

SOUTH AFRICA / JUDGMENT

T and Others v Thebe Hospital of Harissmith and Another (6020/2016)

[2017] ZAFSHC 226 (14 December 2017)

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COURT

Free State High Court, Bloemfontein

BEFORE

Chesiwe, AJ

CASE / FILE NUMBER

6020/2016

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION. BLOEMFONTEIN

Case

number: 6020/2016

In

the matter between:

SO

T.

1st

Plaintiff

NA

T.

2nd Plaintiff

N

T.

3rd Plaintiff

S

T. 4th

Plaintiff

and

THEBE
HOSPITAL OF HARISSMITH
1st
Defendant
MEC
FOR HEALTH, FREE
STATE 2nd
Defendant
HEARD

ON: 8 SEPTEMBER 2017

JUDGMENT

BY: CHESIWE, AJ

DELIVERED ON: 14 DECEMBER 2017

[1] The defendant (excipient in the present instance) has noted an exception on the basis that the particulars of claim do not disclose

a cause of death. The death certificate discloses that the deceased died of natural causes and discounting any casual nexus and no link is established between the falling of the deceased from the bed and her death. Neither is there a link established between the alleged negligence of Sibongile Khathide who the employee of the first and second defendants and the resultant death of the deceased.

[2] The plaintiff filed a notice in terms of Rule 28(1) to amend the particulars of claim that:

"By deleting paragraph 1.1 and replacing it with the following.

The first plaintiff is S. O. T. (Identity No [7...]) an adult male employed as a boiler attendant residing at the house no. [...]

Extension [...] I. H. in his capacity as husband of the deceased N. T. L. M. (Identity no. [7...]) married by way of a customary

marriage and in his representative capacity of the minor child N. T.."

[3] The defendant did not file a notice to object to the amendment of the particulars of claim.

[4] In the defendant's oral submission and heads of argument, Adv Bomela on behalf of the defendants submitted that the plaintiff was given an opportunity to amend their particulars of claim but rather the plaintiff attempted to establish the locus standi of the first plaintiff. Counsel submitted that the defendants also have a duty to investigate any claims or allegations made. Furthermore the death certificate sets out that the deceased died of natural died of natural causes and the death

certificate indicates that the deceased was never married. He further submitted that the pleadings must be lucid and logical and the cause of action must appear clearly from the factual allegations made. In instance the plaintiff has not set out clearly in the particulars the cause of action.

- [5] Counsel for the plaintiff, Adv Sander argued that it is trite that an exception should be vague and embarrassing. The exception must be bound to the pleadings. If not then the exception must fail. He argued that the issues that the defendants raised about the death certificate and marriage certificate are documents that are not before court. He submitted that the exception is flawed and is in fact abortive. In the heads of argument he stated that in order for an Excipients to succeed, they have to persuade the court that upon every interpretation which the pleading in question is based and it disclosed no cause of action or defence, failing which the exception ought not to be upheld.
- [6] It is important that I first deal with the applicable principles in an Exception as stated in Erasmus Superior Court Practice at B1 154 to B1154A:
- (a) In each case the court is obliged first of all to consider whether the pleading does lack particularly to an extent amounting to vagueness where a statement is vague it is either meaningless or capable of more than one meaning. To put it at its simplest; the reader must be unable to distil from the statement a clear, single meaning.
 - (b) If there is vagueness in this sense, the court is then obliged to undertake a quantitative analysis of such embarrassment as the excipient can show cause to him or her by the vagueness complained of.
 - (c) In each case an ad hoc ruling must be made as to whether the embarrassment, is so serious as to cause prejudice to the excipient if he or she is compelled to plead to the pleading in the form to which he or she objects. A point may be of the utmost importance in one case, and the omission thereof may give rise to vagueness and embarrassment, but the same point may in another case be only a minor detail.
 - (d) The ultimate test as to whether or not the exception should be upheld is whether the excipient is prejudiced.
 - (e) The onus is on the excipient to show both vagueness and embarrassment amount to prejudice.
 - (f) The excipient must make out his or her case for embarrassment by reference to the pleadings alone.
 - (g) The court would not decide by way of exception the validity of an agreement relied upon or whether a purported contract may be held for vagueness.

Furthermore, the exception must relate to the entire cause of Action and not a paragraph thereof.

- [7] Briefly, the plaintiff's wife N. L. M. (the deceased) was admitted as a patient and the first and second defendant had a duty of care towards the deceased. On 17 December 2013 the deceased was suffering from shortness of breath and was admitted at hospital to receive treatment. The deceased was left unattended, alternatively not attended to with the due professional care that was required. During the evening of 17 December 2013 the bed rails where not lifted and the deceased subsequently fell off the bed onto the floor and stayed on the floor for the rest of the night.
- [8] Sibongile Khathide, employed by the first defendant as a nurse observed the deceased on the floor, but did not assist the deceased

and left her on the floor for the whole night. The alleged events where confirmed by the other patients in the ward. The first

defendant conducted a disciplinary hearing and Ms Kathide was found guilty at the disciplinary hearing and was suspended for three (3) months without pay (annexure A).

- [9] As a result of the incident the deceased suffered from severe trauma and pain which lead to her death on 20 December 2013. As a result of the aforementioned, the plaintiffs have suffered loss of income in the future. The plaintiff sues the defendants in total an amount of R4 050 000, 00.
- [10] The excipients' case is that the plaintiffs' claim appears to be based on a duty of care owed by the excipient to the plaintiff.

Therefore the excipient seeks an order that would grant the plaintiff leave to amend its particulars of claim and that the plaintiff be afforded 10 days in which to amend its particulars of claim.

- [11] The plaintiff submitted that the defendant does not raise the issue that the pleadings are vague and embarrassing and based on that only the exception must fail. That the defendant cannot address the court on documents that are not before court and neither are these documents raised in the particulars of claim of the plaintiff. Counsel for the plaintiff submitted that the mentioned documents are irrelevant. He indicated that the plaintiff has established the nexus that the deceased was in hospital; the deceased fell from the bed as the bed railings were not pulled up and that the defendant had a duty of care, but failed. Subsequently the falling from the bed, which was the incident, caused the deceased death.
- [12] Counsel for defendant avers that Rule 30 of the Uniform Rules is that particulars of claim must be clear for purposes of trial and that the material facts relied upon must be established. He submitted that the plaintiff did not establish that the falling off the bed caused the death of the deceased, nor are the injuries of the deceased explained or specified.

[13] The test in deciding an exception as clearly set out in Erasmus as stated above. An exception that a pleading is vague and embarrassing should not be directed at a certain paragraph of the pleading but at the cause of action as a whole, which must be demonstrated to be vague and embarrassing. Which the plaintiff submitted that the defendant did not even raised the exception that the pleadings are vague and embarrassing.

[14] In *Jowell v Bramell Jones and Others* 1980 (2) SA 814 at 825g the court stated as follows:

"I must first ask whether the exception goes to the heart of the claim and, if so, whether it is vague and embarrassing to the extent that the defendant does not know the claim he has to meet ... "

Vagueness could arise from the formulation of the pleadings. The absence of necessary averments or incomplete pleadings, serious prejudice must arise from these defects.

[15] It must, also be borne in mind that Rule 18(4) of the Uniform Rules of Court which requires that every pleading

"Shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim ... with sufficient

particularity to enable the opposite party to reply thereto."

Not forgetting that the object of pleading is to define issues between the parties. In Blake Odgers' *Principles of Pleading and Practice in Court action in the High Court of Justice* 22nd edition at page 113, it is stated as follows:

"The object of pleading is to ascertain definitely what is the question at issue between the parties and this object can only be obtained when each party states his case with precision."

[16] I have applied the aforementioned tests to the particulars of claim before me. I have to be persuaded by the excipient that the pleading is expiable on every interpretation that can be attached to it. See *Picbel Group Voorsorgfonds (in liquidation) v Somerville and related matters* 2013 (5) SA 496 SCA at 501A-B.

[17] It was submitted on behalf of the defendant that every pleading shall contain a clear concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading with sufficient particularity to enable the opposite party to reply thereto. Furthermore, that the exception is based on the fact that the pleadings do not disclose a cause of action. The casual relationship between conduct and result thereof was not set out in the particulars of claim and was not sufficient.

[18] Counsel for plaintiff in the Heads of Argument clearly stated that the first exception the cause of death is disclosed. He submitted that: "4.1As a result of the incident, the deceased suffered from severe pain and trauma which led to her death on 20 December

2013. "

Second exception - the death certificate discloses natural causes as cause of death. He submitted that the death certificate does not form part of the pleadings before court. The third exception - no link is established between the felling of the deceased and her death. The plaintiff's particulars of claim states that:

"3.1.1 During the evening of 17 December 2013, the bed rails were not lifted and the deceased subsequently fell of her bed onto the floor and stayed on the floor for the duration of the night."

"as a result of the incident deceased suffered from severe pain and trauma which led to her death on 20 December 2013."

The fourth exception as raised by the defendant that there is no link established between the alleged negligence of Sibongile Khathide and the resultant death of the deceased. Paragraph 3.3 of the particulars of claim clearly states that:

"The incident was the result of the negligent breach of Sibongile Khathide, aforesaid duty of care as a member of the staff employee by the first defendant

..."

[19] It is clear from these submissions on behalf of the plaintiff that the particulars of claim as they stand are clear and concise.

[20] I have been unable to find vagueness or embarrassment that would make the pleadings excipiable. The ultimate tests being that the defendant not be prejudiced. I have looked at the entire particulars of claim and cannot find such vagueness or embarrassment that would lead to any form of prejudice to the excipient. The particulars of claim in my view disclose a cause of action with sufficient clarity to enable the defendant to plead thereto.

[21] In support of my view, I rely in the case of MN v AJ 2013

(3) SA 26 (WCC) and Suid Afrikaans Onderlinge Brand en Algemene Versekerings Maatskappy Bpk v Van der Berg en Andere 1976 (1) SA 602 (A) at 607E

"[24] While pleadings must be drafted carefully a court should not read pedantically nor should it overemphasize precise formalistic

requirements; the substance of the allegations should be properly considered...

[22] In all the grounds raised by the excipient, specifically the issue of the documents; the death certificate and marriage certificate that are not before court, I am not satisfied that it has discharged the required onus of proof for this court to uphold the exception.

[23] I therefore make the following order.

(a) The exception is dismissed with costs.

S CHESIWE, AJ

Appearances

For the plaintiff: Adv Sanders

Instructed by:

Hill, McHardy & Herbst

For the defendant: Mrs Greyling

Instructed by: The State Attorney

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