
SOUTH AFRICA / JUDGMENT

Muller v Shukuma Flooring and Another (PS13/13) [2015] ZAECPEHC 44 (25 June 2015) [2015] ZAECPEHC 44

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

Lallie

CASE / FILE NUMBER

PS13/13

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REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, PORT ELIZABETH

JUDGMENT

Not Reportable

Case no: PS 13/13

In the matter between

MERUSKA MULLER

Applicant

and

SHUKUMA FLOORING

First Respondent

JACQUES BELLINGAN

Second Respondent

Heard: 29 April 2014

Delivered: 25 June 2015

Summary: A statement of case which is not clear and contains not only the material facts the applicant relies upon but also a substantial amount of evidence is excipiable.

LALLIE J

[1] The applicant filed a statement of case against the respondents in which she claimed that she had been constructively dismissed in a manner that is automatically unfair, alternatively, that her resignation resulted from being subjected to occupational detriment

by the respondents. She also claimed to have been unfairly discriminated against by the respondents on arbitrary grounds and by

their failure to protect her constitutional right to dignity. Each respondent, responded by filing a notice to remove causes of

complaint to which the applicant responded by expressing disappointment at the exceedingly technical and unjustified approach to litigation in the Labour Court by the respondents. She found no merit in the causes of complaint raised. The respondents proceeded to file notices of exception.

[2] The statement of case and the applicant's heads of argument were filed late and the applicant applied for condonation. The respondents did not oppose the condonation applications although they submitted that they would take the late filing of the heads of argument into account in their argument for costs. I considered both condonation applications and was satisfied that the applicant had shown good cause. Both applications were therefore granted.

[3] The second respondent's exception against the statement of case is based on the lack of averments necessary to sustain a cause of action, alternatively, it is vague and embarrassing, the second respondent has been misjoined and that this court lacks jurisdiction to entertain aspects of the applicant's claim. The applicant conceded that the second respondent had been misjoined. In view of the concession, the exception of misjoinder is upheld. Dealing with the remaining grounds for exception against the second respondent will be academic because if he is not a party to the proceedings, he will not be affected in his personal capacity by their outcome.

[4] The first respondent raised a number of grounds for exception on the basis that it lacks averments necessary to sustain the causes of action, alternatively, it is vague and embarrassing and that this court lacks jurisdiction to entertain aspects of the applicant's claim. The applicant conceded that the thirteenth and fourteenth grounds for exception which deal with the infringement of her dignity and constitutional right to equality have merit. I have considered the grounds and I am satisfied that the concession was due. The thirteenth and fourteenth grounds for exception are therefore upheld.

- [5] The applicant erroneously submitted that the exceptions are fatally flawed in that the respondents only pray that the exceptions be upheld and for punitive costs orders without seeking relief from this court. The first respondent has spelt out the nature of the relief it is seeking in addition to having the exception upheld. It seeks to have the statement of claim struck out and to have the applicant ordered to amend the statement of claim.
- [6] The first respondent's first and second grounds for exception are related and will be dealt with simultaneously. The first is that in formulating the statement of claim, the applicant failed to confine herself to material facts. She pleaded a substantial amount of irrelevant evidence, her own irrelevant opinions, conclusions and inferences. The second is that the applicant has not divided pleadings into concise and logical statements containing distinct averments. She has instead, included a number of prolix and convoluted paragraphs containing several allegations of fact and/or law and quotations and her irrelevant opinions. The first respondent finds the statement of claim vague and embarrassing and making it unable for the first respondent to plead to properly.
- [7] Justifying the manner in which the statement of claim has been drafted the applicant submitted that the exceptions failed to take into account the difference between Civil Courts and the Labour Court which is a Court of Equity. She submitted that value judgement, considerations of reasonableness, justice and fairness are considered in labour disputes. As the foundation of her claim is constructive dismissal it was necessary for her, in discharging the onus of proof, to present sufficient facts to substantiate his subjective belief that continued employment become intolerable and sufficient facts to prove that she could not reasonably and sensibly be expected to put up with the respondents' conduct. The applicant gave a detailed account of the averments she was required to make in her statement of claim and argued that everything contained in it was material and necessary for her claim.
- [8] The applicant conceded that she included a lot of information in her statement of claim. Her justification was that it was necessary. The first respondent relied on Rule 6 (1) (b) (ii) which requires the statement of claim to be:

‘a clear and concise statement of the material facts, in chronological order, on which the party relies, which statement must be sufficiently particular to enable any opposing party to reply to the document’. As well as Rule 6 (1) (b) (iii) which further requires the statement of claim to contain “a clear and concise statement of legal issues that arise from the material facts, which statement must be sufficiently particular to enable any opposing party to reply to the document”.

The second respondent substantiated its argument that the purpose of the statement of claim is to apprise the party being sued of the ambit and scope of the case that party has to meet by relying on *Lockhat and others v Minister of Interior*[1] where it was held that the object of pleadings is that a succinct statement of the grounds upon which a claim is made or resisted shall be expressed shortly and concisely.

[9] The first respondent also relied on *Inzinger v Hofmeyr and Others*[2] where the court referred with approval to the following dictum of *Trope v South African Reserve Bank*[3]:

‘It is, of course, a basic principle that particulars of claim should be phrased such that a defendant may reasonably and fairly be required to plead thereto.... Pleadings must therefore be lucid and logical and in an intelligible form...’

I have considered the applicant’s submission that in *Inzinger* (supra), the Court upheld one of the exceptions raised on the basis that no relief was claimed consequent upon the issues raised in the particulars of claim. I have already dealt with this issue and stated that the principle the applicant sought to rely on is not

applicable in the matter at hand.

[10] The applicant submitted that it was inappropriate for the first respondent to rely on decisions of the High Court because of the differences in High Court and Labour Court litigation. She relied on *Davidson and Others v Wingprop (Pty) Ltd*[4] where it was held that the test for determining an exception is whether the complaining party would be prejudiced if his or her

exception is not upheld. I am not persuaded by the applicant’s argument that the first respondent’s reliance on High Court cases is appropriate because in a number of judgements, the Labour Court has relied on High Court decisions in determining whether to dismiss or uphold exceptions. A proper reading of the statement of claim reflects that it looks like an affidavit which contains a substantial amount of evidence. It consists of far more than legal issues and clear and concise statement of material facts she is relying on. It lacks particularity which enabled the first respondent to plead to it. In the event of the first respondent being required to plead to the statement of claim it would have to file a statement of defence which will be equally excipiable as it will also not comply with the requirements governing pleadings. It will also be unacceptably long as it will contain all the evidence the first respondent will rely on in resisting the applicant’s claim. It will be of no assistance to the court. The applicant is relying on a number of causes of action which have to be pleaded clearly and distinctly. Even when the applicant’s approach is adopted and accepting that this court is a court of equity, the statement of claim remains excipiable. In its current form, the statement of claim is vague and embarrassing and dismissing the first two grounds for exception which affect the entire statement of claim will prejudice the first respondent.

[11] A decision to uphold the first two grounds for exception coupled with the concession made by the applicant that the thirteenth and fourteenth grounds for exception are valid is sufficient to render the statement of claim vague and embarrassing for lack of conciseness and particularity, making it impossible for the first respondent to plead thereto.

[12] As the applicant’s main claim is constructive dismissal there is merit in her submission that should any of the exceptions be upheld, provisions of section 158 (2) (a) of the LRA should be invoked and this matter referred to arbitration. It would be a travesty of justice to uphold

the exception in a manner that will deny the applicant access to justice. I am not convinced that the respondent's approach that if the exceptions are upheld, the applicant should be granted leave to amend the statement of claim before her dispute is transferred to arbitration. The only purpose which the respondent's approach will serve would be to delay transferring the matter. The respondents expressed their intention not to pursue a costs order against the applicant as her attorney is acting pro bono.

[13] In the premises, the following order is made:

13.1 The first respondent's first, second, thirteenth and fourteenth grounds for exception are upheld.

13.2 The second respondent's first ground for exception is upheld.

13.3 These proceedings are stayed and the matter is referred to arbitration.

13.4 No order is made as to costs.

Lallie J

Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: Mr Niehaus of Minaar Niehaus Attorneys

For the Respondents: Advocate Kroon

Instructed by:

Strauss Daly Attorneys

[1] 1960 (3) SA 765 (D) at 777 C-D

[2]

[2010] JOL 26423 (GSJ) at para 9.

[3] 1992 (3) SA 208 (T)

[4]

(2010) 31 ILJ 605 (LC)

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