

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

CASE NO. 32900/2021

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

06 May 2022

In the matter between:

EVA HELENE MUMENTHALER obo M C SCHERER

Excipient / Defendant

and

THE ROAD ACCIDENT FUND

Respondent / Plaintiff

WRITTEN REASONS

L I VORSTER, AJ:

1. In this matter the Defendant took exception against the particulars of claim of the Plaintiff. The exception is based on the allegation that the particulars of claim of the Plaintiff is vague and embarrassing resulting in the Defendant being unable to plead thereto. In this connection the Defendant (excipient) refers to Uniform Rule 18(4) which reads:

“Every pleading shall contain a clear and concise statement of the material facts upon which the plead relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.”

2. After having heard argument, I dismissed the exception. I have now been requested to supply written reasons for my decision. Those reasons follow below.

3. It is clear from the particulars of claim that the Plaintiff is seeking to set-aside an ostensible settlement between the Plaintiff and the excipient (Defendant). The ostensible settlement was made an order of Court on 3rd of March 2020 and in terms

of that ostensible settlement (Annexure “POC2” to the particulars of claim) the Plaintiff who was the Defendant in the action, was obliged to pay an amount of R4 965 378,39 to the Plaintiff in that action (Eva Helene Mumenthaler).

4. An analysis of the particulars of claim shows that the Plaintiff in paragraphs 3 and 4 sets out the legal framework regulating the lawful actions of the Plaintiff in exercising its duties. That entails reference to the Constitution, the PFMA and the Plaintiff's system of financial management and control which provides for delegation of functions and powers and delegation of powers and functions in relation to the settlement of quantum and merits of cases either above or below R10 million and so forth. The crucial allegation on which the cause of action of the Plaintiff is founded is that the required authority to consent to the settlement agreement was absent and is therefore a nullity and further the absence of such required approval is an infringement of the Constitution and therefore invalid.

5. There is authority for the proposition that the Court should not look too critically at a pleading. It is for the excipient to satisfy the Court that there is a real point of law or a real embarrassment.

Vide: **South African National Parks v Ras 2001(4) All SA Law**

Reports 380 (C);

Jowell v Bramwell-Jones 1998(1) SA 836 (W) at 902 – 903.

6. As I have tried to explain above, the particulars of claim and the structure of the particulars of claim is not difficult to understand. The provisions of the PMFA and the Constitution are only referred to, to substantiate the allegation that the Plaintiff must work prudently with its money and is not entitled to squander it. The exceptions constitutionality and the provisions of PFMA are all about getting clarity on which particular sections of the legislation is referred to, to substantiate the allegations made. Those exceptions in my view cannot be upheld. The duty to plead includes either to admit or deny an allegation made. The Defendant does not need a reference to a particular section or sub-section of legislation to admit or deny the broad allegation that those acts and provisions oblige the Plaintiff to work sparingly and prudently with its money. Reference to specific sections or sub-sections can be cleared up by way of amendment or, at best, by the method of particulars of claim for the purposes of trial which comes about later. It certainly does not embarrass the Defendant at this stage if specific sections or sub-sections are not made available or referred to.

7. The same reasoning applies to the allegation that the settlement was not agreed to or authorised by the relevant officials in the employ of the Defendant. If it is unclear, it is not a basis for an exception but the allegation can simply be denied and in the course of time clarified with reference to the particular section or sub-sections of the particular legislation by means of a request for particulars of trial.

8. I therefore found that such unclarities as there might be, can be rectified by amplification or even amendment of the particulars of claim and are not valid grounds for exception to set-aside the particulars of claim at this stage. Consequently, I dismissed the exception and, because the particulars of claim is clearly not a textbook example of clarity, I ordered that each party should pay its own costs.

L I VORSTER SC, AJ

Acting Judge of the High Court

HEARD ON: 22 April 2022

DECIDED ON: 06 MAY 2022

For Excipient/Defendant: Adv JC Prinsloo with pupil Ms V Van Niekerk

Instructed by A Wolmarans Inc

For the Respondent/Plaintiff: Adv Q Pelser SC

Instructed by Mponyana Ledwaba Attorneys