

SOUTH AFRICA / JUDGMENT

Aggenbach v Wessels (1696/21)

[2024] ZANWHC 170 (3 July 2024)

[2024] ZANWHC 170**COURT**

North West High Court, Mafikeng

BEFORE

A Reddy

CASE / FILE NUMBER

1696/21

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Source record**Last amended version 5****July 2024.****IN THE HIGH COURT OF****SOUTH AFRICA****NORTH WEST DIVISION –****MAHIKENG****Case no: 1696/21****Reportable:**

YES/NO

Circulate to Judges:

YES/NO

Circulate to

Magistrates:

YES/NO

Circulate to Regional

Magistrates: YES/NO

In the matter between:

PHILLIPUS EDWARD

AGGENBACH

PLAINTIFF

And

RONEL

WESSELS

DEFENDANT

Judgment is handed

down electronically by distribution to the parties' legal

representatives by e-mail. The date that the

judgment is deemed to be

handed down is 03 JULY 2024 at 14h00.

ORDER

(i)

The exception is dismissed with costs.

(ii)

The defendant is to file a plea within ten (10) days from the date of this order.

JUDGMENT

REDDY J

- [1] This exception was an invitation for plaintiff to amend his particulars of claim. Instead, the plaintiff declined by defending his claim as pleaded. This is an opposed exception founded on two primary grounds. The defendant contends that the plaintiff's particulars of claim fail to disclose a cause of action, alternatively the particulars of claim are vague and embarrassing.
- [2] The plaintiff is Mr. Phillipus Edward Aggenbach. The defendant is Ronel Wessels. The correct appellations for this interlocutory would be to refer to the defendant as the excipient and the plaintiff as the respondent. For purposes of brevity, I propose to use the designations as cited in the main action. The plaintiff and Mr. Hendrik Wessels were co-directors of Cadou Automatics (Pty) Ltd, ("Cadou Automatics"). Cadou Automatics, traded as Wes Auto.
- [3] The particulars of claim are not a model of clarity, as regards the deceased. This may result in a disjointed synopsis of the facts. It is regrettable. The deceased was at all relevant times the owner of a life policy held with Momentum Life Insurance Company. Cadou Automatics was liable for the payment of the monthly premiums for the life policy that was held with Momentum Life Insurance Company. One of the general conditions of the life policy was that on the passing of the deceased, the chosen beneficiary of the deceased would be credited in the sum of R 7 255 556.00.
- [4] On or about 30 May 2020 at Rustenburg the plaintiff, Mr. Wessels and the deceased entered and concluded an oral agreement. The salient terms of this agreement constituted the following. Cadou Automatics would continue to pay the monthly premiums in respect of the life policy held with Momentum Life Insurance Company. The deceased would remain the owner of the life insurance policy.
- [5] On the deceased's death the proceeds of the life insurance policy, the plaintiff, Mr. Wessels and the defendant would receive a 33.3% of same. Notably, the deceased was to instruct Momentum Life Insurance Company to record the terms of this oral agreement on his policy. On the passing of the deceased the entire proceeds of the life cover were paid to the defendant. In terms of the oral agreement, the plaintiff contends that he was entitled to 33.3% of the life cover which computed to an amount of R 2 416 100.15. Resultantly, the defendant was unjustly enriched in the amount of R 2 416 100.15.

- [6] It is on these *facta probanda*, that the defendant filed a Notice in terms of Rule 23 of the Uniform Rules of Court, (“the Rules”). The defendant asserts firstly, that the plaintiff has no *locus standi in iudicio* to institute this action. Secondly, the particulars of claim do not sustain a cause of action, alternatively the particulars of claim are vague and embarrassing to such an extent that it is impermissible for the defendant to plead.

Locus standi of the plaintiff

- [7] Advocate Greyling SC contended that the plaintiff’s claim for repayment was founded upon a generalized enrichment claim. Advocate Greyling SC continued that an action founded upon an unjust enrichment cause of action must bring its claim within the recognized enrichment actions in our jurisprudence. To sustain such a cause of action it is incumbent on the plaintiff to aver and prove *inter alia*, that the defendant’s estate had been enriched, the plaintiff’s estate had been impoverished, the defendant’s

enrichment was at the expense of the plaintiff and that the defendant’s enrichment was without legal cause.

- [8] The ineptness of the plaintiff to have classed its action in any of the extant enrichment actions (*condictio indebiti*, *condictio causa data causa non secuta*, *condictio ob turpem vel iniustam* and the *condictio sine causa causa specialis*) lead to the plaintiff failing to demonstrate a cause of action, alternatively, the particulars of claim can be described as vague and embarrassing. To this end, the argument ran that notwithstanding the fact that the defendant’s estate being enriched, no averments have been made as to why the payment by Moment Life Insurance of the proceeds of the life policy of the deceased to the defendant lacked *causa*. If it is implied that the payment of the policy proceeds was against the terms of the oral agreement (to which the defendant was not a party), this only creates a personal right for the plaintiff against the deceased estate. Advocate Greyling further avowed that no averment is made that the plaintiff was impoverished at all, directly or indirectly.

No cause of action

- [9] Advocate Greyling asserted that the plaintiff has not made the necessary averments to sustain a cause of action founded on unjust enrichment. This is so, according to Advocate Greyling SC because no legal nexus is pleaded between the oral agreement, to which the defendant was not a party to, and the eventual payment of monies from Momentum Life Insurance to the defendant.

Vague and embarrassing

- [10] In respect of this ground, it was submitted that no averments are made as to why the payment of the proceeds of the life insurance policy to the defendant lacked *causa*. An absence of these allegations makes the particulars of claim vague and embarrassing as the defendant cannot properly and purposefully plead. Further thereto, Cadou Automatic was responsible for the payment of the monthly premiums.

- [11] Advocate Botes SC, for the plaintiff stated that although the Rules of Court do not explicitly require the plaintiff's particulars of claim or a declaration to disclose a cause of action, it is generally accepted that this is in fact what is required. To put emphasis on this contention, Advocate Botes SC placed much store on *Mackenzie v Farmers' Co-operative Meat Industries Ltd* 1922 AD 16 at 22, where the following definition of what constitutes a cause of action was adopted by the then Appellant Division:

"... every fact which it would be necessary for the plaintiff to prove, if transversed in order to support his 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." See: Makgae v Sentrahoer (Kooperatief) Bpk 1981

- (4) SA 239 (T) at 244 C.

- [12] Simply put, so the argument went is that the plaintiff's particulars of claim comply with the rudiments of the *condictio sine causa*. Consequently, it discloses a cause of action nor is it vague and embarrassing. It follows from the objective and undisputed facts that the amount of R 2 416 100.15, was neither due nor owing by Momentum Life Insurance Company to the defendant. Therefore, the defendant was unjustly enriched in this amount at the expense of the plaintiff. The ineluctable inference so Advocate Botes SC concluded was that the exception was stillborn. Resultantly, it falls to be dismissed with costs.

- [13] The general rule regarding pleadings is that pleadings must be drafted in a lucid, logical, and intelligible manner. The cause of action or defence must appear clearly from the factual allegations made. (Harms, *Civil Procedure in the Supreme Court* at 263-264).

- [14] In respect of pleadings, Rule 18(4) of the Rules of Court provides:

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

- [15] In Beck's *Theory and Principles of Pleadings in Civil Actions* 5th Edition, the following is provided:

"Pleadings should state facts and facts only.... That is to say they should not contain statements of either law or the evidence required to establish the facts. Only material facts and no others- need be alleged."

- [16] In *Southernpoort Developments (Pty) Ltd v Transnet LTD* 2003 (5) SA 655 (W) the court formulated the test on exceptions as follows:

"In order for an exception to succeed, the excipient must establish that the pleadings is excipiable on every interpretation that can be reasonable attached to it. A charitable test is used on exception especially in deciding whether a cause of action is established, and the pleader is entitled to a benevolent interpretation. The Court should look at a pleading with a magnifying

glass of too high power. The pleadings must be read as a whole, no paragraph can be read in isolation.”

- [17] It is a first principle in dealing with matters of an exception that, if evidence can be led which can disclose a cause of action alleged in the pleadings, that pleading is not excipiable. A pleading is only excipiable on the basis that no possible evidence led on the pleading can disclose a cause of action. See: McKelvey v Cowan NO 1980
- (4) SA 525 (Z) at 526D-E, Quinlan v McGregor 1960 (4) SA 383 (D) at 393F-G 5 ABSA Bank Ltd v Boksburg Transitional Local Council 1997 (2) SA 415 (W) at 422A 6 1998 (1) SA 836 at 902J – 903B 7 contra Prinsloo v Woolbrokers Federation Ltd 1955 (2) SA 298 (N) at 299E.
- [18] It follows that where an exception is taken the Court must look at the pleadings in its current form, and not place any reliance on facts outside the four corners of the pleadings. In casu, the plaintiff's cause of action has been succinctly set out in the pleadings. It is trite law that an exception that a cause of action is not disclosed by a pleading cannot succeed unless it be shown that ex facie the allegations made by a plaintiff and any document upon which his or her cause of action may be based, the claim is (not may be) bad in law.
- [19] It is of no value to recapitulate all the facts. The peripheral facts at this point are not material. The central facts are. The four requirements to satisfy a claim for enrichment are that the defendant must be enriched, the plaintiff

must be impoverished, the enrichment must be at the expense of the plaintiff and must be unjustified. Although there is no unified

general enrichment action, these are requirements common to all enrichment actions. See: McCarthy Retail Ltd v Short-distance Carriers CC (110/99)

[2001] ZASCA 14; [2001] 3 All SA 236 (A) (16 March 2001) para 8-10; Nortje en Ander v Pool, No 1966 (3) SA 96 (A).

[20] In Govender v Standard Bank of South Africa Limited 1984

(4) SA 392 (C) 400 the Appellate Division (AD) discouraged a ‘formalistic approach’ to labelling the cause of enrichment actions:

‘It may be an open question whether the action in this case falls to be decided according to the principles governing the *condictio indebiti*, in which event negligence of the plaintiff may preclude the *condictio*, or whether the claim is a *condictio sine causa*, in which event negligence of the plaintiff may be irrelevant. A formalistic approach, of course, should be avoided where possible. In some cases it is necessary to classify the cause of action. In others, where no issue turns upon classification of the cause of action, a plaintiff need not place a label upon this case. If he is able to show that the law entitles him to relief it is not necessary for him to commit himself in advance in his pleadings to one form of action to the exclusion of another. It may, however, in this case be of importance in the issue of negligence to bear in mind that the *condictio indebiti* and the *condictio sine causa* have different requisites, and to determine which is the appropriate

action and consequently what are the appropriate requirements which plaintiff must establish in order to succeed. In the case of the *condictio indebiti*, a person who makes a payment of money (or delivers a thing) to another due to a reasonable error of fact in the belief that the payment is owing, whereas it is not, may claim repayment to the extent that the person who received the payment has been enriched at his expense.’

[21] While dissuading a ‘formalistic approach’, the Appellant Division explicated the distinction between *condictio indebiti* and *condictio sine causa* in the following manner:

‘It is necessary for a *condictio indebiti* to show reasonable mistake of the plaintiff, but a *condictio sine causa* lies whether the money is in the hands of the defendant without cause, whether due to mistake of the plaintiff or not. It is therefore a defence to the *condictio indebiti* that the mistake was not reasonable but negligent, but it would not seem to be a defence to the *condictio sine causa* since no error need be proved, whether reasonable or unreasonable.’ ‘

In the case of a *condictio sine causa*, money which has come into the hands or possession of another for no justifiable cause, that is to say, not by gift, payment discharging a debt, or in terms of a promise, or some other obligation or lawful ground for passing of the money to the recipient, may be recovered to the extent that the recipient has thereby been enriched at the expense of the person whose money it was. The *condictio sine causa*, in this special form (*specialis* as opposed to *generalis*) may be brought where the *condictio indebiti* is inappropriate to the case; indeed, it cannot be brought where the *condictio indebiti* applies to the case.’

[22] In endorsing *Govender in B & H Engineering v First National Bank of South Africa*, the Appellant Division illustrated that:

‘A *condictio indebiti* lies to recover a payment made in the mistaken belief that there is a debt owing. However, a bank paying a cheque knows that it owes no debt to the payee. Its mistake lies, not in the belief that it owes money to the payee, but in a belief that it has a mandate from the drawer to make payment. In these circumstances the appropriate remedy is not the *condictio indebiti* but the *condictio sine causa*.’

[23] Unpersuaded by the formalistic approach as enunciated in *Govender* the plaintiff has pinned its colors to the mask by contending that the relief sought in the particulars of claim falls within the realm of the *condictio sine causa*. When juxtaposing requirements of the *condictio sine causa* with the *facta probanda* as pleaded by the plaintiff, in my assessment a clear cause of action has been established.

[24] I find that under the *condictio sine causa* the plaintiff has established a *prima facie* case of unjust enrichment of the defendant at the expense of the plaintiff.

[25] Regarding costs, the usual rule that the costs follow the result applies.

Order

[26] In the premises, I make the following order:

A REDDY

JUDGE OF THE HIGH COURT

OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

Counsel for the plaintiff /respondent: Advocate Botes SC Attorney for plaintiff/respondent: Nienaber & Wissing Attorney Office No.1 First Floor 4204 Palmer Crescent Leopard Park, Mahikeng Email:charl@nwatt.co.za Counsel for defendant/excipient Advocate Greyling SC Attorney for defendant/excipient: Herman Scholtz Attorneys 59 Lanric, Shippard Street Mahikeng Email address : hermanscholtzattorney@gmail.com Date of hearing 31 May 2024 Date of judgment 03 July 2024

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