

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER:6860/2018

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE..... SIGNATURE:.....	

In the matter between:

DR MAILI CALFORNIA MULAUDZI

APPLICANT

And

PLATINUM HEALTH MEDICAL SCHEME

RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The applicant who is the defendant in the main action is a medical doctor practising as a dentist. The respondent who is the plaintiff in the main action is a medical aid scheme. The respondent was the appointed medical aid scheme for Atlatsa Mining Company which has since closed down its operations at Bokoni Platinum Mine. The applicant used to treat the employees of Atlatsa Mining Company and thereafter claim from the respondent for services rendered.
- [2] After the operations of Atlatsa were closed down, the respondent instituted action against the applicant alleging that the applicant had made a false representation that she had rendered necessary services to retrenched employees and thereafter submitted claims to the respondent for payment, whilst in actual fact she did not render the services as alleged or at all.
- [3] On being served with the respondents combined summons, on 13th June 2019 the applicant served and filed her notice of intention to defend the respondent's action. On 5th July 2019 the applicant served and filed her notice to strike out in terms of Rule 23(2) of the Uniform Rules of Court (the Rules) which was set down for the 8th October 2019.

On the 3rd October 2019 the applicant removed her application to strike out from the roll. On 25th October 2019 the applicant filed a notice of withdrawal of her application to strike out and at the same time filed a notice in terms of Rule 35(14).

[4] In the Rule 35(14) notice, the applicant had listed seven questions in which she required respondent to furnish her with certain documents. The respondent had replied to the applicant's Rule 35(14) and furnished the applicant with some of the documents, whilst for others the respondent has stated it was not obliged to provide the applicant with the said documents as they were not necessary for purposes of pleading, or that the information required by the applicant did not constitute a document, or that the documents requested were not in its possession or under its control.

[5] The applicant was dissatisfied in the manner in which the respondent had replied to her Rule 35(14) notice. That resulted in the applicant launching an application seeking an order that the respondent be compelled to reply to her Rule 35(14) notice, and also produce the documents listed for the applicant to have access to the said documents for purposes of pleading to which reference is made by the respondent in paragraphs 4,5,6,7 and 8 of the particulars of claim in the main action. The respondent is opposing the applicant's application, and has

stated that the documents which the applicant is requesting are not required, let alone necessary for purposes of filing a plea.

[6] In this court counsel for the applicant had argued that once documents are relied upon for purpose of making a claim, such documents should be made available to the other party even the documents are privileged. The applicant further submitted that the respondent had furnished her with an incomplete report which was compiled without interviewing her, in which case the *audi alteram partem* principle were not complied with. It is the applicant's contention that the documents she had requested constitute essential documents for purpose of pleading as they will allow her to check her books if indeed such members were retrenched at the time of such treatment if there was any such treatment, check the authenticity of the forensic report against her and enable her to challenge its validity, and check if there was any complaint against her by any member of the aforesaid medical scheme who were part of the alleged retrenched members.

[7] Before this court counsel for the respondent had submitted that Rule 35(14) does not provide a mechanism whereby a party, making use of generic terms, can cast a net which to fish for vaguely known documents. It is the respondent's contention that the seven questions raised by the applicant in her Rule 35(14) do not necessarily refer to

specific documents and that they are at best a fishing expedition, alternatively, the information sought therein is not necessary to file a plea. The respondent submitted that in respect of the seven questions raised by the applicant, in respect of the 1st and 6th questions it had furnished the applicant with the forensic report. With regard to question 2,3,4 and 5 there were no documents either available to which the applicant was entitled. Counsel for the respondent further submitted that the respondent insofar as the forensic report is concerned, it was pertinently recorded that the contents of the report relates to other doctors, as such those facts had no bearing against the applicant's case. However, the applicant's attorneys were offered to peruse the original report on condition a proper confidentiality agreement was signed. It is the respondent's contention that to date the applicant has not accepted that offer, and further that the same offer was again tendered in the respondent's answering affidavit.

- [8] The applicant has not yet pleaded to the respondent's particulars of claim. Rule 35(14) is used by a party who alleges that he/she requires discovery of certain documents or tape recordings for purposes of pleading. The rule read as follows:

"After appearance to defend has been entered, any party to any action may, for purposes of pleading, require any other party to make available for inspection within five days a clearly specified document or tape recording in his possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof."

[9] The right to obtain information under Rule 35(14) is limited to documents or tape recordings that are relevant to a reasonably anticipated issue in an action and also for documents required for purposes of pleading. (See **Quayside Fish Suppliers CC v Irvin & Johnson Ltd 2000 (2) SA 529 (C)** at para 13).

[10] The respondent's paragraphs 4,5,6,7 and 8 of the particulars of claim read as follows:

"4. During September 2017 one of participating employers of the plaintiff, a mining company called Atlatsa closed down their operations at their Bokoni Platinum Mine situated near Atok.

5. In this regard, they retrenched all their employees at this mine effective 30 September 2017 which amounted to some 3000 members of the plaintiff ("the Bokoni members")

6. As part of their retrenchment packages these members were entitled to remain on Platinum Health's Medical Scheme for an additional three months, in other word from 1 October 2017 until December 2017 and their contributions were to be paid to Platinum Health as part of their retrenchment package.

7. Prior to the date of retrenchment (30 September 2017) the defendant conducted negligible business with the members of the plaintiff and particularly Bokoni members.

8. However, after the date of retrenchment and the three months period, the plaintiff noticed a substantial spike in claims submitted by the defendant to the plaintiff for Bokoni members which gave rise to the launching of a forensic investigation, the conclusion of which results in the issuing of these particulars of claim."

[11] The applicant's seven questions in terms of Rule 35(14) read as follows:

"1. The list of the affected people in the alleged fraudulent claims done by the defendant.

2.The sworn statement by the alleged beneficiaries listed on the list requested above confirming that indeed they were treated by the defendant during 01 December 2017 until 31 December 2017, and that there were fraudulent claims made by the defendant on the alleged medical scheme. Furthermore, such sworn statement should confirm that the alleged beneficiaries of the medical scheme are the complainant in these claims.

3.The plaintiff must supply defendant with proof of the closing down of the Mining Company called Atlatsa at Bokoni Platinum Mine situated near Atok during 2017.

4.The list of the alleged 3000 retrenched employees from Bokoni Platinum Mine near Atok during September 2017.

5.The plaintiff must provide proof that the alleged retrenched workers were entitled to remain on Platinum Health's Medical Scheme for an additional three months, in other words from 01st October 2017 until 31 December 2017, and that their contributions were to be paid to Platinum Health as their retrenchment package

6.The plaintiff must provide for the list of people who were treated by the defendant who are members of Platinum Medical Scheme after the alleged retrenchment took place.

7.The plaintiff must provide the defendant with the forensic investigation report, in which resulted in them issuing claim against defendant for the alleged fraudulent claims done by the defendant during 01 October 2017 until 31 November 2017.”

[12] It is trite that the plea is the defendant's answer to the plaintiff's declaration or particulars of claim. In terms of Rule 22(2) the defendant shall in his/her plea either admit or deny, or confess and avoid all the material facts in the combined summons or declaration, or state which

of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he/she relies.

[13] Basically the respondent's claim against the applicant is that the applicant purportedly examined and diagnosed employees of Atlatsa Mining who were members of the respondent, and thereafter submitted claims to the respondent in respect of services rendered. According to the respondent the applicant had made fraudulent representations to the respondent, knowing that the representations were false as the applicant did not render those services, and that where dentistry services were in fact rendered by the applicant, those services were over inflated.

[14] The applicant's question 1 in terms of Rule 35(4) has requested a list of the affected people in the alleged fraudulent claims done by the defendant. The respondent had furnished the applicant with that list. Paragraph 9.1 of the respondent's particulars of claim state that during the period 1st October and up until 31st December 2017 the applicant purported to examine and diagnose patients all of whom were members of the plaintiff referred to as the so-called Bokoni members and purported to render certain services.

[15] The respondent had stated in its particulars of claim the period wherein the alleged fraudulent activities took place. The applicant is having the list of the affected people in the alleged fraudulent claims, and also the period wherein these activities allegedly took place. In my view, it will be

easy for the applicant to go to her own records and check whether during that period she had examined and diagnosed any of the people that appears on that list. Based on that information she will be able to plead wherein she will either admit or deny or confess and avoid all the material facts alleged in the combined summons, and also to state all material facts upon which she relies. The main issue is whether she had rendered those services and also where she had rendered, whether her services were over inflated. By checking her own records, she will be able to answer to the respondent's claim as contained in the combined summons.

[16] **In Ingledew v Financial Services board 2003 (4) SA 584 (CC)** at 595 B-C Ngcobo J said:

"In the first place, we are concerned with an order made at a very early stage of pleading, a stage prior to the delivery of a plea. It is patently clear from the record that the applicant is able to formulate and articulate his defences, in particular, if regard is had to the nature of the allegations against him. The matter must therefore be approached on the footing that even if the applicant were to be refused the information sought, he would be able to plead. The order made by the High Court does not prejudice the applicant in any way in the future conduct of the case. This immediately distinguishes it from other orders which might well influence how litigant conducts the case."

[17] As I have already pointed in paragraph 15 *supra*, that with the information which the applicant is having at her disposal, she will be able to formulate an answer to the respondent's claim as contained in its particulars of claim, it follows that the documents sought by the

applicant are not essential for purposes of pleading, and she will not be prejudiced in pleading without them. After pleading, should the applicant feel that the document she is presently seeking are relevant issues for trial, she can utilise the pre-trial discovery procedures set out in the remainder of Rule 35.

[18] In the result I make the following order.

18.1 The applicant's application is dismissed with costs

MF. KGANYAGO J
JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCE:

Counsel for the Applicant	:	Adv R Mathevula
Instructed by	:	Michael Raphela Attorneys
Counsel for the Respondent	:	Adv Hershensohn
Instructed by	:	Lombard & Partners INC
Date of hearing	:	17 March 2021
Date of Judgment	:	4th May 2021