

SOUTH AFRICA / JUDGMENT

Jim v MEC for Gauteng Department of Health (2021/16030) [2023] ZAGPJHC 212 (8 March 2023)

[2023] ZAGPJHC 212

COURT

South Gauteng High Court, Johannesburg

BEFORE

Moorcroft

CASE / FILE NUMBER

2021/16030

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IN

THE HIGH COURT OF SOUTH AFRICA,
GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 2021/16030

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

DATE:

08/03/2023

In

the matter between:

JIM,
MANJAPEDI MARIA
Plaintiff
and
MEMBER
OF THE EXECUTIVE COUNCIL,
GAUTENG
DEPARTMENT OF HEALTH
Defendant

JUDGMENT

MOORCROFT AJ:

Summary

Rule 21 – Request for further particulars – strictly necessary to enable a litigant to prepare for trial

Further particulars may be sought in relation to a denial when the denial necessarily involves an implied and affirmative allegation

Order

[1] In this matter I make the following order:

1. The defendant is ordered to serve and file a response to the plaintiff request for further particulars for trial dated 27 June 2022 and served on 28 June 2022;
2. The order must be complied with within ten court days of publication of this judgment by email and on CaseLines, and Rule 21(3) must be complied with
3. The defendant is ordered to pay the costs of the application.

[2] The reasons for the order follow below.

Introduction

[3] The plaintiff claims damages from the defendant arising out of medical treatment she received at a Gauteng provincial hospital. The defendant is cited nomine officio as the political head of the Gauteng Department of Health.

[4] The claim is based on the alleged negligence of the hospital staff. The defendant admits that the plaintiff was admitted to the Charlotte Mexeke Hospital on 17 August 2018. The other averments made by the plaintiff are met by bald denials and a number of constitutional defences are raised. The plea does not disclose the treatment or what the outcome of the treatment was, or indeed whether the plaintiff received medical treatment at all.

[5] No version is pleaded save for bare denials and statements to the effect that the defendant complied with its obligations. Rule 18 requires more of a pleader:

- (4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.
- (5) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so

evasively, but shall answer the point of substance.

[6] The plaintiff sought further particulars[1] in respect of averments made in paragraphs 5 and 6 of the defendant's plea.[2]

[7] Paragraph 5 of the plea deals with paragraphs 6 to 12 of the particulars of claim. In the aforesaid paragraphs 6 to 12 of the particulars of claim the plaintiff makes specific and detailed averments:

7.1 She had a prior history of hypertension and diabetes;

7.2 She underwent three surgical procedures at the hospital during the period 22 to 25 August 2018;

7.3 On 23 August 2018 she started complaining of pain in her lower leg, later diagnosed as acute limb ischemia;

7.4 She presented with a number of pre-existing conditions and risk factors;

7.5 The medical staff at the hospital failed to recognise and treat limb ischemia and failed to conduct adequate cardo-vascular system examinations;

7.6 As a result of the negligence of the medical staff the plaintiff had to undergo a below-the-knee amputation of her right leg on 10 September 2018.

[8] In paragraph 5 of the plea the defendant pleads that it has no knowledge of the plaintiff's allegations in paragraphs 6 to 12 of the particulars of claim, denied the allegations of negligence, and denies that there was any breach of legal duty by the defendant and the medical personnel.

[9] The 'no knowledge' plea is possibly directed at the plaintiff's averments of her prior medical history rather than to the events of August and September 2018. The plaintiff would in my view be entitled to clarify the extent of the lack of knowledge (whether it relates only to the existing medical conditions or also to the fact that the plaintiff was treated in the hospital in August to September 2018) in a request for further particulars even though

the plea amounted to a bare denial. I deal with the issue of bare denials below.

[10] In paragraphs 13 to 15 of the particulars of claim the plaintiff alleges –

10.1 a breach of a legal duty arising out of the conduct described in paragraph 12, and

10.2 negligence on the part of the hospital staff.

[11] In response to these averments and in paragraphs 6 of the plea the defendant denies any form of negligence or breach of duty, and in the alternative allege that the medical staff acted as any member of the medical profession would have done under the circumstances, [3] deny that a breach of duty necessarily constitute negligence, and deny that the defendant's constitutional duties have specific

application in the plaintiff's alleged circumstances on the basis of the facts known to the defendant. These are, however,

conclusions and the factual basis (the *facta probanda*) of the defendant's conclusions are not pleaded.

[12] In the request for further particulars the plaintiff sought details of the treatment she received at the hospital during August and September 2018.

[13] The principle that a litigant is not entitled to further particulars in response to a bare denial is well-established and not controversial. The defendant rely on this principle to object to the provision of further particulars.

[14] In this regard the authors of *Herbstein & Van Winsen* write as follows:[4]

"A party is not entitled to further particulars for trial in relation to a bare denial.[5] If, however, the denial necessarily involves an implied and affirmative allegation, the position is otherwise, for in such a case the mere fact that the allegation is not stated in words will not preclude the court from ordering particulars."[6]

[15] The defendant's denials involve implied and affirmative allegations, namely that the plaintiff received proper or adequate medical treatment while she was in the hospital during August and September 2018. The facts surrounding the treatment would be peculiarly within the knowledge of the defendant and the hospital staff, and no doubt the records kept by medical staff in the normal course of their duties will assist at trial.

[16] However, it is not an answer to a request for further particulars to merely refer the opposing party to discovered documents. Not all the documents nor all the information therein contained will necessarily be relevant and one must look to the pleadings to define the issues. A matter should go to trial on an accurate set of pleadings that clearly set out the dispute between the parties. Further particulars make this possible and play an important role in limiting the disputes and saving expensive court time for parties on both sides of a dispute.

[17] Similarly, medical reports and expert notices though useful cannot take the place of pleadings.

[18] The plaintiff is entitled to particulars so as not to be taken by surprise at trial. In the face of the defendant's averment that its staff members were not negligent and did what they were obliged to do, the plaintiff is in my view entitled to the particulars

sought. The following dictum is apposite:[7]

"The purpose which further particulars for trial serve, was set out in Thompson v Barclays Bank D.C.O., 1965

(1) SA 365 (W) at

- p. 369. It was there stated that their purpose was (a) to prevent surprise; (b) that the party should be told with greater precision what the other party is going to prove in order to enable his opponent to prepare his case to combat

counter-allegations; (c) having regard to the above, nevertheless not to tie the other party down and limit his case unfairly at the trial. It should also be remembered that, even if the particulars requested may at times involve the disclosure

of evidence, that fact does not disentitle the applicant from obtaining the particulars if on the grounds of embarrassment or prejudice in the preparation of his case he would otherwise be entitled to know what case he had to meet. See *Annandale v Bates*, 1956

(3) SA 549 (W) at

- p. 551. I find myself in agreement with the remarks in *Snyman v Monument Assurance Corporation Ltd.*, 1966

(4) SA 376 (W) at

- p. 379, where the learned Judge is reported as saying: I therefore make the order as set out above.

'It is, I think, well established that a defendant is not required to give particulars in support of a portion of his plea which embodies no more than a traverse of one or more of the plaintiff's averments . . . But, in applying this principle, it must be borne in mind that a statement in a plea which is in form a denial may embody by necessary implication a positive averment of some fact; and in such a case it may be proper to order that particulars of the implied averment be given.'

[19] If the matter were to proceed to trial on the basis of the plea as it stand, both parties are likely to be embarrassed. The defendant will be unable to present evidence on a case it did not plead, and the plaintiff will be unable to present a case that meets the defendant's version. The further particulars should resolve this difficulty at least to the extent that the further particulars sought demarcate the issues, but this is a matter that may benefit from case management.

[20] For the reasons above I grant the order above.

J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 9 MARCH 2023.

COUNSEL FOR THE PLAINTIFF: L MATSIELA

INSTRUCTED BY: THOMAS

MASIKE

ATTORNEYS

COUNSEL FOR DEFENDANT: M I MOTIMELE

INSTRUCTED BY: STATE

ATTORNEY

DATE OF THE HEARING: 28

FEBRUARY 2023

DATE OF ORDER: 9

MARCH 2023

DATE OF JUDGMENT: 9

MARCH 2023

[1] CaseLines 003-30.

[2] CaseLines 002-30.

[3] This averment implies that the ‘no knowledge’ plea in the preceding paragraph was directed at the plaintiff’s

pre-existing medical conditions and not at the treatment itself.

[4] Cilliers, Loots and Nel, Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa, 5th ed 2009, 832.

[5] Footnote 14: Kliptown Clothing Industries (Pty) Ltd v Marine & Trade Insurance Co of SA Ltd 1960

(1) SA 446 (W) at 448B; Hardy v Hardy 1961

(1) SA 643 (W) at 646D–H; Snyman v Monument Assurance Corporation Ltd 1966

(4) SA 376 (W) at 379G–H; Lotzoff v Connel 1968

(2) SA 127 (W) at 129E–F; Jonnes v Anglo-African Shipping Co (1936) Ltd 1974

- (2) SA 561 (D) at 564F–H; Swart v De Beer 1989
- (3) SA 622 (E) at 625D–J.
- [6] Footnote 15: Hardy v Hardy 1961
- (1) SA 643 (W) at 646H–647pr, cited with approval in Swart v De Beer 1989
- (3) SA 622 (E) at 625G–I. See also Snyman v Monument Assurance Corporation Ltd 1966
- (4) SA 376 (W) at 379H–380A; Lotzoff v Connel 1968
- (2) SA 127 (W) at 129E–G.
- [7] Lotzoff v Connel and Another 1968 (2) SA 127 (W) 129C.
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