

SOUTH AFRICA / JUDGMENT

Damon v Minister of Police (308/2015)

[2020] ZANCHC 41 (25 June 2020)

[2020] ZANCHC 41**COURT**

Northern Cape High Court, Kimberley

BEFORE

Dauds AJ

CASE / FILE NUMBER

308/2015

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****NORTHER****N CAPE DIVISION, KIMBERLEY****Case No:** 308/2015**Date Available:** 25/06/2020
In**the matter between:** MARTIN
ALISTAIR DAMON
Plaintiff
and
MINISTER
OF POLICE
Defendant**RULING****ON PROPOSED AMENDMENT OF PLAINTIFF'S PARTICULARS OF CLAIM****DAUDS AJ**

- [1] This was a civil trial in respect of which evidence was heard from 08 to 10 October 2019, and judgment reserved after oral arguments were made to the Court on 18 November 2019. After evidence and arguments for both the Plaintiff and Defendant were heard, and just before judgment was due to be delivered, the Plaintiff filed what was described as a "NOTICE IN TERMS OF RULE 28(10)" on 12 December 2019. The document purported to be a Notice to

amend the Plaintiff's Particulars of Claim in terms of rule 28(10) of the Uniform Rules of Court, and set out - in broad detail and over 8 pages - the manner in which the Plaintiff sought to amend his Particulars of Claim.

- [2] It is apparent from a reading of rule 28(10) that what the provision does is to preserve the Court's discretion to grant leave for the amendment of a pleading at any stage right up to the moment before judgment is delivered. Rule 28(10) does not lay down the procedure to be followed when an amendment is sought. The procedure to be followed when seeking to amend a pleading is set out rule 28(1) and, while the Plaintiff's Notice to Amend purported to be delivered in terms of rule 28(10), the Notice as a matter of fact followed the provisions of rule 28(1) and (2) in that it notified the Defendant of the Plaintiff's intention to amend his Particulars of Claim, provided details of the amendment and gave the Defendant 10 days within which to object to the proposed amendment, failing which the amendment would be effected.
- [3] On 19 December 2019, and within the stipulated 10 days, the Defendant delivered a rule 28(3) Notice in terms of which he exercised his right to object to the Plaintiff's proposed amendment. In the face of the Defendant's objection, and as stipulated by rule 28(4), the Plaintiff was required to then bring an application for leave to amend his Particulars of Claim. This application was required to be brought within 10 days of delivery of the Defendant's objection. Where the Plaintiff failed to bring the application within the requisite 10 days and there is no agreement between the parties, an application may be brought under rule 27(3) condoning non-compliance with the rules of Court, and in this case rule 28(4), should the Plaintiff wish to persist with amendment of his Particulars of Claim. It is common cause that almost six months later the Plaintiff failed to bring an application as required by rule 28(4) for leave to amend his Particulars of Claim. The Plaintiff also failed to bring an application under rule 27(3) condoning his non-compliance with rule 28(4).

Order

- [4] In the Court's view, the appropriate order to make in the circumstances is the following:

THE MATTER IS DISMISSED WITH COSTS

For the Plaintiff:

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(Ref: 69/201314440/PV/lj)

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