

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 32474/2022

REPORTABLE: ~~YES~~/NO

OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

REVISED: YES/~~NO~~

DATE: 21 August 2023

In the matter between:

ABRAHAM AYELE ADISE

PLAINTIFF

and

MINISTER OF DEFENCE AND MILITARY VETERANS

DEFENDANT

JUDGMENT

Marx du Plessis, AJ

Introduction

1. Before me is an exception raised against the plaintiff's particulars of claim. The defendant argues, simply put, that the plaintiff's particulars of claim is excipiable as it lacks compliance with the provisions of Rule 18(10) and this alleged non-compliance results in the defendant being unable to assess the quantum of damages claimed by the plaintiff.

2. The plaintiff's claim is for general damages in the sum of R 3 000 000.00 and future medical expenses in the sum of R 12 000.00. The basis of the

plaintiff's claim is an alleged assault perpetrated upon him by members of the²
South African National Defence Force (referred to herein as '**SANDF**').

The exception

3. The defendant raises the following as grounds for its exception:

"2. *A Plaintiff suing for damages is required by Rule 18(10) to set them out in a manner as will enable the Defendant reasonably to assess the quantum thereof;*

3. *A Plaintiff suing for Personal Injuries is required to specify not only his date of birth, the nature and extent of the injuries, but also the effects and duration of the disability alleged to give rise to such damages.*

4. *Furthermore, Plaintiff shall state separately what amount (if any) is claimed for;*

4.1 *Medical costs and hospital and other similar expenses and how these costs are made up;*

4.2 *Pain and suffering, stating whether temporary or permanent and which injuries caused it;*

4.3 *Disability in respect of the earning of income, (stating earnings lost to date and how the amount is made up and also the estimated future loss and the nature of the work the Plaintiff will in future be able to do) and also whether the disability is permanent or temporary.*

5. *The Plaintiff does not allege the nature, effects and duration of the disability alleged to give rise to his damages.*

6. *Defendants have no idea of the nature and effect of the injuries*

Plaintiff alleges he suffered from and therefore cannot plead to the Particulars of claim or assess the Plaintiff's alleged damages.

7. *Proper a/legations regarding the nature and effect of the Plaintiff's alleged injuries are essential elements for a cause of action of the nature pleaded by the Plaintiff*

8. *The Plaintiff has not pleaded those facts which he bears the onus of proving in order to demonstrate entitlement to the relief which he seeks.*

9. *Particulars of claim do not comply with the provisions of Rule 18 (10) of the Uniform Rules of Court.*

10. *The particulars of claim do not contain the necessary averments to disclose or sustain a cause of action."*

11. *The Plaintiff's failure to make these essential a/legations render the particulars of claim vague and embarrassing." (sic)*

4. Upon a reading of the notice of intention to except and the notice of exception, it appears that the defendant's complaint is specifically directed at paragraphs 10, 11 and 16 of the particulars of claim. This was addressed with counsel appearing for the defendant who, curiously, confirmed that the exception was confined to these paragraphs of the particulars of claim.

Legal principles applicable to exceptions

5. In circumstances where a pleading does not comply with the provisions of Rule 18, the more appropriate remedy for the complaining party is to rely on the provisions of Rule 30, bringing an application for an order setting aside the pleading complained of as an irregular step.¹

¹ Rule 18 (12) of the Uniform Rules of Court: *"If a party fails to comply with any of the*

6. The approach in adjudicating a complaint against a pleading based solely upon the lack of compliance with the Uniform Rules of Court, the complaint being brought before a court in terms of the provisions of Rule 30, differs from the approach applied when adjudicating an exception based upon a pleading being vague and embarrassing or lacking averments necessary to sustain a cause of action.²

7. The purpose of an exception is to dispose of pleadings that are so vague and embarrassing that a clear and understandable cause of action or defence cannot be ascertained.

8. The approach to be adopted and applied when adjudicating exceptions has recently been reaffirmed by the Supreme Court of Appeal in *Luke M v Tembani and Others v President of the Republic of South Africa and Another* 2023 (1) SA 432 (SCA) (20 May 2022). It was stated that:

"[14] 'Whilst exceptions provide a useful mechanism 'to weed out cases without legal merit', it is nonetheless necessary that they be dealt with sensibly. It is where pleadings are so vague that it is impossible to determine the nature of the claim or where pleadings are bad in law in that their contents do not support a discernible and legally recognised cause of action, that an exception is competent. The burden rests on an excipient, who must establish that on every interpretation that can reasonably be attached to it, the pleading is excipiable. The test is whether on all possible readings of the facts no cause of action may be made out; it being for the excipient to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put upon the facts.

[15] ...

provisions of this 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."

² *Jowell v Bramwell Jones* 1998 (1) SA 836 (W) at 902F-G

[16] ... *It is thus only if the court can conclude that it is impossible to recognize the claim, irrespective of the facts as they might emerge at the trial, that the exception can and should be upheld.*' (References have been omitted).

9. When called upon to determine whether a pleading is vague and embarrassing it must first be determined whether the pleading lacks particularity to the extent that it is vague and, if so, the vagueness complained of must result in serious prejudice to the complaining party.³

10. The nature of the particularity required from a pleading was explained in *Trope v South African Reserve Bank and Another and Two Other cases* as follows:⁴

'It is, of course, a basic of principle that the particulars of claim should be so phrased that a defendant may reasonably and fairly be required to plead thereto. This must be seen against the background of the further requirement that the object of pleadings is to enable each side to come to trial prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form; the cause of action or defence must appear clearly from the factual allegations made...'

11. In determining whether an alleged lack of particularity is vague, to the extent of causing embarrassment to the complaining party, one is to consider the following:

11.1 Whether the pleading is meaningless or capable of more than one meaning.⁵

³ *Brits v Coetzee* 1967 (3) SA 570 (T) at 572A.

⁴ 1992 (3) SA 208 (T) 210G-H

⁵ *Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd* 2008 (4) SA 639 (C) at 644A-B

11.2 And if the pleading is meaningless or capable of more than one meaning, the complaining party must show that embarrassment is caused to it and that the embarrassment so caused is prejudicial.

12. Whether the embarrassment caused is prejudicial is a factual inquiry and a question of degree.⁶

13. In adjudicating this exception, I must accept that the facts pleaded by the plaintiff in his particulars of claim are true and correct, bearing in mind that the plaintiff only needs to plead the facts which are necessary for him to prove his claim.

14. Plaintiff's claim is a personal injury claim. He is thus required to allege the wrongful act which gave rise to the injuries, the resultant damages and the quantum thereof.

15. From a reading of the particulars of claim the following facts appear:

15.1 The plaintiff is a young man, born during January 1993.

15.2 The plaintiff was assaulted by members of the SANDF during April 2020 and this assault caused the plaintiff to suffer multiple injuries, all of which are detailed in paragraph 4 of the particulars of claim.

15.3 Due to the assault and resultant injuries, the plaintiff suffered emotional shock, trauma and grief for which he claims R 3 000 000.00.

15.4 Due to the emotional shock and trauma caused by the assault, the plaintiff's mental health is impaired, and he requires future medical treatment in the form of psychotherapy. For this he claims R 12 000.00 which is for twelve sessions calculated at a rate of R 1 000.00 per session.

⁶ *Sivuka & 328 Others* (36879/2015) (2022) ZAGPJHC 450 (30 June 2022) at para (7)

15.5 The plaintiff's claim is limited to damages for emotional shock, trauma and grief as well as future medical expenses.

16. It was argued on the defendant's behalf that what is lacking from paragraphs 10, 11 and 16 of the particulars of claim is, *inter alia*, particulars regarding the plaintiff's ability to work in future, his date of birth and the nature and extent of the disability the plaintiff is alleged to have suffered as a result of the SANDF's conduct as complained of by the plaintiff. This, so the argument goes, makes it impossible for the defendant to assess the quantum of damages claimed by the plaintiff.

17. It is trite that an exception taken against a pleading is not directed at a particular paragraph or paragraphs within the pleading. An exception is directed at the formulation of the claim as a whole.⁷ No paragraphs can be read in isolation.

18. The plaintiff's claim is formulated in such a manner that, when read and considered as a whole, enables the defendant to identify the plaintiff's claim and to reasonably estimate the quantum of damages claimed by the plaintiff.

19. Plaintiff's claim need only be pleaded in such a manner that will supply the defendant with the necessary facts which will enable the defendant to reasonably assess the quantum of the damages claimed.⁸ This the plaintiff has done.

20. Considering the particulars of claim a whole, the defendant is able to ascertain what amounts are claimed by the plaintiff and in respect of which head of damage the amount is claimed.

21. The allegations and particulars which the defendant asserts have been

⁷ *Jowell v Bramwell Jones* 1998 (1) SA 836 (W) at 899G; *Venter and Others NNO v Barritt; Venter and Others NNO v Wolfsberg Arch Investments 2 (Pty) Ltd* 2008 (4) SA 639 (C) at 644A.

⁸ *Simmonds v White* 1980 (1) SA 755 (C)

omitted from the particulars of claim, save for the plaintiff's date of birth which was pleaded, relate to claims for future loss of earnings, which does not form part of the plaintiff's claim.

22. The plaintiff has pleaded the material facts which he relies on in support of his claim and the quantum thereof and all the averments necessary to sustain his claim have been pleaded.

23. Under the circumstances, the exception is dismissed, with costs.

ORDER

In the result, the following order is granted:

1. The exception is dismissed, with costs.

Z MARX DU PLESSIS

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing: 15 May 2023
Judgment delivered: 21 August 2023

Appearances:

Counsel for the plaintiff: T Mosikili and S Qagana
Instructed by: The Human Rights Commission

Counsel for the defendant: AK Mabena
Instructed by: State Attorney Pretoria