



SOUTH GAUTENG HIGH COURT, LOCAL DIVISION

Case No: 42156/2013

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

10 February 2014

EJ Francis

In the matter between:

LIFE HEALTHCARE GROUP (PTY) LTD

Applicant

and

MDLADLA PRINCE

First Respondent

MDLADLA FAVOURITE

Second Respondent

JUDGMENT

FRANCIS J

1. The respondents instituted an action for damages in their personal capacities and in their representative capacities on behalf of their minor child against the applicant on the basis set out in their particulars of claim. The respondent entered an appearance to defend and brought an application in terms of rule 30(1) of the Uniform Rules of Court (the Rules) to declare that the particulars of claim dated 8 November 2013 is an irregular step or proceeding.
2. The applicant has raised six complaints against the particulars of claim. In a notice filed under rule 30(2)(b) the applicant contend that the particulars of

2.

claim fail to comply with Rules 18(4), 18(6) and 18(10) and that it accordingly constitute an irregular step and/or proceeding. The applicant had afforded the respondents ten days to remove the cause of complainant. The particulars of claims were amended and despite this the applicant persisted with the application.

3. Before considering the complaints it is first necessary to consider the relevant portions of the Rule that the applicant relies on. Rule 18(4) provides that every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies on his claim, defence or answer to any pleadings, as the case may be, with sufficient particularity to enable the opposite party to reply thereto. Rule 18(6) provides that a party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.
4. Rule 18(10) states that a plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof: provided that a plaintiff suing for damages for personal injury shall specify his date of birth, the nature and extent of the injuries, and the nature, effects and duration of the disability alleged to give rise to such damages, and shall as far as practicable state separately what amount, if any, is claimed for (a) medical costs and hospital and other similar expenses and how these costs and

3.

expenses are made up; (b) pain and suffering, stating whether temporary or permanent and which injuries caused it; (c) disability in respect of – (i) the earning of income (stating the earnings lost to date and how the amount is made up and the estimated future loss and the nature of the work the plaintiff will in future be able to do so); (ii) the enjoyment of amenities of life (giving particulars; and stating whether the disability concerned is temporary or permanent; and (d) disfigurement, with a full description thereof and stating whether it is temporary or permanent.

5. Rule 18(12) provides that if a party fails to comply with any of the provisions of the rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30. Rule 30(1) provides that 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. In terms of rule 30(3) if the court is of the opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make such order as to it seems meet.
6. It is trite that rule 30(3) gives a court very wide powers, powers which enable a court to grant a plaintiff an opportunity to amend a summons which is so defective as to constitute a nullity. The discretion must be exercised judicially on a consideration of the circumstances and what is fair to both sides. The court is entitled to overlook in proper cases any irregularity which does not

4.

work to substantial prejudice to the other party. In *Trans - African Insurance Co Ltd v Maluleka* 1956(2) 273 AD it was held at 278 F-G as follows:

"No doubt parties and their legal advisers should not be encouraged to become slack in the observance of the Rules, which are an important element in the machinery for the administration of justice. But on the other hand technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits."

See also *Soundprops 1160 CC v Karlshavin Farm Partnership* 1996(3) SA 1026 NPD.

7. Proof of prejudice is a prerequisite to success in an application in terms of rule 30(1).
8. I first propose to deal with the first three complaints since they all deal with the respondents alleged failure to comply with rule 18(4) and will thereafter deal with the remaining three other complaints which resorts under rule 18(10).

First complaint

9. In paragraph 5 of the particulars of claim, the respondents state that the second respondent was handed an immunisation chart from the applicant with instructions to take the minor to the clinic for regular immunisation and check-ups on development and that the immunisation chart was accompanied by a letter from the applicant with the immunisation program and fees payable by the respondents. In paragraph 6 they state that they accepted the applicant's

5.

offer to attend immunisations and advices on development and an express, alternatively tacit agreement came into being between the respondents and the applicant.

10. It was stated that the aforesaid paragraphs fail to comply with rules 18(4) and 18(6) *inter alia* because:

10.1 no attempt has been made by the respondents to identify who on behalf of the plaintiff handed the immunisation chart to the second respondent;

10.2 it is unclear whether or not the respondents act upon a partly written, partly oral agreement with the written portion constituting the immunisation chart and letter by the applicant or whether the respondents intend relying upon an oral agreement by their reference to an 'express' agreement;

10.3 the respondents have not identified when they accepted the applicant's alleged offer and thus when the agreement relied upon by them was concluded and where it was concluded.

10.4 the respondents have failed to attach the immunisation chart and letter that accompanied the chart.

The second complaint

11. In paragraph 7 of the particulars of claim the respondents allege that the second respondent meticulously followed the guidelines of the clinic to bring the minor at the correct times for the immunisation and clinical follows up. The respondents have however failed to identify what those guidelines were

6.

and they have failed to furnish a clear and concise statement of the material facts upon which they rely in order to enable the applicant to properly plead thereto as contemplated by rule 18(4).

The third complaint

12. In paragraph 9 of the respondents particulars of claim, the respondents allege that on subsequent visits to the clinic, the second respondent enquired about the abnormal growth of the minor, but each time it was made as of no significance. They complain that the respondents have failed to state the number of subsequent visits; when those visits occurred and who on behalf of the applicant made the abnormal growth of the minor as of no significance. In the result the particulars of comply with rule 18(4).

13. It is clear that in the first three complaints the applicant contends that particulars of claim fail to comply with the provisions of rule 18(4) and 18(6) in respect of the first complaint. As stated above rule 18(4) requires that the pleading shall contain a clear and concise statement of the material facts upon which the pleader relies on his claim with sufficient particularity to enable the opposite side to reply thereto. Rule 18(6) deals with an instance where reliance is made on a contract and what needs to be pleaded.

14. I am of the firm view that the particulars of claim contain sufficient particularity to enable the applicant to plead thereto and that the applicant suffers no prejudice in pleading to the particulars of claim as they stand. The objections are baseless. The applicant has not claimed that the particulars of

7.

claim are vague and embarrassing or that they contain insufficient particularity to enable it to plead to them. Its contention is that certain of the aforementioned paragraphs of the particulars of claim constitute an irregular step and or proceeding. It is not necessary for the respondents to plead who handed the immunisation chart to the second respondent since this is not material to the issue. This fact is relevant as background and not as a *facta probanda*. The applicants have pleaded and rely on a tacit contract which came into being when they presented their baby to the applicant's clinic for immunisation and follow up and the clinic, in return for a fee, provided such services. The conduct of the parties leading to the tacit contract is set out in the particulars of claim. The documents referred to could be made available through the rules dealing with discovery.

15. The material fact is that the minor was taken to the clinic for immunisation and clinical follow up. It is stated in the particulars of claim that she attended the clinic in an 18 months period 11 times. Further particularity would be a matter of evidence. In respect of the third complaint the material fact is that the applicant represented by one of its employees failed to heed of the abnormal growth of the minor's head. Whether this happened on numerous occasions or just once is irrelevant to the applicant's pleading to this fact.
16. This brings me to the remaining complaints which all deal with the issue of quantum.

The fourth complaint

17. In paragraph 20.3.1 of the particulars of claim, the respondents in their personal capacities, claim the sum of R200 000 in respect of past hospital and medical expenses and state that such an amount is an estimate of expenses to date, the details of which are not presently available and which would be provided to the defendant as soon as possible. It was stated that the foregoing allegations do not comply with rule 18(10) and do not enable the applicant to reasonably assess the respondents quantum.

The fifth complaint

18. In paragraph 20.3.2 of the particulars of claim, the respondents in their personal capacities, the sum of R10 million in respect of future hospital and medical expenses which they allege constitute an estimate which in due course will be supported with appropriate medico-legal and actuarial reports. It was stated that the quantum and the allegations contained in paragraph 20.3.2 likewise do not comply with rule 18(10) more particularly in that a globular figure is set out without any indication as to how it is computed. The allegation that the medico-legal reports would in due course be furnished does not enable the applicant at this stage to properly assess the respondents quantum and how it is computed.

The sixth complaint

19. The respondents are in paragraph 20.4 of the particulars of claim, claiming in their representative capacities the sum of R2 million in respect of future loss of earnings and interference with and incapacity in respect of the minor. The complaint is that the respondent have made no attempts to set out how the sum

9.

of R2 million has been computed and that they have failed to comply with rule 18(10).

20. As stated above complaints 4 to 6 deal with quantum and falls to be determined under rule 18(10). The respondents have estimated the medical and hospital costs to date and are not in possession of every voucher and account at this this stage to give greater precision. The respondents are obliged to set out their damages in such a manner as will enable the applicant 'reasonably' to assess the quantum thereof and further the respondents are obliged to 'as far as practicable' state the amounts claimed under the various heads of damages.
21. The applicants have set out the nature and extent as well as the nature effects and duration of the disabilities giving rise to the damages. The amount claimed for future medical expenses is an estimate but the items of medical and auxiliary treatment required are itemised. They have stated that the amount claimed is an estimate as the particularity has been provided that is available to them at the time of the pleading. The applicant can request medical examinations in terms of rule 36 to enable it to make its own assessment of the quantum. The parties could agree to or for one of the parties to apply for, a separation of the issues of liability and quantum. The respondent is not hampered in any way to plead to the respondents claims and assessment of quantum is most probably a long way off. For the amount claimed for loss of earnings it is clear that the minor will be unemployable for

10.

the remainder of her life and the amount claimed is an estimate and it cannot at this stage be stated with greater precision.

22. In the premises I do not think that the irregularity of the proceedings under attack in relation to particulars of claim is such that I should exercise my discretion in favour of setting it aside out as a whole. The complaints raised are not of any substance and particulars of claim should be allowed to stand.

23. The application stands to be dismissed.

24. There is no reason why costs should not follow the result.

25. In the circumstances I make the following order:

25.1 The application is dismissed with costs.


FRANCIS J

GAUTENG HIGH COURT JUDGE

FOR THE APPLICANT : N ALLI INSTRUCTED BY NORTON ROSE
FULBRIGHT SOUTH AFRICA

FOR RESPONDENTS : C VALLARO INSTRUCTED BY MUNRO
& VERMAAK

DATE OF HEARING : 30 JANUARY 2014 & 4 FEBRUARY 2014

DATE OF JUDGMENT : 10 FEBRUARY 2014