

SOUTH AFRICA / JUDGMENT

## Emakhazeni Local Municipality v Mkansi NO (53902/15) [2016] ZAGPPHC 888 (23 September 2016) [2016] ZAGPPHC 888

COURT

North Gauteng High Court, Pretoria

BEFORE

Tlhapi VV

CASE / FILE NUMBER

53902/15

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IN THE COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE: 53902/15

23/9/2016

Reportable: No

Of interest to other judges: No

Revised.

In the matter between:

EMAKHAZENI LOCAL MUNICIPALITY PLAINTIFF

and

HLEKANI DUDU MKANSI N.O DEFENDANT

TLHAPI J

[1] The defendant excepted to the plaintiff's Particulars of Claim on grounds that they do not disclose a cause of action. The application

was opposed. The exception was upheld with costs. An order was granted on 2 August 2016 in favour of the defendant and the applicant

was ordered to amend the particulars of claim within fifteen days of the order, in particular relating to issues raised in paragraphs 4 and 4.1.3 of the agreement. My reasons now follow.

[2] The plaintiff and respondent entered into an agreement whereby the defendant was deposit all proceeds collected by it on behalf of the plaintiff for the supply of prepaid electricity. All proceeds collected were to be deposited into the bank account of the plaintiff on a daily basis, excluding Saturdays, Sundays and Public Holidays. Between July 2013 and March 2015 the defendant collected an amount of R22 915 90.38. The plaintiff alleged that the defendant was in breach of clause 4.1.3 of the agreement in that for the same period only deposited an amount of R16 353 018.64. The plaintiff sued for the total balance in the amount R6 562 951.84.

[3] The following were the grounds of exception in the Particulars of Claim:

3.1. that the plaintiff failed to indicated how the amount of R22 915 970.38 is calculated, who in particular collected the said amount as it is an all-inclusive third party distribution system;

3.2. with regard to the amounts of R16 33 018.64 and R 6 562 91.84 the plaintiff failed to provide how the amounts are calculated and when the deposits were made;

3.3. the plaintiff failed to provide the date and content of the letter of demand.

[4] I shall deal only with those submissions I consider to address the issues raised. Counsel for the excipient submitted that since the agreement provided for two methods of 'revenue collection' that is, through the debt collection centre and through prepaid electricity vending platform' it was important to indicate which cause of action is being relied upon in the particulars of claim.

Counsel for the plaintiff submitted that the exception was without merit and that it was nothing more than the defendant wanting the plaintiff to plead evidence.

[5] It is trite that the purpose of pleadings is to state with precision, concisely and for the benefit of the Court and the litigants all the issues and or facts relied upon by them in order to establish a cause of action. Furthermore pleadings should not state evidence to be relied upon by either of the parties in establishing a cause of action or in defence of the action.

Where the defendant alleges that a pleading lacks allegations to substantiate a claim, such defendant may note an exception. The Court should consider the substance properly and will not uphold the exception unless it is satisfied that the defendant would suffer prejudice 'in the conduct of his defence if the summons were to be permitted to stand'; MN v AJ 2013 (3) SA 26 (WCC) paragraphs 19 - 25.

[6] Clause 4.1.3 of the agreement reads:

"The service provider must deposit all proceeds (less the commission and/or service fees payable as per clause 13 of this agreement) from third party prepaid electricity on daily basis excluding Saturdays, Sundays and public holidays into the following Municipal bank account . ....

Clause 3.1.2

"All prepaid revenue related o the prepaid meters supplied, installed and project managed as per clause 13.1.2 will first go towards expunging the costs as per Annexure A. Once the costs are expunged all prepaid electricity revenue related to theses prepaid meters will be passed onto the Emakhazeni Local Municipality.

The preamble to the agreement indicates that revenue collection by the defendant is subject to the above clauses. The particulars of claim should, having regard to the above clauses articulate and without pleading evidence show how the outstanding amount of R6 562 951.84 is calculated. If one has regard to 13.1.2 above it suggests that even though the plaintiff would have record of how much revenue was collected, the defendant may deduct payment for costs incurred in respect of services and goods supplied as provided in 4.1.1 and 4.1.3 of the agreement.

[7] It was argued for the defendant that the plaintiff had failed to indicate which aspect of the contract the amount claimed related to having regard to the two types of revenue collection and I agree with this submission, hence the upholding of the exception.

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TLHAPI VV

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON

:

02 AUGUST 2016

**REASONS**

RESERVED ON

:

02 AUGUST 2016

ATTORNEYS FOR THE PLAINTIFF :

NOMASWAZI SHABANGU ATT

ATTORNEYS FOR THE DEFEDANT :

UREESH DORASAMY ATT

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