

IN THE HIGH COURT OF SOUTH AFRICA

BISHO

CASE NO. 176/2000

In the matter between:

NOMBONISO CYNTHIA MNGAZA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

DHLODHLO ADJP:

1. The Plaintiff issued summons against the defendant claiming, among others, payment of the sum of R140 000,00, for and as damages suffered by her as a result of her father's death as a result of a motor accident which allegedly resulted in loss of support as the deceased father fully supported her.

2. On 07 August 2001 the Defendant filed a notice to remove the cause of the complainant and to file an exception to the Plaintiff's particulars of claim that it lacked averments which are necessary to sustain the cause of action and that they were vague and embarrassing on grounds including the following:

“2.1 In terms of section 18 of the Road Accident Fund Act 56 of

1996 liability of the Defendant is limited to R25 000,00 where the injured or deceased person was a passenger in the insured vehicle.

2.2 Plaintiff pleaded that the deceased father, Mr Mninawe Robinson Mngaza was fatally injured after motor vehicle GCE 11808 overturned.

2.3 Plaintiff did however not plead whether or not her deceased father was the driver of the vehicle or a passenger therein or a pedestrian or other motorist involved in the collision.

2.4 In the event that the Plaintiff's father was a passenger in the insured vehicle, Plaintiff has not pleaded in what capacity or under what circumstances he was conveyed, e.g.

2.4.1 whether for reward;

2.4.2 whether in the course of the business

of the owner or driver;

2.4.3 whether in the course of his employment; or

2.4.4 for purposes of a lift club.

2.5 Accordingly, Plaintiff's Particulars of Claim are vague and embarrassing.

3.1 In respect of Plaintiff's claim for loss of support Plaintiff has failed to plead:

3.1.1 Her date of birth;

3.1.2 Any facts from which can be calculated how her claim of R140,000,00 has been calculated;

3.1.3 Until what date she would have required support from her deceased father; or

3.1.4 What facts would justify her to claim an amount in excess of R25 000,00.

3.2 Accordingly Plaintiff's Particulars of Claim are vague and embarrassing.

WHEREFORE

Defendant prays that this Exception be upheld and that Plaintiff's claim be dismissed with costs."

4. On 07 September 2001 the Defendant excepted to the Plaintiff's particulars of claim on substantially the same grounds as those referred to in the notice to remove the cause of the complaint and to file an exception, referred to in the preceding paragraph.

5. The Plaintiff amended her particulars of claim to aver, among others, that;

5.1 that Mninawe Robinson Mngaza was the Plaintiff's biological father;

5.2 that the said Mninawe Robinson Mngaza was the sole breadwinner in his household;

5.3 that the Plaintiff, being a minor at the time of her father's death, was solely dependent on her deceased father for maintenance and support and that he was legally obliged to render such support and maintenance;

5.4 that the deceased was being conveyed in the insured motor vehicle for reward even though it was not

registered as a taxi and that a public carrier permit could not be obtained;

5.5 that the Plaintiff's claim was accordingly limited to special damages of only R25 000,00.

6. On 02 November 2005, in the minute in terms of Rule 37(6) it was agreed, among others, that:

6.1 in view of the issues in dispute as stated in the defendant's exception, no settlement offer could be considered;

6.2 the only issues to be decided would be those raised in the defendant's exception;

6.3 all other issues were to stand over for adjudication at a later stage.

7. On 14 November 2005 argument was confined to the exception.

8. Mr Koekemoer for the defendant argued that the plaintiff had failed to remove the cause of the complaint and that he had not pleaded in accordance with Sub - Rules (10) and (11) of Rule 18 of the Rules of Court.

9. Sub - Rule (10) provides:

"A Plaintiff suing for damages shall set them out in such manner as will enable the Defendant reasonably to assess the quantum thereof."

10. Sub - Rule (11) provides:

"A Plaintiff suing for damages resulting from the death of

another shall state the date of birth of the deceased as well as that of any person claiming damages as a result of the death.”

11. Mr Koekemoer argued further that the Plaintiff’s amended Particulars of Claim do not state the date of birth of the Plaintiff and do not give any indication as to how the claim for damages for loss of support is calculated in the sum of R140 000,00, nor how it is claimed in the sum of R25 000,00 (save for the limitation).

12. Reference was made to **Rondalia Versekeringskorporasie van SA v Mavundla 1969(2) SA 23(A) at 28B - D** and **Minister van Wet en Order v Jacobs 1999(1) SA 944(O) at 952I - 953E.**

13. Mr Zilwa for the Plaintiff argued that the exceptient (for purposes of this judgment referred to as the defendant) failed to comply with the provisions of Rule 23(1) of the Rules of Court.

14. Rule 23(1) deals with exceptions and applications to strike out and provides:

“Where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may set it down for hearing in terms of paragraph (f) of sub-rule (5) or (6):

Provided that where a party intends to take an exception that a pleading is vague and embarrassing he shall within the period allowed as aforesaid by notice afford his opponent an opportunity of removing the cause of the complaint within 15 days:

Provided further that the party excepting shall within ten days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver his exception."

15. Mr Zilwa argued further that the particulars of claim were filed on 03 July 2000 and that the exception was taken on 07 September 2001 before the particulars of claim were amended and that the defendant filed nothing after the particulars of claim were amended.

16. Mr Zilwa submitted that the exception was not properly before the Court and that the defendant had the option of proceeding in terms of Rule 30 of the Rules of Court.

17. Responding to the suggestion by Mr Koekemoer that the exception had been conceded, Mr Zilwa submitted that at no stage was it conceded. He referred to the Rule 37(6) minute wherein it is recorded, among others, that the only issues to be decided would be those raised in the defendant's exception.

18. Mr Zilwa finally submitted that the exception does not comply with the provisions of Rule 23(1), that is improperly before Court and that it should be dismissed with costs.

19. Indeed the exception does not comply with the provisions of

Rule 23(1) and is improperly before Court. It stands to be dismissed with costs.

20. The exception is dismissed with costs.

A E B DHLODHLO
ACTING DEPUTY JUDGE PRESIDENT
13 NOVEMBER 2005

DELIVERED ON: 15 DECEMBER 2005
FOR THE EXCIPIENT (DEFENDANT): MR J R KOEKEMOER

FOR THE PLAINTIFF: MR P ZILWA

DEFENDANT'S ATTORNEYS: NIEHAUS McMAHOND
OOSTHUIZEN,
EAST LONDON

PLAINTIFF'S ATTORNEYS: ROSS G M SOGONI &
COMPANY
EAST LONDON