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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 53273/2021

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

17/11/2022

In the matter between:

SCORPION LEGAL PROTECTION

Applicant

and

JEFRIFANOS EBBY MAHLABA

Respondent

JUDGMENT

MAKUME J:

[1] This is an application in terms of Rule 30 (1) of the Uniform Rules in which the Applicant seeks an order setting aside the Respondent's particulars of claim.

[2] The Applicant maintains that the Respondent's particulars of claim are:

2.1 non-compliant with the provisions Rules 18(3); 18(4); 18(6) and 18 (10).

2.2 That the particulars of claim are vague and embarrassing.

2.3 That the particulars of claim lack the necessary averments to sustain a cause of action.

[3] As a result of the above the Applicant says it is prejudiced and does not know what case to meet. It is necessary at this stage to quote the portions of the particulars of claim that are the subject matter of this application they read as follows:

3.1 "On or about the 5th November 2002 the Plaintiff was involved in a motor vehicle accident whilst he was on duty working as a fleet Manager at Trotsky Investment whilst driving from Durban to Johannesburg. The Plaintiff sustained severe injuries because of the aforesaid motor vehicle accident. Consequently, the Plaintiff was hospitalised at Lan-Verna Clinic in Ladysmith from the date of the aforesaid accident to the 23rd November 2002.

3.2 The Plaintiff lost his right arm because of the aforesaid motor vehicle accident.

3.3 As a result of the untimely termination of his employ, the Plaintiff approached Scorpion Legal Protection for legal assistance. The Plaintiff's choice of opting for Scorpion Legal Protection extended beyond client-service provider relationship as the Plaintiff had been an advertising agent of Scorpion Legal Protection from its inception in 1996. The Plaintiff's policy number is [...].

3.3.1 The Legal assistance that the Plaintiff required from the Scorpion Legal Protection was twofold:

3.3.1.1 Lodgement of the personal injury claim against the Road Accident Fund.

3.3.1.2 Pursuance of the labour matter against the Plaintiff's former employer including refusal to process Plaintiff's claim in terms of the Compensation for Occupational Injuries and Diseases Act.

3.4 Scorpion Legal Protection then appointed a new attorney of record for the Plaintiff one Chris Manzini in view of the arbitration inquiry that was approaching. On the day of the inquiry the appointed attorney dismally failed to represent the Plaintiff because he was a notary conveyancer and had no expertise in labour matters.

3.5 In 2009 another attorney was appointed by Scorpion Legal Practice to represent the Plaintiff yet nothing tangible was reached to appeal the Plaintiff's arbitration inquiry.

3.6 Members of the Defendant herein and others not stated herein failed to fulfil their mandate towards the Plaintiff as any reasonable person in the legal profession could have in the same situation. As a result, Scorpion Legal Protection breached its contract of providing legal assistance to the Plaintiff.”

[4] The Respondent maintains that the Applicant is non-suited to avail itself of the provisions of Rule 30 and says that the Applicant should have relied on the provisions of Rule 23 in its claim that the Respondent's particulars of claim are vague, embarrassing and lack the necessary averments to sustain a cause of action.

[5] The Respondent is clearly wrong in the matter of **Sasol Industries (Pty) Ltd t/a Sasol v Electrical Repair Engineering (Pty) Ltd t/a H.L. Marthinussen 1992 (4) SA 466 W** the Court held that if a pleading both fails to comply with Rule 18 and is vague and embarrassing the Defendant has a choice of remedies he may either bring an application in terms of Rule 30 or raise an exception in terms of Rule 23(1).

[6] In this matter the Applicant's complaint is that the particulars of claim are defective due to failure to comply with the requirements of Rule 18(3); 18(4); 18(6)

and 18(10). The Applicant is clearly not raising an exception to the pleadings but is raising irregularities of form and not to matter of substance.

RULE 18 (4)

[7] Rule 18(4) provides that: “Every pleading shall contain a clear and concise statement of the material facts upon which the pleader 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.”

[8] It is trite law that a pleading contains sufficient particularity if it identifies and defines the issues in such a way that it enables the opposite party to know what they are. In the present matter the particulars of claim are all over the place tracing history of the Plaintiff (Respondent) having been involved in a motor accident in the year 2002 and concluding that the Applicant failed to provide for Plaintiff (Respondent) with legal services. The Plaintiff (Respondent) has failed to set out the material facts he relies on to reach that conclusion.

[9] In **Trope v South African Reserve Bank 1992 (3) SA 208 T** it was held that pleadings must be lucid and logical and be in an intelligible form, that the cause of action must appear clearly from the factual allegations made. I cannot find this in the Respondent’s particulars of claim.

RULE 18(6)

[10] Rule 18(6) provides that “A party who in his pleadings relies upon a contract shall state whether the contract is written or oral and when and 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 pleadings, shall be annexed to the pleadings.

[11] The Plaintiff’s particulars of claim are glaringly lacking in particularity and fall far short of complying with this Rule. As an example in his paragraph 4.5 all that the Plaintiff says is that “Plaintiff approached Scorpion Legal Protection for legal

assistance and then at 4.5.1 the Plaintiff says that the legal assistance required from the Scorpion Legal Protection was twofold.

[12] What the Plaintiff/Respondent says is that he mandated the Applicant Scorpion to render certain legal services and if that is the case he is required in terms of Rule 18(6) to firstly indicate if this was a written or oral mandate. Secondly it is required that he should indicate when, where and who acted for the parties when the mandate was concluded. Lastly if the contract or mandate was in writing then a true copy thereof should be attached to the particulars of claim. The Respondent's argument that such information will be provided or is only required at discovery stage is untenable.

[13] The Court in **Vorster vs Herselman 1982 (4) SA 857 (O) at 861 F** concluded that if a Plaintiff relies upon a contract he is bound by the requirements of the sub rule and is obliged, if possible to give the information required in the precise terms. In **Moosa and Others NNO v Hassam 2010 (2) SA 410 (KZP)** Swain J said that a party clearly relies on a contract when he uses it as a link in the chain of his cause of action.

RULE 18(10)

[14] Rule 18(10) provides that "A Plaintiff suing for damages shall set them out in such a manner as will enable the Defendant reasonably to assess the quantum thereof."

[15] The claim for damages is set out in paragraphs 9.1 up to 9.4 and it is divided into categories each category specifies the amount and what that amount is for.

[16] This sub rule stipulates the minimum particulars to be furnished by the Plaintiff with regard to personal injuries to enable the Defendant reasonably to estimate the quantum of the Plaintiff's damages and plead thereto. The Court in **Reid N.O. v Royal Insurance Co Ltd 1951 (1) SA 713 (T)** held that the Plaintiff is not required to set out his claim in such a manner as will enable the Defendant to ascertain whether or not the Plaintiff's assessment of quantum is correct.

[17] I accordingly cannot find anything wrong with how the damages have been categorised in paragraph 9.1 and 9.4. It complies fully with the requirements of Rule 18(10).

[18] The facts and statements contained in the particulars of claim as it stands now do not support the relief sought. It is not clear if the Plaintiff is suing in contract or in delict or both. The cause of action does not appear clearly from the factual allegation set out in the particulars of claim and accordingly lack particularly and are vague and embarrassing and fall to be set aside.

[19] In the result I have come to the conclusion that the particulars of claim do not comply with the requirements of Rule 18(3), 18(4) and 18(6) and are thus vague and embarrassing and lack the averments which are necessary to sustain a cause of action. Accordingly, the following paragraphs in the particulars of claim are hereby set aside:

paragraph 4.5; 4.5.1; 4.5.1.1; 4.5.1.2; 4.6; 4.9; 4.10; 4.11; 4.12; 4.13; 4.15; 5.1; 5.2; 5.3; 5.4; 6.1; 6.1.1; 6.1.2; 6.1.3; 6.1.4; 7.

ORDER

i) The Plaintiff's particulars of claim as set out in the paragraphs mentioned in 19 above are hereby set aside as being irregular for non-compliance with the provisions of Rule 18(3); 18(4) and 18(6).

ii) The Plaintiff (Respondent) is ordered to pay the taxed party and party costs of this application which costs shall include the wasted costs occasioned by the postponement on the 24th October 2022.

iii) The Plaintiff/Respondent is hereby granted leave to amend his particulars of claim within 15 (fifteen) days of the date of this order.

DATED at JOHANNESBURG this the 17 day of NOVEMBER 2022.

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

DATE OF HEARING : 28 OCTOBER 2022

DATE OF JUDGMENT : 16 NOVEMBER 2022

FOR APPLICANT : Adv R Kriek

INSTRUCTED BY : Messrs CGG Incorporated

FOR RESPONDENT : Adv PF Ndou

INSTRUCTED BY : Messrs Ndou Attorneys