

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: 50143/16

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

5/9/2019

In the matter between:

CENTRAFIN (PTY) LTD

APPLICANT/PLAINTIFF

And

FOOD AND TREES FOR AFRICA

RESPONDENT/DEFENDANT

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] The applicant applies in terms of the provisions of Rule 28 of the Uniform Rules of Court for an amendment to its particulars of claim. The respondent opposes the application.

- [2] Neither the applicant nor the respondent filed a supporting affidavit. Thus, the amendment is to be considered on the proposed amendment as set out in the notice of amendment and the notice of opposition filed.
- [3] The applicant instituted proceedings against the respondent in which it claimed payment of arrear rentals and monies due in respect of continued rentals not paid either timeously or at all.
- [4] The initial rental agreement was entered into by Itec Communications (Pty) Ltd and the respondent. That rental agreement was ceded to the applicant at some stage.
- [5] In terms of the notice of amendment, the proposed amendment primarily relates to various cessions effected in respect of the rental agreement until it was ceded to the applicant. It is submitted that the purpose of the amendment is to plead the necessary *facta probanda* to support the applicant's claim premised upon the sequence of the various cessions of the rental agreement. The amendment further relates to the citation of respondent, to augment the manner in which the respondent's breach was pleaded, to rectify an obvious error, to delete an annexure initially annexed to the particulars of claim, to rectify an amount due and payable and to effect consequential amendments and renumbering paragraphs in the particulars of claim.
- [6] It is further submitted on behalf of the applicant that the amendment sought does not prejudice the respondent, that it is *bona fide* and does not require a supporting affidavit to explain any amendment.
- [7] The objection lodged can be categorised into three categories:
- (a) that the amendment would render the particulars of claim excipiable;

- (b) that the amendment would render the particulars of claim vague and embarrassing;
- (c) that the amendment is unsound in law.

- [8] It is further submitted on behalf of the respondent that the amendment ought to be dismissed for want of a supporting affidavit. The respondent abandoned the objection in respect of the alleged non-joinder of a party.
- [9] The respondent concedes that generally a supporting affidavit is not required for an amendment.¹ However, it is further submitted that there are exceptions to the general rule, such as where a substantial amendment is sought or the *bona fides* are questionable.
- [10] In my view, for what follows, the application for an amendment does not require the filing of a supporting affidavit and the point *in limine* stands to be dismissed. The respondent was at liberty to file a supporting affidavit in respect of its objections raised. It chose not to do so.
- [11] It is trite that an amendment can be sought until before judgment is granted. In the present case, albeit that the pleadings have closed, the matter is only to be heard in May 2020. There is sufficient time to adjust a plea and prepare for trial.
- [12] The respondent further opposes the amendment on the premises that the applicant seeks to withdraw an "admission". The alleged withdrawal of an admission relates to that part of the amendment which seeks to delete annexure "D" from the particulars of claim.

¹ *Swartz v van der Wal t/a Sentraten* 1998(1) SA 53 (W) at 55J – 58B

- [13] Annexure "D" is nothing more than *facta probantia* to support claim for an amount alleged to be due and payable. It is trite that evidence is not normally pled and thus there can be no "withdrawal of an admission". There is no prejudice to the respondent should annexure "D" be deleted. It may still find it useful in cross-examination. That objection stands to be dismissed.
- [14] In its heads of argument filed on behalf of the respondent, the main objection seems to lie against the attempt to introduce into paragraph 6 of the particulars of claim allegations regarding the cession of Annexure A to the Master Unified Agreement by Itec Communications to Itec Finance in terms of the First Main Cession Agreement annexure C1. The objection lies against the alleged vagueness of time during which the cession was effected.
- [15] In my view, the particularities relating to the time period is sufficient to permit the respondent to plead thereto. A party is not required to provide evidence to its counterpart in its particulars of claim to sustain a defence, which the respondent seeks in its complaint of lack of particularity.
- [16] The respondent objects to the introduction of a document, annexure "F", allegedly not discovered and such introduction would be excipiable. It is trite that documents attached to particulars do not require discovery. Such documents are before court by virtue of its appending to the pleadings. Pleadings do not require discovery. In any event, the applicant is at liberty to discover documents at any stage of the proceedings, including during evidence being led. It is trite that the bar would be any prejudice that the other party may suffer that would not be sufficiently remedied by an appropriate order as to costs and/or postponement.
- [17] It follows, that in view of the main objection to the amendment that no supporting affidavit was filed in respect of the amendment stands to be

dismissed. The objections to alleged vagueness have no merit and stand to be dismissed. The respondent could plead to the amended particulars of claim.

- [18] The issue of costs remains. The applicant seeks an indulgence and it is thus required to pay the costs occasioned by the amendment. In my view the opposition to the amendment is not frivolous and the applicant should bear those costs.

I grant the following order:

- (a) The amendment is granted;
- (b) The applicant shall bear the costs of the amendment including the costs of opposition.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

On behalf of Applicant: Ms H Snyman
Instructed by: Jay Mothobi Inc.

On behalf of Respondent: E Rudolph
Instructed by: Preston-Whyte and Associates