

SOUTH AFRICA / JUDGMENT

Kotze v Member of the Executive Council responsible for the Mpumalanga Department of Education in the Mpumalanga Province (17290/13) [2014] ZAGPPHC 367 (17 June 2014) [2014] ZAGPPHC 367

COURT

North Gauteng High Court, Pretoria

BEFORE

S K Hassim

CASE / FILE NUMBER

17290/13

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

NORTH PROVINCIAL DIVISION

CASE NO: 17290/13

DATE: 17 JUNE

2014

In the matter

between:

WILLEM JOHANNES

PAULUS

KOTZE.....Excipient

and

MEMBER OF THE

EXECUTIVE COUNCIL

RESPONSIBLE FOR

THE MPUMALANGA

DEPARTMENT OF

EDUCATION IN THE

MPUMALANGA

PROVINCE.....Respondent

In re: MPUMALANGA
PROVINCE.....
.....Plaintiff
WILLEM JOHANNES
PAULUS
KOTZE.....Defendant

JUDGMENT

HASSIM AJ

- [1] This is an exception against particulars of claim. The excipient is the defendant in the action. I refer to the parties as in the action.
- [2] The plaintiff is the defendant's former employee. The plaintiff seeks to recover an amount of R4 691 219.63 from the defendant which is alleged to be damage suffered by the defendant's conduct whilst in employment.
- [3] The plaintiff pleads that the amount of R4 691 219.63 constitutes irregular and/or wasteful and/or fruitless expenditure. The expenditure is alleged to have been incurred contrary to section 217 of the Constitution of the Republic of South Africa, 2006, National Treasury Regulations issued in terms of "the Public Finance Act" (the plaintiff intended the reference to be Public Financial Management Act, 1 of 1999), the Supply Chain Management of the Department, and the provisions of section 38
- (1) (a) (iii) and (vi) of the Public Finance Act. These suggest a statutory cause of action.
- [4] The plaintiff also claims that the defendant failed to follow procurement processes set out in the prescripts applicable to the department. The plaintiff does not identify these "prescripts", nor does he identify which of the processes "set out in the prescripts" have not been complied with. The particulars of claim do not disclose why and how it is that such failure/s give rise to a cause of action. Had more particularity been furnished, this may have given more insight into the claim.
- [5] The plaintiff then proceeds to aver that the expenditure could have been avoided had the defendant "exercise[d] a [sic] reasonable care". This in my view suggests a claim in delict.
- [6] Apart from the averment which I have summarised in paragraph 5 above, the plaintiff pleads that the loss was caused among other things by the following:
- (a) the expenditure (which was a total payment to a service provider of the plaintiff) was:
- (i) inflated;
- (ii) was not fair, equitable, transparent, competitive and/or cost effective.

- (b) alternatively the "defendant was responsible for the fruitless expenditure of the aforesaid stated amount due to omission, which is reckless and negligent, to carry out his duties and vim responsible for the loss of the said amount of money by the Department"
- (c) further alternatively, the defendant was "responsible for the authorised and/or fruitless and/or wasteful expenditure of the aforesaid amount due to an [sic] improper conduct on his part".
- [7] The averments which I identify in paragraph 6 (b) and (c) are again suggestive of a claim in delict.
- [8] The defendant has excepted to the particulars of the plaintiffs claim on the basis that they lack averments necessary to sustain an action, alternatively they are vague and embarrassing, alternatively do not comply with the provisions of rule 18 (10) of the uniform rules of court.
- [9] Nine grounds of exception are raised. In light of my finding I do not consider it necessary to list any of these, nor to identify all the respects in which the particulars of claim are wanting.
- [10] I am satisfied that at the very least the particulars of claim are vague and embarrassing and also lack averments to sustain a cause of action.
- [11] The exception must succeed. I order as follows:
- (a) the exception is upheld with costs:
- (b) the plaintiff is afforded 15 days within which to amend its particulars of claim, if it wishes to do so.

S K HASSIM

Acting Judge: Gauteng North High Court

11 June 2014

Counsel for excipient: Adv M Snyman

Counsel for respondent: Adv M Gwala

Date heard: 12 March 2014

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