

SOUTH AFRICA / JUDGMENT

Diedricks v Rex (865/2020) [2020] ZAFSHC 253 (3 December 2020)

[2020] ZAFSHC 253**COURT**

Free State High Court, Bloemfontein

BEFORE

Chesiwe

CASE / FILE NUMBER

865/2020

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**IN****THE HIGH COURT OF SOUTH AFRICA****FREE****STATE DIVISION, BLOEMFONTEIN****Case****number: 865/2020****In**

the matter between:

KENNETH
LEONARDO
DIEDRICKS Plaintiff
and
CHARLTON
MICHEAL
REX Defendant**JUDGMENT****BY: CHESIWE, J****HEARD ON: 11 SEPTEMBER 2020****DELIVERED ON: 03 DECEMBER 2020**

- [1] The Plaintiff instituted action against the defendant for payment of damages for R1 000 000, 00. The defendant filed a counter-claim application, in which he seeks damages amounting to R400 000, for three separate incidents that occurred between 13 June 2018 and October 2018.

- [2] The Plaintiff filed a Notice to Exception in terms of Rule 23. The application is respect of the counter-claim on the four claims, that is, claim A, B, C and D as well as lack of jurisdiction by this court and that the pleadings lack the necessary averments to disclose a cause of action. In addition, that the counter-claim fails to comply with Rule 18 (4) of the Uniform Rules of Court.
- [3] The application was unopposed; however, the defendant indicated before commencement of arguments that the matter was now opposed. It proceeded on a virtual platform.
- [4] I pause to mention the following: Adv. Mosikili before the matter could proceed raised an objection to the appearance of Adv. Nel on behalf of the defendant. He mentioned that Adv. Nel was not suited to appear for the defendant as the plaintiff had several encounters with Adv. Nel, including having represented the plaintiff. Adv. Mosikili submitted that Adv. Nel was a director in a

company that involved Mr. Nel, Mr Rex and Mr Diedricks. He further submitted that the claims raised against the defendant, Adv. Nel has a direct interest in the business as Adv. Nel may have to testify if the matter has to go on trial. He further mentioned that the relief sought in the counter-claim, is an unreserved apology that must be issued to Adv. Nel by the Plaintiff. He submitted that the Plaintiff has legal challenges towards Adv. Nel and proposed that the matter be postponed with costs.

- [5] Adv. Nel replied to the objection indicating that in his personal capacity, he is not a trustee nor has he consulted with the plaintiff. He submitted that the statements made by the plaintiff are not by way of affidavit. He mentioned that there is no need to delay the exception, it should proceed as his appearance on behalf of the defendant, has shown no evidence of any prejudice towards the plaintiff. He submitted that the plaintiff has known about him appearing for the defendant, as there is no evidence of conflict of interest. Adv. Nel objected to the postponement and requested that the matter should proceed, as both parties were ready to proceed with arguments for the exception.
- [6] I was inclined to grant the postponement, in order for the plaintiff to bring an interlocutory application in respect of the issue of conflict of interest of Adv. Nel. However, Adv. Mosikili requested that the exception application should proceed in order to save time, as he will attend to the issue of Adv. Nel at a later stage. Adv. Mosikili abandoned the objection to Adv. Nel's appearance as a legal representative for the defendant.
- [7] Background on this matter is briefly as follows: The plaintiff and the defendant are shareholders in Rexton Holdings (Pty) Ltd (Rexton), a private company duly registered in accordance with Company Law in the Republic of South Africa. The parties had ongoing negotiations with a company called Sincerity Resources (Pty) Ltd (Sincerity) for a manganese transaction in the Northern Cape, South Africa. It appears that the plaintiff became aware of illicit dealings between Rexton and Sincerity. The plaintiff addressed correspondence to the directors/shareholders of Rexton. The defendant proceeded to address an email to the plaintiff in which the defendant copied the directors/shareholders, which email according to

the plaintiff had defamatory content. The plaintiff proceeded to institute action in the Gauteng North Provincial Division to interdict the ongoing transaction between Rexton and Sincerity, under case number 93639/2019 and this matter is ongoing.

- [8] However, before me for determination is whether this court has jurisdiction to adjudicate on the defendant's counter claim, and whether the defendant's counter-claim has been pleaded sufficiently and if it is vague and embarrassing.
- [9] It is important that I first deal with the applicable principle in an Exception as stated in Erasmus Superior Court Practice at B1 154 to B1 154A:

“(a) In each case the court is obliged first of all to consider whether the pleading does lack particularly to an extent amounting to vagueness where a statement is vague it is either meaningless or capable of more than one meaning. To put it at its simplest; the reader must be unable to distil from the statement a clear, single meaning.

- (b) If there is vagueness in this sense, the court is then obliged to undertake a quantitative analysis of such embarrassment as the excipient can show cause to him or her by the vagueness complained of.
- (c) In each case and ad hoc ruling must be made as to whether the embarrassment, is so serious as to cause prejudice to the excipient if he or she is compelled to plead to the pleading in the form to which he or she objects. A point may be of the utmost importance in one case, and the omission thereof may give rise to vagueness and embarrassment, but the same point may in another case be only a minor detail.
- (d) The ultimate test as to whether or not the exception should be upheld is whether the excipient is prejudiced.
- (e) The onus is on the excipient to show both vagueness and embarrassment amount to prejudice.
- (f) The excipient must make out his or her case for embarrassment by reference to the pleadings alone.
- (g) The court would not decide by way of exception the validity of an agreement relied upon or whether a purported contract may be held for vagueness.”

- [10] In *Jowell v Bramwell Jones and Others*,^[1] the court stated as follows:

“I must first ask whether the exception goes to the heart of the claim and, if so, whether it is vague and embarrassing to the extent that the defendant does not know the claim he has to meet...”

Vagueness could arise from the formulation of the pleadings. The absence of necessary averments or incomplete pleadings, serious prejudice must arise from these defects.”

- [11] It must, also be borne in mind that Rule 18(4) of the Uniform Rules of Court which requires that every pleading:

“Shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim... with sufficient particularity to enable the opposite party to reply thereto.”

Not forgetting that the object of pleading is to define issues between the parties. In Blake Odgers' Principles of Pleadings and Practice in Civil Actions in the High Court of Justice 22nd edition at page 113, it stated as follow:

“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.”

[12] I have applied the aforementioned tests to the particulars of claim before me. I have to be persuaded by the excipient that the pleading is expiable on every interpretation that can be attached to it.[2]

[13] The plaintiff raised the first exception that of jurisdiction, as pleaded in paragraph 10 of the defendant's counterclaim

according to the particulars of claim the cause of action arose in Pretoria. Adv. Mosikili submitted that the defendant is aware that the plaintiff resides in Gauteng and is therefore not within the jurisdiction of the Free State Division. He submitted that the defendant is abusing court process in the form of a counterclaim by enforcing the plaintiff to proceed in the Free State Division,

whereas it is common cause that the action was committed in the Pretoria. Counsel disputed that the plaintiff by instituting the

action in the Free State High Court, was consenting to the whole action being in the Free State. He submitted that the main action

remains in the Free State, but the defendant to approach the plaintiff in his jurisdiction.

[14] Adv. Nel submitted that the defendant has displayed a cause of action and that the plaintiff need not be overly technical when it comes to the exception. He submitted that section 21(2) of the Superior Courts Act 10 of 2013, that a court may assume jurisdiction over a party. He submitted that the plaintiff by instituting action against the defendant in this division, the plaintiff submitted himself to the jurisdiction of this court in respect of the claim in reconvention.

[15] Section 21(1) of the Superior Courts Act 10 of 2013 (the Act) which provides as follows:

“A division has jurisdiction over all persons residing or being in and in relation to all causes arising and of all offences, enable within its area of jurisdiction.”

[16] In Gallo Africa Ltd v Sting Music[3] Harms DP said the following:

“However, our courts have for more than a century interpreted to mean no more than that the jurisdiction of the High Court is to be found in the common law. For the purpose of effectiveness, the defendant must be or reside within the area of jurisdiction of the court (...) although effectiveness lies at

the root of jurisdiction, it is not necessarily the criterion for its existence. What is further required is a ration jurisdiction, the ration in turn may for instance be domicile, contract, delict and relevant for present purposes... It depends on the nature of the right or claim whether one ground or the other provides a ground for jurisdiction. Domicile on its own for instance may not be enough."

- [17] The factors a court has to consider are the residence of a litigant, cause of action, place where dispute arose, quantum, and nature of the claim and consent. The plaintiff instituted proceedings in this division as the defendant resides in the Free State, whereupon the defendant filed a claim in reconvention based on defamation. Generally, the court where the wrongful act was committed will have jurisdiction.
- [18] Where the court has jurisdiction in respect of some claim, but not others, it may apply the *causae continentia* doctrine. (See *Roberts Co. Ltd v Wileox Bros (Pty) Ltd* 1962 (4) SA 326 (A)). It was designed to avoid multiplicity of processes and the possibility of conflicting judgments on the same cause of action and to provide for the convenient finalization of a suit. In terms of this doctrine, if the court has jurisdiction in respect of one claim, it can assume jurisdiction in respect of other claims in the same action which are based on different causes of action.[4] For purposes of convenience and appropriateness as well as effectiveness, it would be proper that the whole action proceed in the Free State Division. The plaintiff by instituting the action against the defendant in this division, the inference drawn is that the plaintiff submitted himself to this court's jurisdiction. In *Bid Industrial Holdings (Pty) Ltd v Strang and others*,[5] the court adopted a more relaxed view in respect of jurisdiction and stated that consideration, appropriateness and convenience need to prevail.
- [19] If the counterclaim in reconvention has to be instituted in the Gauteng Division, it will indeed bring a multiplicity of actions as well as duplication of proceedings concerning a defamation claims between the parties, that could be litigated in one court. Both litigants being South African citizens and residing in South Africa permanently, the court can assume jurisdiction in this matter for purposes of convenience and effectiveness, justice and fairness, it would therefore be justified in exercising jurisdiction over the whole suit.
- [20] In *Association of Debt Recovery v The University of Stellenbosch Legal Aid Clinic and Others*,[6] the court said the following.

"It would be eminently practical, reasonable and convenient for the non-confirmation matter to be heard together with the confirmation

matter. The matters share the same factual content, formed part of the same papers and the legal arguments of these cases overlap...

It would amount to wastage of time and costs for what is effectively one half of the case to be dealt with by the constitutional court and the other half by the SCA."

- [21] It would indeed be wastage of costs, time and resource if one part of this case should be heard in Gauteng Division and the other part be heard in the Free State Division, where the cause of action stems from the same issues.
- [22] The exception relating to claim A, B, C and D are intertwined as they all relate to words/insults that the defendant averred are defamatory. In claim A, the word “Fuckin idiot” was used and in claim B, the defendant contends that the plaintiff in the email stated that he is an “asshole”, “annoying”, “slept on a litigious matter”, “he stretched his fees on a litigious matter”, “be kept away from judges”, “threaten to shoot judges”, “stupid”, “has crippled his family”. To which the plaintiff averred that the defendant’s pleadings lack the necessary averments to disclose the cause of action. Claim C and D relate to an email attached to the defendant’s plea, marked “CC1” and “CC2”. Both annexures read as follows:

“17. On or about 21 October 2019, the plaintiff published, by way of transmitting an electronic mail, a copy of which is attached hereto marked “CC1”, to the defendant, Pretorius, DIyase and Mr Piet Nel (Nel), stating of and concerning the defendant.”

In addition to that, CC2 reads as follows:

“On or about 21 October 2019, the plaintiff published, by way of transmitting an electronic mail, a copy of which is attached hereto marked “CC2”, to the defendant, Pretorius, DIyase and Mr Piet Nel, McCare and Mr Penuell Maduna (“Maduna”) stating of and concerning the defendant.”

- [23] In my view the defendant has failed to succinctly indicate the cause of action. Thus making it difficult for the plaintiff to plea properly to the uttered words, including to plea to the statements, which indeed appear to be vague and embarrassing.
- [24] An exception that a pleading is vague and embarrassing strikes at the formulation of the cause of action and its legal validity. If it is not directed at a particular paragraph within a cause of action, but at the cause of action as a whole, it must be demonstrated to be vague and embarrassing, as stated in *Jowell v Bramwell – Jones supra*.
- [25] The plaintiff contends that the defendant failed to set out properly the elements of defamation and thus the defendant’s claim lacks the necessary averments to disclose cause of action. Averments in the pleadings that are not pleaded are patently vague and embarrassing. Indeed, words such as “fucking idiot”, “ought not to chair the meeting”, the plaintiff can be left guessing as to the actual meaning of the conveyed pleadings.
- [26] Rule 18(4) requires that each pleading in an action, “... shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim with sufficient particularity to enable the opposite party to reply thereto...”
- [27] In *Trope and Others v South African Reserve Bank*,^[7] the court said:

“This must be seen against the background of the further requirement that the object of pleadings is to enable each side to come to that prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form, the cause of action or defence must appear clearly from the factual allegation made.”[8]

[28] The object of pleadings therefore is to ascertain definitely what the question/issue between the parties is. That can be attained when each party states his case with precision and the degree of precision depends on the circumstances of each case. In this instance a statement that: “Someone ought not to chair a meeting”, this can be regarded as vague as it is not clear and concise, so is the word “someone” a vague term, as a litigant is unable to plea to “someone”.

[29] The allegedly uttered words of “asshole” “annoying” “stupid”, become difficult to plead. The plaintiff could simply deny uttering such words. Each of the claim should pass the test of discharging the cause of action. In *Spearhead Property Holdings Ltd v E & D Motors (Pty) Ltd* [9], the court stated that:

“It is equally trite that since pleadings are made for the court and not the court for the pleadings, it is the duty of the court to determine the real issue between the parties.”

[30] In my view, the defendant’s claim lacks the necessary averments to disclose a cause of action. On all the grounds raised by the excipient, I am satisfied that he has discharged the required onus of proof for this court to uphold the exception in part.

[31] Accordingly, I make the following order:

1. The exception to the defendant’s claim is upheld on the three grounds.
2. Exception on jurisdiction is dismissed.
3. Defendant is granted an opportunity to amend his Particulars of Claim within ten (10) days of the granting of this order.
4. Failing to comply with order 2 above, the defendant’s counter claims are struck out.
5. The defendant is to pay the costs of this application.

CHESIWE, J

Appearances:

On behalf of the Plaintiff: Adv. T Mosikili

Instructed by: Webber Laws Attorneys

BLOEMFONTEIN

On behalf of the Defendant: Mr. P Nel

Instructed by: Honey Attorneys

[1]1998

[1] SA 836 W at 905G.

[2] See Pichel Group Voorsorgfonds (in liquidation) v Somerville and Related Matters 2013 (5) SA 496 SCA at 501A-B.)

[3] 2010(6) SA 329 (SCA) at paragraph 10

[4] Roberts Supra para 18; Thomas v BMW South Africa (Pty) Ltd 1996 (2) SA 106 (C) at 127H.

[5] 2008 (3) SA 355 (SCA),

[6] [2016] ZACC 32 (CCT 127?15

[7] (641/91)

[1993] ZASCA 54; 1993 (3) SA 264 (AD) [1993] 2 ALL SA 278.

[8] 1992 (3) SA 208 (T) at 210 G-J

[9] 2010 (2) SA SCA at 15 H-16 A

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAFSHC/2020/253.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/diedricks-v-rex-unknown-topic-afshc-2020--6a3ea5103b1caa9129808b1f>

Prepared on 9 October 2026 · Esheria