



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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| 1. | REPORTABLE: YES /NO |
| 2. | OF INTEREST TO OTHER JUDGES: YES /NO |
| 3. | REVISED: YES /NO |
| | 16 January 2023 |
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DATE |
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SIGNATURE |

CASE NO.: 50611/2021

In the matter between:

MEDAL PAINTS (PTY) LTD

Applicant

And

LINDY RAYNARD

Respondent

JUDGMENT

MAZIBUKO AJ

Introduction

1. This is an application seeking to set aside the respondent's particulars of claim and declare that an irregular step has been constituted. The complaint is that they are not compliant with rules 18(4),18(10) and 18(12).¹

¹ of the Uniform Rules of Court

2. The applicant is the defendant in the main action, whilst the respondent is the plaintiff. For this judgment, the parties shall be referred to as in the main action.

Background facts

3. The plaintiff was in the employ of the defendant. On 11 January 2021, she lodged a grievance to the defendant relating to nepotism and unfair labour practice in the workplace. Which unfair labour practice referred to the defendant's management personnel locking black employees with dangerous dogs in a dog kennel to punish them for transgressing and raising grievances.
4. On 14 January 2021, the plaintiff was called to a meeting with the defendant's Human Resources management, who proposed a mutual separation agreement between the parties. The plaintiff was not agreeable to the proposal.
5. In her particulars of claim, she averred that the defendant's Human Resources management team member assaulted her on the same day of their meeting. On 27 January 2021, she lodged yet another grievance. On 28 January 2021, the defendant terminated her employment contract.
6. In October 2021, summons was issued on her behalf, seeking relief against the defendant for; (a) emotional shock, trauma and damages, (b) future medical costs, (c) Constitutional damages, (d) Interest and (e) costs of suit.
7. The following is common cause between the parties:
 - 7.1. On 3 November 2021, a copy of the summons was served on the defendant.
 - 7.2. On 19 November 2021, the defendant entered an appearance to defend the action. On 15 December 2021, the defendant delivered a notice to remove the cause of the complaint.
 - 7.3. On 21 January 2022, the defendant served notice on the plaintiff that it intended to make an application for an order that (a) the plaintiff's

particulars of claim be declared to constitute an irregular step in terms of rule 18(12) and (b) the particulars of claim be set aside or struck out.

Defendant's case

8. In paragraph 16 of its affidavit, the defendant stated that the plaintiff's particulars of claim, which relate to the damages for a personal injury claim, failed to:

"16.1. Aver her date of birth;

16.2. Specify the nature or extent of the alleged assault on her, the averments in paragraphs 8 of the particulars of claim, namely that a Mrs Janny April on 14 January 2021 physically assaulted the plaintiff, being insufficient to enable the defendant to reasonably assess the quantum of the alleged damages sustained as a consequence of the alleged assault.

16.3. specify the nature or extent of the physical injuries sustained by her as a consequence of the alleged assault, the averments in paragraph 9 of the particulars of claim, namely that the plaintiff sustained physical injuries, confirmed by a medical report and that the plaintiff received "medical attention" being insufficient to enable the defendant to assess the quantum of the alleged damages sustained as a consequence of the alleged assault;

16.4. Specify which of the alleged acts, as set out in paragraphs 4 - 11, caused the respondent to suffer which of the consequences specified in paragraphs 17.1 to 17.4 of the particulars of claim, with sufficient particularity to reasonably enable the applicant to reply thereto, in particular, to consider whether an appropriate reply would be:

16.4.1. Lack of jurisdiction by this court to determine the issue and/or consequences of an alleged unfair labour practice, or

16.4.2.To plead lis alibi pendens, or

16.4.3.Except to the respondent's particulars of claim;

16.5. In respect of the alleged impaired mental health pleaded in paragraph 17.2 of the particulars of claim, to specify the nature of the impaired mental health, the nature of the treatment required in respect thereof, or the duration thereof; and

16.6. In respect of the alleged financial loss suffered, as pleaded in paragraph 17.4, to quantify the amount thereof or how it is calculated."

9. It was argued on behalf of the defendant that the averments in the plaintiff's particulars of claim are insufficient to enable them to assess the quantum of the alleged damages sustained as a consequence of the alleged assault. In a delictual claim, the respondent must allege and prove the causal connection between the act and the damages suffered. Also, that is irrelevant that expert evidence will be provided in due course.
10. Further, the defendant's view was that it was evident from the particulars of claim that the plaintiff's claims were for personal injuries, and the cause of action was irrelevant in the circumstances.

Plaintiff's case

11. The plaintiff stated that the particulars of claim are based on the defendant's failure to uphold its common law duty to create a safe working environment and the infringement of Constitutional rights.

Issue for determination

12. The condonation sought by the applicant regarding the late filing of his replying affidavit. Whether the defendant can comprehend the cause of action based on the material facts pleaded to enable it to know what case it has to meet. Whether the particulars of claim constitute an irregular step and should be set aside.

The law and discussion

Condonation application

13. In paragraphs 27 to 28 of the plaintiff's affidavit, she seeks condonation for the late filing of her affidavit, which was due on 27 February 2022, but only filed on 17 March 2022. The explanation is that her attorneys had other business to take care of, which delayed her compliance with the time frames in filing the affidavit. The defendant does not oppose the application.

14. In exercising the court's discretion in respect of good cause for condonation, the following was stated in the matter of *United Plant Hire Pty Ltd v Hills*,² *"It is well settled that, in considering applications for condonation, the court has the discretion to be exercised judicially upon consideration of all facts and that, in essence, it is a question of fairness to both sides. In this inquiry, relevant considerations may include the degree of non-compliance with the rules, the explanation, therefore, the prospects of success on appeal, the importance of the case, the respondent's interest in the finality of his judgement, the convenience to the court, and the avoidance of unnecessary delay in the administration of justice. The list is not exhaustive."*

15. In *Van Wyk v Unitas Hospital*,³ it was stated that: *"This court has held that the standard for considering an application for condonation is the interest of justice. Whether it is in the interest of justice to grant condonation depends upon the facts and circumstances of each case. Factors that are relevant to this inquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success."*

16. I am satisfied that the plaintiff has shown good cause for her delay in filing her affidavit. I find that granting the condonation application will not be prejudicial

² *United Plant Hire Pty Ltd v Hills* 1976 (1) SA 717(A) at 720E-G

³ *Van Wyk v Unitas Hospital* 2008 (2) SA 472 (CC) at 447A-B

to the defendant and is in the best interest of justice. The condonation application is granted.

Ground for non-compliance

17. The defendant complained that the provisions of Rule 18(4) and (10) were not complied with. In that, the plaintiff's particulars of claim did not set out a clear and concise statement of fact for the defendant to assess the quantum of the alleged damages.
18. Rule 18⁴(4) *"Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto."*

Rule (18) (10) *"A plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof: Provided that a plaintiff suing for damages for personal injury shall specify his date of birth, the nature and extent of the injuries, and the nature, effects and duration of the disability alleged to give rise to such damages, and shall as far as practicable state separately what amount, if any, is claimed for—*

- (a) medical costs and hospital and other similar expenses and how these costs and expenses are made up;*
- (b) pain and suffering, stating whether temporary or permanent and which injuries caused it;*

Rule(18)(12) *"If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step, and the opposite party shall be entitled to act in accordance with rule 30."*

19. In *Absa Bank Limited v Macke*⁵, it was stated that *"the object of the pleadings is to enable each side to come to trial prepared to meet the case of the other*

⁴ Uniform Rules of Court above no 1 at para 1

⁵ (1324/2016) (2017) ZAFSHC 97 (15 June 2017) at paragraph (2)

and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form, and the cause of action or defence must clearly appear from the factual allegations made."

20. *"The object of pleading is to ascertain definitely what is the question at issue between the parties, and this object can only be obtained when each party states his case with precision."*⁶
21. The defendant, through its counsel, argued that in her particulars of claim, she seeks relief against the defendant for; (a) emotional shock, trauma and damages, (b) Future medical costs, (c) Constitutional damages, (d) Interest and (e) costs of suit.
22. It was argued on behalf of the defendant that the averments in the plaintiff's particulars of claim are insufficient to enable them to assess the quantum of the alleged damages sustained as a consequence of the alleged assault, as the plaintiff's claim is that of personal injuries. Conversely, the plaintiff stated that her claim emanates from a common law duty of the employer to provide its employees with a conducive environment. Also, its claim is that for Constitutional damages.
23. In *Makhanya v University of Zululand*,⁷ the Supreme Court of Appeal held that: *"(73) The LRA creates certain rights for employees that include the right not to be unfairly dismissed and [not to be] subjected to unfair labour practices. . . . Yet employees also have other rights, in common with other people generally, arising from the general law. One is the right that everyone has (a right emanating from the common law) to insist upon performance of a contract... When a claimant says that the claim is to enforce a right that is created by the LRA, then that is the claim that the court has before it as a fact. When he or she says that the claim is to enforce a right derived from the Constitution, then, as*

⁶ Odgers, Principles of Pleading and Practice in Civil Actions in the High Court of Justice 22nd Edition, page 113

⁷ *Makhanya v University of Zululand* (2009) ZASCA 69

a fact that is the claim. That the claim might be a bad claim is beside the point."

24. I agree with the approach adopted by the Supreme Court of Appeal. The plaintiff stated that her claim is based on the common law and the Constitution. The defendant might view the plaintiff's claim differently and conclude the claim is that of personal injury, which invokes rule 18(10).⁸ That, in my view, is not an issue for the defendant to fret about since the plaintiff is the one who has to adduce evidence to prove what they state is their claim. The defendant or the respondent may only respond to the averments as they *ex facie* appear in the particulars of claim or an affidavit unless they are non-compliant with the provisions of rule 18. The plaintiff, in *casu*, avers that her claim emanates from the common law and of Constitutional damages. That is the plaintiff's claim, nothing more. Whether such is a bad claim in law, and maybe a better one they could have pursued, is inconsequential. Their claim is as they elect to view it and pursue it before the court.

25. I, with respect, do not agree with the submission that the averments in the plaintiff's particulars of claim do not comply with the provisions of rules 18(4) and (10).⁹ The averments contained in paragraphs 4 to 11, as well as paragraphs 17.1 to 17.4, are sufficient to enable the defendant to answer the plaintiff's claim and assess the quantum of the alleged damages sustained as a consequence of the alleged assault. In the circumstances, no formal amendment is required.

26. Rule 30¹⁰ provides:
"(1) A party to a cause in which an irregular step has been taken by any other party may apply to the court to set it aside.
(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged and may be made only if—

⁸ Uniform Rules of Court, no 4 above at para 18

⁹ Uniform Rules of Court, no 8 above at para 24

¹⁰ Uniform Rules of Court, no 9 above at para 25

(a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within 10 days of becoming aware of the step, by written notice, afforded his opponent an opportunity of removing the cause of complaint within 10 days;

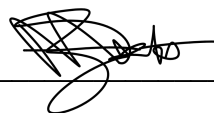
(c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2)."

(3) If at the hearing of such application, the court is of the opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet."

27. In my respectful view, the plaintiff's particulars of claim are comprehensible. The cause of action can be comprehended based on the material facts pleaded, which enables the defendant to know what case it has to meet. Also, they can reasonably assess the quantum from the particulars of claim, considering the kind of claim the plaintiff pursues. No cogent facts were placed before this court suggesting that the plaintiff's particulars of claim constitute an irregular step and should be set aside. Therefore, the application cannot succeed.

28. In the premises, the following order is made:

1. The application is dismissed.
2. The defendant is to pay the costs of this application.



N. Mazibuko

Acting Judge of the High Court of South Africa

Gauteng, Pretoria

This judgment is digitally submitted by uploading it onto Caselines and emailing it to the parties.

Representation

Counsel for the Applicant:	Mr C Cremen
Instructed by:	Cox Yeats Attorneys
Counsel for Second Respondent:	Mr MW Marweshe
Instructed by:	Marweshe Attorneys
Date of hearing:	25 October 2022
Judgment delivered on:	16 January 2023