

SOUTH AFRICA / JUDGMENT

M.M.M v MEC for Health, North West Province (1102/14) [2015] ZANWHC 73 (29 October 2015) [2015] ZANWHC 73

COURT

North West High Court, Mafikeng

BEFORE

Landman

CASE / FILE NUMBER

1102/14

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

WEST DIVISION, MAHIKENG)

CASE

NO.: 1102/14

In

the matter between:

M.

M. M.

PLAINTIFF

and

THE

MEC FOR HEALTH, NORTH WEST PROVINCE

DEFENDANT

JUDGMENT

Landman J:

Introduction

- [1] The plaintiff issued a combined summons against the MEC for health of the North West Provincial Government claiming damages for injuries suffered by her minor child, B., born on [.....] 2013. The defendant has taken an exception to the summons on the grounds that it lacks the necessary averments to sustain a cause of action. The notice of exception is itself defective in that it does not contain a prayer for relief. See *Majatau v Mathibe and Another* (2226/2009) [2010] ZAFSHC 105 (23 February 2010).
- [2] When the matter was called, Mr Madima SC, who appeared for the defendant, conceded that there was no merit in the exceptions listed in the notice of exception. However, he submitted that the particulars did not disclose a cause of action (on a basis not properly foreshadowed in the notice of exception).
- [3] This exception is taken against the background of paragraphs 6, 7 and 8 of the particulars of claim. They read:

‘6. On 9 February 2014 the minor was admitted to the hospital with dehydration and acute gastroenteritis.

7. On 12 February 2014, as a result of a lack of attention and medical care as may be reasonably required in the circumstances, and in particular a failure to properly administer intravenous fluids or medication, the minor, in the presence of the plaintiff, suffered a hypoxic-ischemic insult due to cardiac arrest, causing the minor to sustain severe brain damage, as a result of which the minor is permanently suffering from cerebral palsy and mental retardation (“the Complications”).

8. The Complications were witnessed at all material times by the plaintiff and occurred as a result of the negligence of the defendant,

alternatively, as a result of the negligence of the defendant’s employees and/or representatives and/or agents, alternatively, as a result of the combined and cumulative negligence of the defendant and the defendant’s aforesaid employees, representatives and/ or agents.’

[4] Mr Madima SC submitted that these paragraphs did not disclose a cause of action as it was not alleged whether the omission took place in the Hospital or elsewhere. To my mind a reading of the particulars of claim lead to the conclusion that the omission was while the child was in the Klerksdorp Tshepong Hospital.

[5] However, even if I were to assume that there is some uncertainty, the objection, properly construed, is not that the particulars do not disclose a cause of action but, as submitted by Mr P Smit, who appeared on behalf of the plaintiff, it is that the particulars are vague and embarrassing. But an exception that particulars are vague and embarrassing may not be taken until the plaintiff is afforded an opportunity to remove the cause of the complaint. See Rule 23(1) of the Uniform Rules of Court. One may not simply rise in court and take this exception.

[6] This exception as indeed all the others must be dismissed.

Costs

[7] Although the defendant concedes that remainder of the exceptions (including some only set out in the heads of argument) are without merit, it is necessary to say something about the exceptions taken by the defendant as this informs the cost order that I intend to make.

[8] The first of exception reads:

‘There is no proof that the minor child on whose behalf Plaintiff allegedly sues, in (sic) the child of the plaintiff.’

[9] This exception overlooks the fact that the facts pleaded by the plaintiff must be accepted for what they are and that no proof need be nor may be adduced in regard to an exception. In paragraph 1 of her particulars of claim, the plaintiff alleges that she sues in her personal capacity and representative capacity as a mother and natural guardian of her minor son B. Mosehla, born on 21 April 2013. This is sufficient. There is absolutely no merit in this exception.

[10] The second exception reads:

‘There is no allegation that the hospital the minor child was admitted to on 9th February 2014 is an institution funded and managed by the North West Provincial Government.’

[11] This exception too is entirely without merit. In paragraph 2 of the particulars of claim the plaintiff alleges that the MEC is the nominal defendant for all claims arising against the Klerksdorp Tshepong Hospital which she describes as: ‘an institution established, funded and managed by the North West Provincial Government’.

[12] The next exception marked 2.1 reads as follows:

‘Plaintiff’s particulars of claim failed to disclose whether the laparotomy allegedly performed on 13 December 2013 and further laparotomies were diagnostic or therapeutic.’

[13] In paragraph 4 of her particulars of claim the plaintiff alleges that:

‘On 22 October 2013 the Minor was examined at the Hospital and referred to Chris Hani Baragwanath Hospital where he was admitted from 23, while October 2013 to 13 December 2013 for performance of a laparotomy and 3 further relook laparotomies.’

[14] Paragraph 4 constitutes part of the patient history of the minor child. It is not pleaded as a fact relevant to establishing the claim of negligence.

[15] The following exception marked 2.2 reads:

‘Perinatal cerebral hypoxia-ischemia is a frequent cause of chronic handicapping conditions suitable palsy, mental retardation and epilepsy, and newborn infants suffer this fixture at or shortly before birth. The hospital records attached to the summons indicate that the plaintiff may have borne a child around April 2013.’

[16] This exception is not an exception. It is simply a display of some medical knowledge on behalf for the draughtsman and an observation that the plaintiff may have borne a child around April 2013. The plaintiff has pleaded that the minor child was born on 21 April 2013. This so-called exception should never have been taken. It is frivolous in the extreme.

[17] The last exception marked 2.3 reads:

‘It is not clear from the particulars whether the alleged brain damage is pre or post natal (sic), and that if the post-natal, no such allegation is made.’

[18] The particulars are clear and plain for all to see. The brain damage the minor child allegedly suffered was after his birth and after his admission at the Klerksdorp Tshepong Hospital on 9 February 2014 and occurred when he suffered a hypoxia-ischemia insult on 12 February 2014 due to cardiac arrest. See paragraphs 6 and 7 of the particulars. This exception is without any vestige of merit.

[19] When frivolous exceptions are taken that have no merit whatsoever, it creates the impression that the defendant, in this case the North West Provincial Government, intended to vary the plaintiff, delay bringing the matter to trial and to sap her finances. This conduct is not what is expected from government in a constitutional State. The exception taken orally is also an abuse of the time of this court. All this warrants a special order for costs.

Order

[20] I make the following order:

1. The exceptions are dismissed.
2. The defendant is to pay the costs on an attorney and client basis.

AA Landman

Judge of the High Court

Appearances

Date of hearing:

29 October 2015

Date of

Judgment:

5 October 2015

For the Plaintiff:

Adv P Smit instructed by Minchin & Kelly Inc

For the Defendant:

Adv Madima SC instructed by State Attorneys

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