

SOUTH AFRICA / JUDGMENT

Mbelani v Eastern Cape Development Corporation (491/16) [2017] ZAECELLC 2 (24 January 2017) [2017] ZAECELLC 2

COURT

Eastern Cape High Court, East London Local Court

BEFORE

J.E Smith

CASE / FILE NUMBER

491/16

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IN THE HIGH COURT OF
SOUTH AFRICA
EASTERN
CAPE DIVISION – EAST LONDON
Case
no: 491/16

ECD: 1191/16
Case
Heard: 06/12/2016
Date
Delivered: 24/01/2017
In

the matter between: DALUBUHLE
MBELANI
PLAINITFF
and
EASTERN
CAPE DEVELOPMENT CORPORATION DEFENDANT

JUDGMENT

SMITH J:

- [1] The defendant filed an exception to the plaintiff's particulars of claim on the following grounds:
- (a) in paragraph 7(ii) thereof the plaintiff alleges that the defendant has breached the terms of the agreement, but fails to provide any particularity regarding the manner of the alleged breach;
 - (b) the plaintiff has failed to provide sufficient particularity regarding the nexus between the alleged breach and the damages claimed. There is also no particularity regarding the quantum of damages as required by Rule 18(10) of the Uniform Rules of Court; and
 - (c) the plaintiff has failed to provide a proper factual basis for his prayer for a "Verdict on suspension within 15 (fifteen) days alternatively re-instatement of the plaintiff".
- [2] After the defendant filed its exception on 16 May 2016, the plaintiff gave notice of his intention to amend his particulars of claim. The defendant then filed an objection to the proposed amendment on the ground that the particulars of claim would remain excipiable. The plaintiff did not thereafter seek leave to amend in terms of Rule 28(4), and the exception must accordingly be adjudicated on the particulars of claim in its original form.
- [3] The plaintiff's cause of action was founded on the alleged breach of a contract of employment in terms of which he was employed as the defendant's Company Secretary. He alleges that the defendant breached the agreement by failing to:
- (i) remunerate the plaintiff for the months of November, December and January 2015, respectively; and
 - (ii) comply with "30 days suspension period as stipulated in the contract of employment".
- [4] He avers (in paragraph 8) that as a result of the breach the plaintiff suffered "loss of income" and "damages". No further particularity is provided regarding the manner of the alleged breach, or how the claims in respect of loss of income and damages are calculated. It is only in the prayer section of the claim where the following is stated:
- "(a) payment of an amount of R171 044. 50 (one hundred and seventy one thousand and forty four rand and fifty cents) being the*
- remuneration for the months of November, December and January underpayment, respectively;"
- "(c) Verdict on suspension within 15 (fifteen) days, alternatively instatement of the plaintiff"; and*
- "d) Payment of the mount of R2 000 000.00 (two million rands) being damages suffered by the plaintiff from the date of suspension to date".*

[5] It must have been abundantly clear from the foregoing that the particulars of claim lack the necessary factual averments to sustain

any of the plaintiff's claims, and it is consequently fundamentally defective.

[6] Mr Rorke SC, who appeared on behalf of the defendant, correctly argued that the plaintiff appeared to have conflated the nature of contractual and delictual damages; has in the event failed to provide a factual basis for his claim in either respect; has merely alleged a breach without providing any particularity as to the manner in which the defendant is alleged to have breached the contract; and has not provided any particulars regarding either the amount claimed for loss of earnings or damages, as required by Rule 18(10). It is consequently virtually impossible for the defendant to discern what case it is required to plead to.

[7] Unsurprisingly, Mr Ntila, who appeared for the plaintiff, was unable to contest the defendant's contentions in this regard, and has instead resorted to a technical argument, namely that the defendant has prematurely set the matter down for argument without providing the plaintiff an opportunity to remedy the defects as required by Rule 23(1). There is of course no merit in that argument since the Rule clearly states that it is only where a party takes an exception that a pleading is vague and embarrassing that he or she must allow the opponent to remove the cause of complainant. The defendant's exception is based on the ground that the particulars of claim lack averments necessary to sustain a cause of action. The exception must accordingly be upheld.

[8] Although the defendant has prayed for the exception to be upheld and the plaintiff's claim to be dismissed, Mr Rorke has conceded that such an order would be unduly harsh.

[9] In the result the exception is upheld, with costs, and the plaintiff is granted leave to amend his particulars of claim within a period of 15 days from the date of this order.

J.E SMITH

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Defendant : Mr S Rorke SC

Attorney for the Defendant : Wesley Pretorius & Associates

Ground Floor

Pilot Mill House

The Quarry, Selborne

East London

Counsel for the Plaintiff : Adv Ntila

Attorney for the Plaintiff : Mtabela Attorneys & Associates

c/o Boboptyana & Compant

13 King Street

Date Heard

: 6 December 2016

Date Delivered : 24 January 2017

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Prepared on 10 October 2026 · Esheria