

SOUTH AFRICA / JUDGMENT

Hlatshwayo v Multichoice South Africa and Others (2021/27076) [2025] ZAGPJHC 364 (28 March 2025) [2025] ZAGPJHC 364

COURT

South Gauteng High Court, Johannesburg

BEFORE

WJ du Plessis

CASE / FILE NUMBER

2021/27076

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THE

HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

2021/27076

(1)

REPORTABLE: No

(2)

OF INTEREST TO OTHER JUDGES: No

(3)

REVISED: Yes

28

March 2025

In

the matter between: PHUTHUMILE
JOYCE HLATSHWAYO
Plaintiff
and
MULTICHOICE
SOUTH AFRICA
First
defendant
SIYAYA
MEDIA NETWORK
Second
defendant
THANDI
NZIMANDE
Third
defendant

JUDGMENT

DU PLESSIS J

Introduction

- [1] The plaintiff sues the defendants for defamation arising from a televised broadcast in which she was accused of murder and other misconduct. The statements were made by the third defendant, aired by the first defendant, and produced by the second defendant. The plaintiff claims R3 000 000.00 in general damages, special damages of R10 000.00, and further relief related to the online availability of the programme.
- [2] Before the court are three exceptions: two by the first defendant and one by the second defendant. All concern the sufficiency and clarity of the plaintiff's amended particulars of claim. There is also a Rule 30 application brought by the plaintiff.
- [3] The rules of the court set out the principles of pleadings that were further explained in *Benson & Simpson v Robinson*[1] as being that

"The plaintiff must not set out the evidence upon which he relies, but he must state clearly and concisely on what facts he bases his claim and he must do so with such exactness that the defendant will know the nature of the facts which are to be proved against him so that he may adequately meet him in court and tender evidence to disprove the plaintiff's allegations."

- [4] The facts that the pleader relies on to support their claim must be set out clearly, concisely and sufficiently particular to allow the defendant to reply thereto.[2] It is so that the court must not be too pedantic when reading pleadings, but the allegations made by the plaintiff must be clear

and cognisable.[3]

- [5] The first defendant delivered an exception dated 8 September 2023 to the plaintiff's amended particulars of claim. The plaintiff opposes same. This will be referred to as the "first exception". The first defendant also applied for a condonation of the late filing of the August 2023 exception, which the plaintiff opposes. This will be referred to as the "second exception". The second defendant has also delivered an exception to the plaintiff's amended particulars of claim, which the plaintiff likewise opposes. This will be referred to as the "second defendant's exception". The plaintiff has since applied for the second defendant's exception to be set aside under Rule 30. This will be referred to as the "Rule 30 application".

The first defendant's exceptions

First exception

- [6] The first defendant states that the plaintiff's amended particulars of claim are vague and embarrassing. They submit that the pleading conflates multiple causes of action (defamation, negligence, breach of dignity, and breach of privacy) without clearly indicating which are relied upon and on what factual basis this application relies.
- [7] In particular, it is unclear whether dignity and privacy are pleaded as separate causes of action or as consequences of the alleged

defamation. The pleading refers to the conduct of the first defendant as "unreasonable" but does not allege facts that would establish a separate claim in negligence, nor does it plead the essential elements of a claim for infringement of dignity, as set out in *Le Roux v Dey*.^[4]

- [8] The plaintiff maintains that the claim is based on defamation under the *actio iniuriarum*, and that dignity and privacy are cited only to show the effect of the publication. However, the particulars of claim fail to convey this with sufficient clarity.
- [9] I say this because the particulars of claim refers to various issues, to list but a few examples: injury to the plaintiff's "reputation, self-worth, dignity and privacy", "severe damage" to the plaintiff's "reputation, dignity and privacy" and a defamatory publication "due to the sole negligence of the owner(s) of DSTV".
- [10] The second defendant is entitled to know the case it must meet. A pleading that leaves the defendant guessing the true nature of the claim, is excipiable. I find that the particulars, as currently framed, are vague and embarrassing and fail to disclose a clear cause of action. The first exception must be upheld.
- [11] The second exception concerns the plaintiff's second and third claims arising from repeat broadcasts. These claims incorporate allegations from the original and/or amended particulars, but do so imprecisely. It is unclear which allegations are relied upon and whether new delicts are alleged. These claims are likewise vague and embarrassing.

The second exception

- [12] The second exception challenges the second and third claims arising from repeat broadcasts of the same programme on later dates. These claims incorporate allegations from the "main claim" under case number 21/27076, but do so imprecisely.
- [13] The plaintiff answers as follows: the second and third claims were a repetition of the publication in the initial claim, with the only difference being that it was aired on different dates. The first defendant is linked to these defamatory statements and behaviour because it made a channel available to the second defendant to air the material. The plaintiff persists that it has disclosed the cause of action sufficiently. I disagree.
- [14] It is firstly unclear whether the plaintiff relies on the original particulars of claim or the amended version and whether all or only some of the original allegations are incorporated. This creates uncertainty regarding the factual and legal basis of the second and third claims. These claims, too, are vague and embarrassing. This exception is, likewise, upheld.

Condonation

- [15] The first defendant seeks condonation for the late filing of the second exception. The delay arose after a change in counsel, and the plaintiff had already received the Rule 23(1)(a) notice more than a year earlier, raising the same issues.
- [16] The test for condonation considers the length of the delay, the explanation provided, the prospects of success, and potential prejudice. The delay here is not excessive, has been adequately explained, and caused no discernible prejudice to the plaintiff. The plaintiff had ample opportunity to respond and was not ambushed by new grounds. I am satisfied that condonation should be granted.
- [17] The first defendant is, therefore, successful in their exception.

Second defendant's exception

- [18] The second defendant's exception is based on five grounds. Firstly, the plaintiff's claim for R3 000 000.00 in general damages is framed as "pain and suffering", a term which, in law, is associated with bodily injury and not compensable under the *actio iniuriarum*. This is indeed so.[5]
- [19] While general damages may be claimed to vindicate one's reputation and good name, as well as for pain and suffering, the reference to "pain and suffering" in the present context, particularly where the plaintiff frames the claim as an *actio iniuriarum*, is confusing and requires clarification.
- [20] Secondly, the second defendant contends that the plaintiff's claim for special damages fails to allege that the second defendant knew the defamatory statements were false, a necessary averment where patrimonial loss is claimed in the context of defamation. Such a claim falls under the *actio legis aquiliae*, not the *actio iniuriarum*. In *Media 24 Ltd v SA Taxi Securitisation (Pty) Ltd*,^[6] the Supreme Court of Appeal clarified that liability for pure

economic loss, caused by defamatory publication, would arise only if the plaintiff pleads and proves that the statement was false, that the defendant knew it was untrue, and that the falsehood was the cause of the loss. This reflects the principles of injurious falsehood, where liability turns not merely on the statement's

falsity but also on the defendant's knowledge and intention to cause harm. The plaintiff's pleadings, as they stand, do not allege such knowledge on the part of the second defendant.

[21] The third to fifth ground alludes to the fact that the plaintiff claims interest without specifying the date from which it is to run, rendering that part of the claim incomplete.

[22] While I agree that a pleading for interest on unliquidated damages must allege the date from which interest is claimed. This defect can be cured by amendment and does not render the claim entirely excipiable.

Rule 30 Application

[23] The plaintiff seeks to set aside the second defendant's exception as an irregular step. While the exception may have been filed outside of time, no condonation was sought. However, the plaintiff has suffered no prejudice, and the parties have engaged with the exception on the merits. It would serve no purpose to set it aside now. The Rule 30 application is dismissed.

[24] The second defendant is also substantially successful in its exception.

Conclusion

[25] It is well established that a pleading must be excipiable on every reasonable interpretation. That principle assumes, however, that a reasonable interpretation is available. Upon reading the plaintiff's pleading, one gets the impression it simultaneously says too much and too little. Despite the further explanation offered at the hearing, the particulars remain obscure. The defendants are entitled to know what case they are expected to meet, and the court must be able to discern, without undue interpretive effort, the legal basis on which relief is sought.

[26] Pleadings are instruments intended to clarify the issues in dispute. In their current form, the plaintiff's particulars do not fulfil that purpose, and the exceptions should be upheld.

Order

[27] The following order is made:

1. The late filing of the first defendant's exception is condoned;
2. The first defendant's exception is upheld, with costs taxed on scale B;
3. The plaintiff's rule 30 is dismissed with no order as to costs;
4. The second defendant's exception is upheld;

5. The plaintiff shall pay the second defendant's costs, costs to be taxed on scale B;
6. The plaintiff is afforded 20 days from date of order to amend their particulars of claim, failing which the plaintiff's particulars of claim will be struck out.

WJ du Plessis

Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing: 10 February 2025 Date of judgment: 28 March 2025 For the plaintiff: TC Matbuye in terms of s 34(2)(b) of the Legal Practice Act 28 of 2014 For the first defendant: S Kazee instructed by Weber Wentzel For the second defendant: B Winks instructed by Rupert Candy Attorneys

[1] 1917 WLD 126.

[2] Rule 18(4).

[3] SA Onderlinge Brand Versekeringsmaatskappy v Van den Berg 1976 (1) SA 602 (A).

[4]

[2011] ZACC 4.

[5] Potgieter. (2020). Law of Delict 8th Ed. LexisNexis SA.at page 301.

[6] [2011] SCA 117 paras 13 – 14.

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