

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – PORT ELIZABETH**

Case No.: 1658/2015

In the matter between:

SHADLEY CRAIG VAN SENSIE

Applicant

And

MINISTER OF POLICE

Respondent

JUDGMENT

REVELAS J:

1. The defendant, in an action for damages arising out of the plaintiff's arrest and detention on 7 December 2013, seeks relief in terms of Rule 30 of the Uniform Rules of Court. The defendant applies for an order to set aside

the plaintiff's application for leave to amend his particulars of claim as an irregular step.

2. The trial proceedings commenced on 5 December 2018 and was postponed *sine die* on 6 December 2018, after the mother of the plaintiff testified. It is common cause that the plaintiff was a minor at the time of his arrest. The case for the defendant is that none of the police officers involved in his arrest and detention, and further detention were aware of the fact that he was a minor.
3. The plaintiff's mother, Mrs Maria van Sensie, testified that she went to the Police Station where her son was detained after his arrest. She testified that despite the fact that she informed a female police officer (not named) in the charge office that the plaintiff was a minor, he was not released into her custody.
4. The defendant objected to this evidence on the basis that it introduced issues not pleaded and the matter thereafter was postponed *sine die*.
5. The defendant objected to the applicant's plaintiff's notice of his intention to amend his particulars of claim which was subsequently filed. The plaintiff thereafter filed an application for leave to amend his particulars of claim. The defendant then filed the present application in terms of Rule

30(1), seeking an order to set aside the application for leave to amend the plaintiff's particulars of claim as an irregular step.

6. The defendant argues that since the amendment seeks to introduce a new cause of action, it is a substantial application. The defendant submits that the plaintiff's application seeking leave to amend his particulars of claim ought to have been supported by an affidavit, and since it was not, Rule 30(1) applies. Further, the defendant asserts that the question of whether or not the amendment sought would be allowed, is to be decided in a separate hearing, if the application to have the application for leave to amend set aside the application for leave to amend his particulars of claim is dismissed.
7. In my view, the defendant misunderstood the purpose and rather limited application of Rule 30(1).

Rule 30 reads:

"A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside."

- [8] In the commentary on this rule in *Erasmus*, Superior Court Practice (B1-190) the learned authors state that "[the] irregular step contemplated by the sub-rule must be a step which advances the proceedings one stage near to completion. The sub-rule does not apply to omissions, but to positive steps in the

proceedings.” (emphasis added) The same authors, in the same paragraph also conclude that an “annexure of an unsworn statement to an affidavit is also named as a step which is not an irregular proceeding under this rule”. It follows, in my view, that the omission to attach an affidavit to an interlocutory application for leave to amend particulars of claim is not *per se* irregular and ought not to be dealt with under Rule 30(1). The rule has found application where a proper power of attorney has not been filed, proper service by a summons has not been effected, an address for service of documents had not been set out in the summons, the pleadings were not signed in accordance with the rules, or did not comply with the rules as to form (see *Erasmus*, Superior Court Practice B1-190C where the aforesaid list is tabulated). The examples mentioned are examples of matters of mere formality, all of which could readily be corrected or remedied by taking the appropriate action or step and dispose of the complaint raised in the Rule 30(1) application finally and bringing the parties one step closer to completion of the procedural aspects of the case in question.

[9] In the present application, the purpose behind the defendant’s application is an attempt to thwart the granting of an amendment to pleadings. Even if the plaintiff had indeed filed an affidavit, in accordance with the misplaced application in terms of Rule 30(1), that would not have disposed of the complaint. It does not fall in the category of examples as tabulated above, where the Rule 30(1) would apply. The question whether the amendment should be granted would still be open for determination.

[10] The appropriate step which ought to have been taken by the defendant in response to the application for leave to amend the plaintiff's pleadings, was to argue and raise its objections during the application for an amendment. The defendant has thus unnecessarily caused (and insisted upon) two separate hearings for the same relief, thus duplicating the costs in this matter. Such conduct clearly calls for a punitive costs order.

Order:

1. In the circumstances, the application in terms of Rule 30(1) is dismissed.
2. The defendant is ordered to pay the plaintiff's costs on a scale as between attorney and client.

E REVELAS

Judge of the High Court

Appearances:

For the Applicant: Adv. Paterson instructed by Lexicon Attorneys, Port Elizabeth

For the Respondents: Adv. Ntsepe instructed by the Office of the State Attorney,
Port Elizabeth

Date heard: 30 July 2019

Date delivered: 6 August 2019