

SOUTH AFRICA / JUDGMENT

Absa bank Ltd v Phenyo General Supply CC + 1 (45466/12) [2013]

ZAGPPHC 286 (11 October 2013)

[2013] ZAGPPHC 286

COURT

North Gauteng High Court, Pretoria

BEFORE

Hassim A

CASE / FILE NUMBER

45466/12

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NOT

REPORTABLE

IN THE NORTH GAUTENG HIGH COURT,

PRETORIA

(REPUBLIC OF SOUTH AFRICA)

Case

no: 45446/12

DATE:

11/10/2013

In the matter between:

ABSA

BANK

LIMITED.....APPLICANT

and

PHENYO GENERAL SUPPLY CC +

1.....RESPONDENT

JUDGMENT

HASSIM A AJ

1. This is an application brought in terms of Rule 30(1) of the Uniform Rules of the High Court. The applicant (plaintiff in the main action) issued a simple summons against the First and Second Respondents.

2. The applicant seeks to set aside the plea and counterclaim that was filed by the respondents. The applicant contends that these pleadings were an irregular step in that the applicant's declaration had not yet been filed. During the hearing counsel for the applicant conceded that the applicant was probably out of time for filing the declaration. Applicant requests that the plea and counterclaim be set aside and that the applicant be permitted to file a declaration. It is common cause between the parties that leave to defend was granted on 26 October 2012. The plea and counterclaim was delivered on 8 November 2012. The applicant afforded the respondents the opportunity to remove the cause of complaint on 14 November 2012.
3. The respondents did not file heads of argument in this matter, nor was there any appearance for the respondents. The position of the respondents, however, is evident from the record. In their notice objecting to the Rule 30 notice by the Applicant, the respondents contend that the plaintiff is not entitled to file a declaration because the summons was a combined summons. Rule 20 of the Uniform Rules of the High Court provides that a plaintiff may deliver a declaration within 15 days of receipt of a notice of intention to defend, 'except in the case of a combined summons'. Rule 1 of the Uniform Rules defines a combined summons as "a summons with a statement of claim annexed thereto in terms of subrule (2) of rule 17/"
4. The applicant's counsel contends firstly, that the summons is clearly a simple summons because it is headed so; and second, that the particulars of claim were not 'annexed' to the summons but instead is part of the body of the summons. This is evident from the form of the document. While there is a heading that reads 'particulars of claim', what follows is a statement of the cause of action, further followed by the rest of the usual notices in a simple summons. Further there is no citation of parties under the heading 'particulars of claim' because these are contained at the beginning of the summons as information to the sheriff. But for the heading 'Particulars of Claim', the contents of the claim could be construed as a concise statement of the plaintiff's cause of action.
5. Form 9 requires the plaintiff to set out his cause of action in concise terms. This does not mean that there can be no particularity of the claim. According to Harms Civil Procedure in the Superior Courts at B-136(l), "although the cause of action in a simple

summons can be termed a label or a general indication of claim, it must be described with sufficient clarity to inform the defendant in sufficient detail of the case against him to enable him to ward off a summary judgment application and to satisfy the court that the plaintiff has a valid cause of action entitling him to judgment." Where the cause of action is founded on a document, such document should be attached to the simple summons: *Volkskas Bank Ltd v Wilkinson* 1992 (2) SA 388 (C) at 395A. The relevant documents were attached to the summons here.

6. They only marker that seems to suggest that the simple summons was more than it proclaimed to be, is the heading 'Particulars of Claim' within the body of the summons rather than a separate annexed document. While this is sloppy and creates confusion, it is not sufficient to render the summons a combined summons. On this basis, the applicant is entitled to deliver a declaration.
7. It also appears from the record (in the Defendant's Reply to the Rule 30(1)) that the respondents simultaneously took the view that the applicant was out of time for delivery of the declaration. This contradicts the defendants' initial objection on the basis that the summons was a combined summons. It is not clear from the

pleading whether this is intended to be an alternative ground of objection. There were no submissions before court in this regard.

8. In the circumstances I find that the applicant is entitled to succeed in this application. In the written heads of argument, the applicant sought costs on a punitive scale. However, during argument, counsel for the applicant did not pursue this argument.
9. I make the following order:
 - 9.1. The defendant's plea and counterclaim is set aside.
 - 9.2. The plaintiff is to deliver its declaration within ten days of this order.
 - 9.3. Costs are to be costs in the cause.

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