

SOUTH AFRICA / JUDGMENT

Firmpulse Trading CC and Another v Kleynhans and Another (5115/2023) [2024] ZAFSHC 166 (27 May 2024)

[2024] ZAFSHC 166**COURT**

Free State High Court, Bloemfontein

BEFORE

Opperman J

CASE / FILE NUMBER

5115/2023

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****FREE STATE DIVISION,****BLOEMFONTEIN****Case no.: 5115/2023****Reportable:**

NO/YES

In

the matter between:

FIRMPULSE

TRADING CC

First

Excipient

(Registration

number: 2004[...])

MICHAEL

ROBERT LUNDERSTEDT

Second

Excipient

And

HERMANUS

LUKAS KLEYNHANS

First

Respondent
MARTHA
CORNELIA KLEYNHANS
Second
Respondent
In

re: HERMANUS
LUKAS KLEYNHANS
First
Plaintiff
MARTHA
CORNELIA KLEYNHANS
Second
Plaintiff
And
FIRMPULSE
TRADING CC
First
Defendant
(Registration
number: 2004[...])
MICHAEL
ROBERT LUNDERSTEDT
Second
Defendant

Coram: Opperman
J

Heard: 17 May 2024

Delivered: 27 May 2024. This judgment was handed down in
court and electronically by circulation to the parties' legal
representatives via email
and release to SAFLII on 27 May 2024. The date and time of hand-down
is deemed to be 15h00 on 27 May 2024

Summary: Exceptions - Rule
23 of the Uniform Rules of Court

JUDGMENT

[1] Rule 18(4) of the Uniform Rules of Court states that:

Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.[1]

- [2] Fair constitutional litigation is crucial. An exception in terms of rule 23 has at its core to serve this purpose and its principal use is to raise and obtain a speedy and economical decision on issues that are apparent on the face of the pleadings.
- [3] In *Member of the Executive Council, Department of Education, Free State Province v Superintendent-General for the Department of Education, Free State Province and Another* [2008] ZAFSHC 156;
- [2008] ZAFSHC 45 (12 June 2008) the test to be applied in exception applications was enunciated to be:
- [7] As far as paragraphs 1.2.1- 1.2.4 are concerned it is necessary to keep in mind what an excipient must establish before it can succeed with an exception:

The test on exception

- (i) In order for an exception to succeed, the excipient must establish that the pleading is excipiable on every interpretation that can reasonably be attached to it. *FIRST NATIONAL BANK SOUTHERN AFRICA v PERRY NO AND OTHERS* 2001 (3) SA 960 (SCA) at 965D; *THEUNISSEN EN ANDERE v TRANSVAALSE LEWENDEHA WE KOÖP BPK* 1988 (2) SA 493 (A) at 500 E - F.
- (ii) 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. *PERRY'S CASE* supra at 972 1- J.
- (iii) The court should not look at a pleading "with a magnifying glass of too high power." *KAHN v STUART AND OTHERS* 1942 CPD 386 at 391; *PURDON v MULLER* 1961 (2) SA 211(A) at 214 e - 215 F. In the latter case it was stated: "minor blemishes in, and unradical embarrassments caused by, a pleading can, and should be, cured by further particulars."
- (iv) "The pleadings must be read as a whole; no paragraph can be read in isolation." *SOUTHERNPORT DEVELOPMENTS (PTY) LTD v TRANSNETLTD* 2003 (5) SA 665 (W) at 669 A - B.
- [4] The excipients/defendants (excipients) complain that the claim by the respondents/plaintiffs (respondents) does not contain the necessary averments to sustain a cause of action and must be struck.
- [5] The cause of action is one of *rei vindicatio* and the respondents want the return of certain farm implements. Three requirements must be met for a claim to be based on the *rei vindicatio*: There must be proof of ownership on the part of the person instituting the action; the property must exist and be identifiable; and the defendant must be in physical control of the property at the time the action is instituted.[2]

- [6] The excipients in the instance took issue with the annexure that was attached to the particulars of claim that is supposed to describe and identify the items that must be returned and in the alternative; the value of which must be paid by the excipients. This is the overarching bone of contention. These are the grounds for complaint against the annexure as described by counsel for the respondents:
1. First, they contend that the court cannot have regard to the list of equipment attached to the particulars of claim.
 2. Second, they argue that the court cannot consider the value of the equipment set out in the attached list.
 3. Third, they allege that the description of the equipment in the list lacks detail.
- [7] The facts of the case show that adjudication of the third ground above will also dispose of the issues on the first and second grounds.
- [8] During argument counsel for the excipients magnanimously agreed that the court may allow for the opposing parties to amend and file again to bring their claim in order.
- [9] As said; exceptions, generally speaking, serve as a means of objecting to pleadings which are not sufficiently detailed, lack lucidity or are incomplete. It affects the ability of the other party to plead thereto.
- [10] Court documents must at all times be drafted with the utmost care; in the least it must be drafted in one language. In the instance the combined summons was drafted in English and the annexure attached in Afrikaans. The use of different languages is not fatal but added to that is that the annexure is riddled with mistakes and the items are vaguely and generically described. This makes it legally impossible to react or reply or litigate further. There is not any indication in the particulars of claim as to how the value of the items that are depicted in the same annexure was established. It is unacceptable to expect from the excipients to blindly reimburse the respondents to the value of R1 572 000.00.
- [11] One cannot wait for the defects to be cured during trial because the fair trial - principle demands that both parties be placed in a position to prepare their defence effectively; to litigate effectively.
- [12] The annexure just speaks for itself and cannot be tolerated in its current form and contents. It must be struck as legally inappropriate. This is the annexure:

DETAILS VALUE Planter MF 3 ry hydrolies met spiutpomp en tenk R 90 000,00 Planter MF 3 ry (lift) met spiutpomp R 50 000,00 MF skrop se raamwerk met wiel R 20 000,00 Selgeboude lusemplanter R 20 000,00 LM skoffel net stikolof bakkie R 15 000.00 Onkruidspuit op wiele meet 20001 tenk en nuwe pomp R 100 000,00 Ford K1010 kajuit en bak met tyres R 50 000,00 Verkeie soos ontrent 300 ysterpale 900 droppers, 50 staal pyd, ander paie R 150 000,00 Ou wol skuerstafel R 20 000,00 Emmer met spesiale jakals vlagysters -10 R 20 000,00 Verskele los ysters voor oliekamer en stoor R 50 000,00 Agter werkswinkel verkele yster, tenkstaander en staal R 50 000,00

1 x MF offsit 2.1m breed R 15 000,00 4 x MF raamploee 3 skaar R 12 000,00 3 x MF Balkploee 4 skaar R 45 000,00 3 x Ou lusemsyners R 3 000,00 1 x 4 tol hooi hark R 20 000,00 1 x veevoer waertjie R 10 000,00 2 x Skoffeltjies R 20 000,00 3 x Stolmaster beiteploee R 60 000,00 1 x Big ox blou beiteploeg R 10 000,00 1 x LM 5 tand rippers R 50 000,00 1 x 3 ry ripper saadbed voorbereider R 1 00 000,00 2 x 1 ry "moffie" rippers R 20 000,00 1 x John Shearer saadbed voorbereider R 80 000,00 1 x Dortsky hammermeuk R 50 000,00 1 x 3 ry roleg R 30 000,00 1 x 2 ry roleg R 12 000,00 1 x Laai graaf (hydrolies) Verskeie ouderdele, saad en planterkarrerjies R 50 000,00 uit kamer van melkstal (toegesluit) R 30 000.00

Verskeie ander los artikels in melkstal R 10 000.00 Treinspoor trekpale en ander akerpale R 50 000,00 1 x misskraper (Jan Uys) R 15 000,00 1 x Kunsmis toediener R 10 000,00 1 x Outydse mielieplanter R 5 000,00 1 x Enjin ophyser van H-staal R 20 000,00 1 x Skaapselvervoeder R 10 000,00 3 x Onderdak voerders vir wild R 15 000,00 1 x Baal laai vurk R 10 000,00 5 x Ronder baa! houers R 25 000,00 Verskeie rolle 2de hande draad R 10 000,00 1 x 2.4m x 2.4m Koelkamer R 60 000,00 1 x Ford K1010 Enjin R 80 000,00 GRAND TOTAL R 1572 000,00

[13] The result of the above is that the exception succeeds in as far as the annexure is to be struck out on the basis that it was inappropriately drafted, the court cannot consider the value of the equipment set out in the annexure and that the description of the equipment in the annexure lacks detail to identify the items. The issue that the annexure does not form part of the text of the particulars of claim is not fatal but it would be prudent to draft the particulars of claim in such a manner as to include it therein.

[14] If an exception is allowed, the court will usually give the respondent an opportunity to file an amended pleading within a stated time. In service of the interest of justice[3] and as recommended by counsel for the excipients, a reasonable opportunity will be granted to amend the particulars of claim.

[15] Given the fact that the excipients are successful and the poor quality of the particulars of claim and the annexure; the respondents must carry the costs.

[16] Order of Court:

Accordingly, it is ordered that:

1. The exceptions on the second ground (In re: The quantum of the plaintiffs' claim) and the third ground (In re: The description and value of implements, equipment, and objects in the annexure to the plaintiffs' particulars of claim) are upheld. Save as aforesaid the exception on the first ground is dismissed.
2. The respondents (plaintiffs) are ordered to pay the costs of suit as on party and party scale A.
3. The plaintiffs (respondents) are afforded one (1) month from the date of this order to amend their particulars of claim.

OPPERMAN J

Appearances For excipients/defendants: J DELPORT Instructed by: Van der Merwe Dorning Maponya Inc. c/o Honey Attorneys Bloemfontein For the respondents/plaintiffs: E.J.J. NEL Instructed by: Jansen and Jansen Attorneys c/o Symington de Kok Attorneys Bloemfontein

- [1] Substituted by GNR.3397 of 12 May 2023.
- [2] Unimark Distributors (Pty) Ltd v ERF 94 Silvertondale (Pty) Ltd 1999 (2) SA 986 (T).
- [3] Christies Fish Supplies (Pty) Ltd v Ornelas Fishing Co (Pty) Ltd 1978 (3) SA 431 (C).

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