that applicant has, within ten days of becoming aware of the step, by written notice afford his opponent and opportunity of removing the cause of complaint within ten days;*
- (c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of sub-rule (2).”*

14. The question as to whether the defendant adhered to the procedural requirements as set out in Rule 30 of the Rules was never in issue and I will consequently not spend any further time hereon.

Suffice it to say that I could not find any indication that the procedural requirements of Rule 30 were not adhered to by the defendant in lodging this application.

15. Rule 18(12) of the Rules specifically states that a failure to comply with the provisions relating to pleadings as set out in Rule 18 and certainly also Rule 22 of the Rules, is deemed to be an irregular step within the meaning of Rule 30(1) and it is also trite that even if a pleading is excipiable, a party may in any event make use of the provisions of Rule 30.²

16. Rule 18(4) of the Rules states as follows:

² See *inter alia* *Nasionale Aartappel Koöperasie Bpk v Price Waterhouse Coopers Ing & Andere* 2001 (2) SA 790 (T) at 796G.

“Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.”

17. Mr. Harmse maintained that the particulars of claim complies with the provisions of Rule 18(4) and during his argument he relied primarily on **Jowell v Bramwell-Jones and Others**³ and specifically on the following passage:

*“... a distinction must be drawn between the *facta probanda*, or primary factual allegations which every plaintiff must make, and the *facta probantia*, which are the secondary allegations upon which the plaintiff will rely in support of his primary factual allegations. Generally speaking, the latter are matters for particulars for trial and even then are limited. For the rest, they are matters for evidence...”*⁴

18. I was also pointed to **McKenzie v Farmers’ Co-operative Meat Industries Ltd**⁵ where the Court in dealing with the description/definition of “cause of action” stated that it comprises “... every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support this right to judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.”⁶

19. In **Nasionale Aartappel Koöperasie Bpk v Price Waterhouse Coopers Ingelyf en Andere**⁷ the Court explained that the difference between *facta probanda* and *facta probantia* is that the formers refers to those facts that a party needs to prove in order to sustain a cause of action, whilst the latter refers to those facts that will prove the former.⁸

³ 1998 (1) SA 836 (W).

⁴ **Bramwell-Jones**, *supra* at 903A-B.

⁵ 1922 AD 16.

⁶ **McKenzie**, *supra* at 23. See also **Black Sheep Capital (Pty) Ltd v Du Toit and Others** [2023] ZAGPJHC 1483 (21 December 2023), par 20.

⁷ [2001] 2 All SA 319 (T).

⁸ **Nasionale Aartappel Koöperasie Bpk**, *supra* at 324.

20. I was finally invited to have regards to ***Afgri Bedryfs Beperk v Merwede Boerdery BK and Others***⁹ where the Court held as follows:

*“Facta probantia do not belong in the particulars of claim. They do not form part of the essential averments which a defendant is required to meet in his plea. He can therefore not insist on their being provided in the particulars of claim and can only obtain them, after having filed his plea, by way of a request for discovery or a request for further particulars for trial.”*¹⁰

21. It was argued on behalf of the plaintiff that the particulars of claim in the present matter affords the defendant sufficient information to plead thereto and that what the defendant in essence wants the Court to order, is that *facta probantia* should be provided which is not acceptable and should not be allowed.

It was further argued that any issues that remain, after the plea of the defendant has been filed, may be sorted out by way of a request for further particulars and discovery and may also be proven by way of the leading of evidence of expert witnesses.

22. Mr. Jaga quoted Rule 18(5) which states as follows:

“When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he or she shall not do so evasively but shall answer the point of substance.”

23. The gist of the argument on behalf of the defendant is that the particulars of claim not only fails to comply with the provisions of Rule 18(4) of the Rules, but also that in its current form, it does not allow the defendant the opportunity to

⁹ [2010] ZAFSHC 168 (17 December 2010).

¹⁰ *Afgri Bedryfs Beperk*, *supra*, par 23.

plead thereto which in essence denies the defendant the opportunity to comply with the provisions of Rule 18(5).

It was submitted that as matters now stand, the defendant will only be able to plead bare denials and that the defendant will not be afforded an opportunity to answer to the allegations made in the particulars of claim with any measure of particularity.

24. Mr. Jaga urged me to consider the case of ***HAL obo MML v MEC for Health, Free State***¹¹ where the learned Wallis JA remarked as follows:

*“One can allow a measure of generality in pleading allegations of negligence, but simply to allege everything the pleader can conjure up as potential negligence is unacceptable. There needs to be clarity as to the case being made and the nature of the impugned conduct on the part of the defendant, or those for whose conduct the defendant is said to be liable, who must at least be identifiable.”*¹²

and further:

*“...litigation is not a game. This case resembles nothing so much as a game commenced by hopefully kicking the ball of a summons into play, without any factual basis for a claim beyond knowing that MML had cerebral palsy caused by a hypoxic-ischemic incident and ... hoping Micawber-like that something would turn up in the course of pre-trial preparation ... he said nothing about the specific acts of negligence that were to be relied on, who was responsible for those acts, and what should have been done if there had been no negligence. This diffuse, unfocussed approach to the conduct of complex litigation is to be deprecated. If the issues are not properly and clearly defined the conduct of the trial cannot be controlled in a properly efficient manner.”*¹³

¹¹ 2022 (3) SA 571 (SCA).

¹² ***HAL v MEC for Health***, *supra*, par 193.

¹³ *Ibid*, paras 197 and 198.

25. The above quoted views of Wallis JA were recently endorsed by Mamosebo ADJP (as she was then) in ***Disipi v Member of the Executive Council for Health: Northern Cape Province***.¹⁴
26. In view of the fact that Rule 18(12) specifically states that non-compliance with the provisions of Rule 18 constitutes an irregular step, a greater degree of particularity of pleadings has been called for¹⁵ and it does appear that the Courts in general, require a greater degree of particularity specifically in cases where possible medical negligence is alleged¹⁶ and that the emphasis is placed on the requirement that the opposing party must be placed in a position to properly reply to what is alleged in the impugned pleading.¹⁷
27. The question is therefore whether the defendant, in the present matter, is in a position to properly plead to the particulars of claim in its current form.
28. If regards are to be had to the current legal position and the fact that the plaintiff's claim is based on alleged medical negligence and is per definition technical in nature, I hold the view that paragraph 12 of the particulars of claim has been pleaded with too much generality and that the plaintiff would need to provide more particularity to enable the defendant to properly plead thereto.
29. I am of the view that the plaintiff needs to provide more clarity as to the specific acts of negligence relied on as well as to what should have been done in order to ensure that there was no negligence on the part of the persons involved and details should also be provided as to the specific persons allegedly involved in these acts.

¹⁴ [2024] ZANCHC 117 (13 December 2024), paras 22 and 23.

¹⁵ See *Nasionale Aartappel Koöperasie Bpk v Price Waterhouse Coopers Ing & Andere*, *supra* at 799; *Trope v South African Reserve Bank and Another* 1992 (3) SA 208 (T) at 210.

¹⁶ *HAL v MEC for Health*, *supra*; *Disipi*, *supra*.

¹⁷ *Deltamune (Pty) Ltd and Others v Tiger Brands Limited and Others* [2022] 2 All SA 26 (SCA).

30. That being said, it should also be stated that the particulars of claim in its current form, does not prevent the defendant to plead thereto, but I am of the view that if the plaintiff is allowed to amend her particulars of claim at this point in order to address the complaints by the defendant in as far as paragraph 12 of the particulars of claim is concerned, it will ensure a clear statement of issues so that both parties will be in a position to know the cases that they need to meet from the outset.
31. It is further my view that, if regards are to be had to all of the above, the defendant's complaints with regards to the allegations made in paragraph 13 of the particulars of claim are without merit and that paragraph 13 of the particulars of claim contains sufficient particularity which would allow the defendant to plead thereto.

COSTS:

32. Despite the fact that the defendant was substantially successful in its application, I hold the view that it would be unfair towards to plaintiff, who litigates in her personal capacity, to mulct her with the costs of this application in circumstances where she essentially had no control over the events that ultimately lead to this application.

The plaintiff was not responsible for the preparation of the particulars of claim and consequently had no say on the manner in which the allegations in the particulars of claim were worded and/or structured and/or pleaded.

33. In view of the above and also in view of what I stated in paragraph 30 *supra*, I hold the view that the costs of this application should be costs in the cause.

ORDER:

34. In the result, the following order is made:

1. The particulars of claim is declared to be an irregular step in the sense that paragraph 12 thereof does not comply with Rule 18(4) of the Uniform Rules of Court;
2. The plaintiff is directed to amend paragraph 12 of the particulars of claim in order to comply with the provisions of Rule 18(4) within 20 (twenty) days from date of this order; and
3. The costs of this application are to be costs in the cause.

A.D. OLIVIER
ACTING JUDGE
NORTHERN CAPE DIVISION

REPRESENTATIVES OF PARTIES:

For PLAINTIFF	:	Adv. J. Harmse o.i.o CJ Bouwer Attorneys GRAAF-REINET c/o Van Den Heever Inc. KIMBERLEY
For DEFENDANT	:	Adv. R. Jaga SC Adv. S. Desai o.i.o Robert Charles Attorneys KIMBERLEY