

SOUTH AFRICA / JUDGMENT

Letseng v Car Care Clinic Bloemfontein (4090/2021) [2022] ZAFSHC 247 (17 June 2022) [2022] ZAFSHC 247

COURT

Free State High Court, Bloemfontein

BEFORE

M.S. Litheko

CASE / FILE NUMBER

4090/2021

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA,****FREE****STATE DIVISION, BLOEMFONTEIN****Case****number: 4090/2021**

Reportable:

YES/NO

Of

Interest to other Judges: YES/NO

Circulate

to Magistrates: YES/NO

In

the matter between: LELOKONYANA
 ISAAC
 LETSENG
 Applicant/Plaintiff
 And
 CAR
 CARE CLINIC BLOEMFONTEIN
 Respondent/Defendant
 HEARD

ON: 26
 MAY2022

JUDGEMENT

BY: LITHEKO, AJ

DELIVERED ON: 17 JUNE 2022

Introduction

- [1] This case involves an application and a counter application, both brought in terms of Rule 30 of the Uniform Rules of Court.

The parties

- [2] The plaintiff is an adult male resident at [...] C[...], V[...], Road, W[...], Bloemfontein.
- [3] The defendant is motor mechanics company conducting business at 30 Curie Avenue, Bloemfontein.

Background

- [4] On the 06th September 2021 the plaintiff issued a combined summons in this Court against the defendant wherein he prays for confirmation of

cancellation of the agreement between him and the defendant, return of the Volvo [...] motor vehicle with registration number [...] and for payment of R123,420.00.

- [5] On the 17th September 2021, after entering a notice of intention to defend, the defendant delivered a notice in terms of Rule 30(2)(b) complaining about the irregularity of the plaintiff's combined summons owing to non-compliance thereof with the provisions of Rule 18(1) and Rule 41A(2)(a) of the Uniform Rules of Court.
- [6] The bases of the complaints are that:
- (a) The plaintiff's summons and the particulars of claim annexed thereto were signed only by an attorney without indicating therein that he has a right of appearance in the High Court.

- (b) The plaintiff did not serve a notice wherein he indicates whether he agrees to or opposes referral of the dispute to mediation.
- [7] On the 4th October 2021 the plaintiff also delivered a notice of complaint in terms of Rule 30(2)(b). The cause of complaint is that the defendant's notice in terms of the latter rule is an irregular step for the reason that, by delivering a notice of intention to defend, the defendant had taken a further step in the cause with knowledge of the alleged irregularity. The plaintiff consequently called upon the defendant to withdraw its notice of complaint in terms of Rule 30(2)(b).
- [8] The defendant did not comply with the plaintiff's Rule 30(2)(b) notice whereupon the plaintiff served an application in terms of Rule 30(1) to have defendant's notice in terms of Rule 30(2)(b) set aside.
- [9] On the 22nd April 2022 the defendant served a counter application in terms of Rule 30(1) upon the plaintiff wherein it sought an order setting

aside the plaintiff's combined summons on the basis that same is irregular on the grounds stated above. As the defendant's counter

application was out of time, condonation was granted by agreement which was made an order of the Court on the 14th April 2022.

- [10] Both the application and the counter application are opposed.

The legal position

- [11] The relevant provisions of Rule 30 are the following:

"30 Irregular proceedings

- (1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.
- (2) An application in terms of sub-rule (1) shall be on notice to all parties specifying the particulars of the irregularity or impropriety alleged, and may be made only if -
 - (a) The applicant has not himself taken a further step in the cause with knowledge of the irregularity;
 - (b) The applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days;
 - (c) The application is delivered within fifteen days after the expiry of the second period mentioned in paragraph (b) of sub-rule (2).
- (3) ... "

- [12] Rule 18(1) provides that:

"(1) A combined summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under Section 4(2) of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party."

[13] During the hearing Mr. Tsoeu, who appeared for the plaintiff conceded that, not only is entry of appearance to defend not a further step contemplated in Rule 30(2)(a),[1] but the application of the plaintiff stands to fail based also on the provisions of Rule 19(4). Rule 19(4) provides that:

"(4) A party shall not by reason of delivery of notice to intention to defend be deemed to have waived any right to object to the jurisdiction of the court or to any irregularity or impropriety in the proceedings".

[14] Mr. Booysen, for the defendant did not pursue his application based on the provisions of Rule 41A(2)(a). He argued however that the plaintiff's combined summons must be set aside on the basis that it was not signed in accordance with the provisions of Rule 18(1).

[15] It is necessary to mention the fact that the defendant's case in this regard is based on the fact that the combined summons that was served upon the defendant did not have the last page. This last page is page 16 of the paginated bundle to which the signature of Adv. Tsoeu is appended.

[16] Mr. Booysen consequently attacks the combined summons on the basis that:

- (a) Firstly, it was signed only by an attorney who does not have a right of appearance in the High Court, if that last page is to be disregarded, and
- (b) Secondly, even if the last page is not disregarded, it is irregular on the basis that only the particulars of claim were signed by the advocate whereas in terms of Rule 18(1), both the summons and the particulars of claim must be signed by an attorney with a right of appearance in the High Court or by any other attorney and an advocate.

[17] Regarding the last page, Mr. Booysen argued that it must be disregarded as it did not form part of the combined summons upon service thereof on the defendant. He suspects that it was surreptitiously annexed to the particulars of claim after the defendant raised the irregularity of the combined summons. However, Mr. Booysen conceded that a possibility also exists that the combined summons may have been served with all the pages upon the defendant and that the defendant might have misplaced the last page.

[18] In the light of the fact that the combined summons which was filed with the registrar is complete and for the reason that it is not improbable that the last page may have been part of the combined summons upon service and might have been misplaced by the defendant, I am not prepared, based on a suspicion, to disregard any part of the summons that is contained in the court file.

[19] The last issue raised by Mr. Booysen is whether a combined summons that is signed by an attorney and an advocate only on the particulars of claim is irregular for want of compliance with Rule 18(1). The attorney in this matter signed the summons alone and it is common cause that he does not have the right of appearance in the High Court.

[20] Mr. Booysen referred me to the unreported

judgement

of Rampai J. in the case of *Louw v Grabler and Another*[2] , which he argues is authority for the proposition that to comply with the provisions of Rule 18(1), both the summons and the particulars of claim must be signed by either an attorney authorised to appear in the High Court or by any other attorney and an advocate. In that case, although the Court was dealing with a combined summons wherein the attorney had stated in the particulars of claim, but not on the summons, that he had the right to appear in the High Court, the following was said, in passing:

"The second defendant did not challenge the way the summons had been signed as explained in the preceding paragraph. Consequently, it has to be accepted that the summons, as prefixed to the particulars of claim, was duly signed by an attorney lawfully certified to appear in this Court." [3]

[21] The Court proceeded as follows:

"It was never the second defendant's case that the particulars of claim on the one hand and the summons to which they were affixed on the other hand were not signed by one and the same person. It must accordingly be accepted that the same attorney who has a right of appearance in terms of section 4 and competent to sign a combined summons alone in terms of Rule 18(1) also signed the particulars of claim." [4]

[22] It is indeed correct that, properly interpreted, the paragraphs of the judgement referred to above seem to suggest that both the summons and the particulars of claim must be signed either by an attorney with the right of appearance in the High Court or by an attorney and an advocate. However, to the extent that that is the interpretation given to the provisions of Rule 18(1) in that judgement, I am unable to agree therewith. In any event, the issue that had to be adjudicated in that case was not the meaning to be given to the provisions of Rule 18(1) but a different issue altogether.

[23] The answer to the issue raised by Mr. Booysen is to be found in the proper meaning of Rule 18(1) and, in my view, the following rules are relevant in the determination of that meaning:

23.1 Rule 1 defines a combined summons as a "summons with particulars of plaintiff claim annexed thereto in terms of subrule (2) of rule 17."

23.2 Rule 17(2)(a) provides that:

"(2)(a) In every case where the claim is not for a debt or liquidated demand, the summons shall be in accordance with Form 10 of the First Schedule, to which summons shall be annexed particulars of the material facts relied upon by the plaintiff in support of the claim, which particulars shall inter alia comply with rule 18; and..."

[24] Rule 18(1) requires a combined summons, and every other pleading except a summons, to be signed by an attorney with a right of appearance in the High Court or an attorney with no such right, together with an advocate. When this is read with Rule 17(2)(a), the result is that the part of the combined summons that is required to be signed as provided in Rule 18(1) is the "annexed particulars of the material facts relied upon by the plaintiff". This view is based on the fact that Rule 18(1) specifically provides that "a combined summons, and every other pleading" shall be signed with the specific 'exclusion' of a summons, which is not a pleading. Lest I am misunderstood, I must state that I do not suggest that a summons need not be signed, but my understanding of the rule is that only the particulars of claim which are annexed to the summons need to be signed by an attorney with the right of appearance in the High Court or by an attorney and an advocate. It is sufficient compliance with the rule if the summons is signed only by an attorney who has no right to appear in the High Court and the particulars of claim annexed thereto are signed by both such attorney and an advocate.

[25] As I have found that the last page of the particulars of claim should not be disregarded, contrary to Mr. Booysen's submission, and for the reason that the last page has been signed by an advocate, there is, in my view, sufficient compliance with the provisions of Rule 18(1). The combined summons is consequently properly signed and it is not an irregular or improper step. The defendant's counter application therefore also stands to be dismissed.

COSTS

[26] Based on the above conclusion, there is no need to deal with the issue of costs in any more detail than to order that, as both parties have been unsuccessful, each party must pay his or its own costs.

ORDER

[27] In the result I make the following order:

1. The plaintiff's application in terms of Rule 30 is dismissed.
2. The defendant's counter application in terms of Rule 30 is dismissed.
3. Each party is ordered to pay his/its own legal costs.

M.S.LITHEKO, AJ

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Tsoeu

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[1] Singh v Vorkel 1947 (3) SA 400 (C) at 407.

[2] (3074/2016) [2016] ZAFSHC 206 (15 December 2016).

[3] At paragraph 22

[4] At paragraph 23.

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