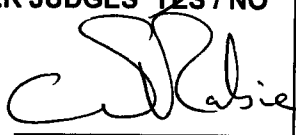




REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

IN HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG DIVISION: PRETORIA)

(1) REPORTABLE YES / NO
(2) OF INTEREST TO OTHER JUDGES YES / NO
(3) REVISED. OK
<u>23/07/2014</u> DATE
<u></u> SIGNATURE

23/7/14

Case No: 38274/13

6 JULY 2014

BEFORE THE HONOURABLE JUDGE RABIE

In the matter between:

SASOL GROUP SERVICES (PTY) LTD

and

V.M. MAGAGULA

AND

In the matter between:

SASOL GROUP SERVICES (PTY) LTD

and

J.S. MOSIKILI

Case No: 38274/13

Excipient/Defendant

Respondent/Plaintiff

Case No: 38278/13

Excipient/Defendant

Respondent/Plaintiff

JUDGMENT

1. Both the matters mentioned in the heading of this case came before this court by way of exception. The exceptions were directed at the respective particulars of claim on the basis that they were vague and embarrassing. Except for the identity of the two respective respondents/plaintiffs, all the other facts, including the averments in the respective particulars of claim and the allegations in the respective Notices of Exception, were identical. The two matters were argued simultaneously by the two counsel representing, on the one hand, the respective respondents/plaintiffs, and on the other hand, the excipient/defendant. It was agreed between the parties that only one judgement should be prepared in respect of both matters. I shall for ease of reference refer to the excipient in each matter as the defendant and to the respondent in the exception in each matter as the plaintiff.
2. According to the particulars of claim of both the plaintiffs, they were at all relevant times in the employ of the defendant and were dismissed from their employment on 15 December 2010 following a disciplinary hearing held on 8 December 2010. In respect of both plaintiffs and appeal tribunal dismissed the appeals of the plaintiffs against their dismissals.
3. In respect of both plaintiffs an arbitration hearing was held on 30 August 2011 under the auspices of the National Bargaining Council of the Petro-Chemical Industry. It was further pleaded by the plaintiffs that it was found on arbitration that the presiding officer in the original disciplinary hearings had been biased; that to the knowledge of the plaintiff (the reference should probably be to the "defendant") the evidence tendered against the plaintiff had been hearsay; and that the defendant had ulterior motives and that the charges brought against the plaintiffs had been malicious and to the

knowledge of the defendant (or at least the persons acting on behalf of the plaintiff), false. As a result of these findings, the arbitrator ordered the defendant to reinstate the plaintiffs with retrospective effect.

4. The facts referred to above were all pleaded in the first seven numbered paragraphs of the respective particulars of claim. Since the wording of the particulars of claim is identical in both matters, as stated above, I shall, for ease of reference, merely refer to the plaintiffs in the singular and also refer to the pleadings and the notices, and to the allegations therein, as if same were filed and made in one action.
5. In paragraph 8 of the particulars of claim it was alleged that the basis of the defendant's case against the plaintiff in seeking his dismissal, was that the plaintiff was unreliable and dishonest, more particularly that the plaintiff had during November 2011 tendered dishonest evidence in a disciplinary hearing relating to another employee.
6. In paragraph 9 of the particulars of claim it was alleged that that "(t)he defendant's instigation of dismissal proceedings against the plaintiff, under circumstances where the defendant knew (for purposes of claim 1 hereunder) or at least should have known (for purposes of claim 2 hereunder) that the charges against the plaintiff were false, was a wrongful."
7. Under the heading "Claim 1 - Iniuria" the plaintiff pleaded in paragraph 10, 11 and 12 as follows:

"10. The seeking and the obtaining of dismissal of the plaintiff on charges based on false evidence, the defendant intended to injure the dignity and reputation of the plaintiff.

11. The unlawful dismissal of the defendant indeed caused an impairment to the plaintiff's dignity and reputation, which caused the plaintiff to suffer damages in the amount of R1 000 000,00.

12. Detail of the impairment to the plaintiff's dignity and reputation appears in the report prepared by the clinical psychologist, D.G. Maluleke. (A copy of the report is attached as annexure "A".) (sic)

8. Under the heading "Claim 2 - Lex Aquila" (sic) the plaintiff pleaded in paragraph 13 to 18 as follows:

"13. The seeking and obtaining dismissal of the plaintiff on charges based on false evidence was intended to cause the plaintiff psychiatric harm and patrimonial loss, alternatively caused the plaintiff psychiatric harm and patrimonial loss.

14. The defendant acted intentionally in that it recklessly relied on false facts (alternatively the defendant was negligent in that it failed to properly investigate, establish and present true facts).

15. Defendant's intentional (alternatively negligent) reliance on false facts breached the legal duty that it owed to the plaintiff, as an employee, to act fairly and honestly towards employees (including the plaintiff).

16. As a result of such proceedings, the plaintiff suffered psychiatric shock (which manifested in the form of post-dramatic stress and depression).

17. The psychiatric harm suffered by the plaintiff has caused him to suffer:

17.1 special damages: estimated loss of earnings R1 000 000,00

17.2 general damages R5 000 000,00

R6 000 000,00

18. Detail of the psychiatric injury suffered by the plaintiff as a result of the defendant's conduct, appears from the report prepared by the clinical psychologist, DG Maluleke (attached marked "A"). (sic)

9. Paragraph 19, which contains the relief sought against the defendant, reads as follows:

"19. As a result of the defendant's conduct, plaintiff claims against the defendant:

- 19.1 For the impairment of the plaintiff's dignity and reputation (claim1) - R1 000 000,00;
 - 19.2 In respect of special and general damages arising from psychiatric harm (claim 2) - R6 000 000,00;
 - 19.3 Costs of suit on attorney and client scale;
 - 19.4 Further and/or alternative relief."
10. After giving notice of its intention to oppose the action, the defendant filed a Notice in terms of Rule 23(1) of the Uniform Rules of Court informing the plaintiff that its particulars of claim are vague and embarrassing and afforded him an opportunity to remove such complaint. In this Notice reference was made to paragraph 12 and 18 of the particulars of claim and more particularly to the sentences referring to and attaching the report of the clinical psychologist. The defendant then proceeded to state the following in paragraphs 3, 4 and 5 of the Notice:
- "3. The report consists of 41 pages and does not contain a clear and concise statement of the material facts upon which the plaintiff relies for his claim, and is accordingly vague and embarrassing.
4. The defendant is prejudiced in that the defendant is not able to discern which allegations the plaintiff relies upon for his claim.
5. The plaintiff further relies on the same report in respect of two different causes of action, the defendant is unable to discern which part of the report the plaintiff relies on for the two different causes of action, accordingly the pleadings is vague and embarrassing." (sic)
11. During argument before this court it was, *inter alia*, submitted on behalf of the defendant that the report of the clinical psychologist, which was attached to the particulars of claim, "does not contain a clear and concise statement of the material facts upon which the plaintiff relies for his claim, and is accordingly vague and embarrassing ."

12. It is of course correct that Rule 17(2) requires that in every case where the claim is not for a debt or liquidated demand, the particulars of claim must contain a statement of the material facts relied upon by the plaintiff in support of his claim and that such statement should, *inter alia*, comply with Rules 18 and 20. Rule 18(4) requires that a pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, with sufficient particularity to enable the opposite party to reply thereto.
13. In addition to the provisions of the Rules of Court, the statement must comply with two further requirements, namely, that it may not be vague and embarrassing and, secondly, that it must contain all the allegations necessary to sustain a cause of action. Cf **Makgae v Sentraboer (Koöperatief) Bpk 1981 (4) SA 239 (T) op 244C - D**. Failure to comply with either of these requirements, would result in the pleading being excipiable.
14. A pleading is vague and embarrassing if it is open to more than one interpretation, or if it is not reasonably clear what the meaning or interpretation of the pleading is or should be, or if the allegations do have an ascertainable meaning, but they are pleaded in such a bald and uninformative way that they lack sufficient particularity. Cf **Quinlan v MacGregor 1960 (4) SA 383 (D) op 390C - F**. Cf also **Nasionale Aartappel Koöperasie Bpk v Price Waterhouse Coopers Ing en Andere 2001 (2) SA 790 (T)**.
15. In order to set out a cause of action, it is only necessary to plead every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the Court. However, this does not mean that every piece of evidence which is necessary to prove each fact, has to be

pleaded. Only the facts which are necessary to be proved, should be pleaded. This qualification emphasises the difference between the *facta probanda*, i.e., the facts which have to be proved in order to establish a cause of action, and the *facta probantia*, i.e., the facts or evidence which prove the aforesaid facts. Cf **Nasionale Aartappel Koöperasie Bpk v Price Waterhouse Coopers Ing en Andere** (*supra*). It is only the material facts (the *facta probanda* and not the *facta probantia*) which have to be pleaded.

16. It may also be added that since it is for the Court, on the established facts, to apply the rules of law and to draw conclusions as regards the rights and obligations of the parties and to give judgment. A particulars of claim which merely propounds the plaintiff's own conclusions and opinions instead of the material facts, is defective since it does not set out a cause of action. Cf **Buchner and another v Johannesburg Consolidated Investment Co Ltd** 1995 (1) SA 215 (T).
17. In his particulars of claim the plaintiff initially referred to background facts which were not strictly speaking necessary for purposes of pleading. However, they set the scene for what follows and there is obviously no prejudice to the defendant resulting therefrom. From paragraph 9 of the particulars of claim the two causes of action are dealt with. Claim 1 is based on the *actio iniuriarum* and is aimed at relief for the alleged impairment to the plaintiff's dignity and reputation which was allegedly committed by the defendant wrongfully and *animo iniuriandi*. For this purpose the plaintiff was required to allege facts which, objectively speaking, are sufficient to lead to a reasonable inference of wrongfulness. Depending on the circumstances it

may in addition be required to plead the facts from which a reasonable inference of an *animus iniuriandi* may be made.

18. The plaintiff has complied with the aforesaid requirements and has made the necessary allegations. In paragraph 12 the plaintiff, however, went further by referring to the detail of the impairment to his dignity and reputation. He did so by referring to and attaching the aforesaid report of the clinical psychologist.
19. In my view it was not strictly speaking necessary for the plaintiff to have pleaded the facts or evidence which would prove the fact that his dignity and reputation had been impaired. It was consequently not strictly necessary for the plaintiff to have referred to the report at all for purposes of establishing a cause of action in respect of Claim 1. Bearing in mind that the main purpose of the *actio iniuriarum* is to recover sentimental damages, it is not necessary to quantify these damages. Consequently, evidence which may tend to influence the amount to be awarded in damages, such as may be gleaned from the psychiatrist's report, need not be pleaded.
20. Claim 2 is for the plaintiff's alleged psychiatric harm and patrimonial loss and is based on the *actio legis Aquiliae*. It is not required of me to comment on the soundness of this claim or any part thereof, and I shall consequently not do so. I am required to decide whether, as a matter of pleading, this claim is vague and embarrassing. A claim based on this *actio* enables a plaintiff to recover patrimonial loss and purely economic loss suffered through a wrongful and negligent act or omission of the defendant.

21. The plaintiff made the necessary allegations to establish liability on the part of the defendant namely wrongfulness, negligence and causation between the negligent act or omission relied upon and the damages suffered. As far as damages are concerned, the plaintiff referred to his estimated loss of earnings suffered as a result of the defendant's unlawful conduct. The plaintiff also referred to alleged general damages suffered by him.
22. In paragraph 18 the plaintiff referred to the alleged psychiatric injury suffered by him as a result of the defendant's conduct, which appears from the report of the clinical psychologist attached to the particulars of claim. In my view it was not strictly speaking necessary for the plaintiff to have pleaded the facts or evidence which would prove the fact that he suffered the alleged psychiatric injury. It was consequently not strictly necessary for the plaintiff to have referred to the report at all for purposes of establishing a cause of action in respect of Claim 2.
23. The grounds relied upon by the defendant in the Notice in terms of Rule 23(1), which also formed the basis of the submissions to this Court, may now be dealt with in more detail. In the first ground the defendant criticised the report of the clinical psychologist for not "contain(ing) a clear and concise statement of the material facts upon which the plaintiff relies for its claim" and submitted that the report was accordingly vague and embarrassing.
24. This submission cannot be accepted. Firstly, non-compliance with the Rules relating to pleading does not, as such, result in the pleading being vague and embarrassing. In such event the Rules relating to, for example, an irregular step and striking out, may be available. Secondly, the report itself cannot be

vague and embarrassing. If it contains allegations which, read with the particulars of claim, fulfils the requirements for an exception on this basis, then the particulars of claim must be found to be vague and embarrassing, not the report. But it is not necessary to further follow this wrong track on which the defendant finds itself. The purpose of the attachment of the report was not to have its contents included in the particulars of claim for purposes of establishing a cause of action. As pointed out above, the necessary facts to support the two causes of action have been independently set out in the particulars of claim. All that the report tends to do is to introduce evidence which the plaintiff intends to present at the trial in order to prove the facts necessary to sustain the cause of action in respect of his claims.

25. In addition to the aforesaid it needs to be said that the attachment of expert reports in personal injury claims for general and/or specific damages, has become the norm in our courts, at least in this division. It fleshes out the claim and places the defendant in a much better position to understand the nature and extent of the plaintiff's case which it has to meet and also to calculate the damages allegedly suffered, than would have been the case if the reports have not been attached.
26. This brings me to the second and third objections by the defendant namely that he is prejudiced because he is not able to discern which allegations the plaintiff relies upon for his claims and furthermore because he is unable to discern which part of the report is relied upon for the two different causes of action respectively. As stated before, the necessary allegations to support the plaintiff's claims have been made in the particulars of claim. The plaintiff does not rely on the report or any allegation in the report, to constitute his

causes of action. The plaintiff relies on the report insofar as it refers to the evidence which the plaintiff intends to present at the trial to support and prove his causes of action. It is for the defendant himself to establish from a reading of the report as a whole, which of the facts and opinions contained therein would assist the plaintiff in proving his case, or not.

27. As a result of the attachment of the report, the defendant is entitled to assume that the plaintiff will rely on the whole of the report. As a matter of pleading the defendant can, for example, admit the contents of the report, or he can deny the contents thereof or deny its relevance or deny its admissibility, or plead thereto in any other way he wishes. For obvious reasons there is no need to plead to every sentence thereof as was suggested on behalf of the defendant during argument of this matter.
28. Lastly, I wish to underline two aspects. The first is that it was never suggested on behalf of the defendant that the contents of the psychologist's report has caused the allegations in the particulars of claim to be open to more than one interpretation, or that its contents have resulted in it being unclear what the meaning or interpretation of the allegations in the particulars of claim is, or that its contents are such that it had resulted in the particulars of claim lacking sufficient particularity. As such the attachment of the report did not result in what is normally understood by a pleading being vague and embarrassing.
29. The second aspect is that the defendant relied only upon the aforesaid objections. No other objection or any other possible prejudice on the part of the defendant were referred to or relied upon. All three the objections

mentioned by the defendant related to the attachment of the expert report and to the contents of the report insofar as it relates to the issue of pleading, and nothing more.

30. In the result the exception cannot succeed and must be dismissed.
31. As far as costs are concerned, there is no reason why costs should not follow the event.
32. In the result the following order is made:

In Case No. 38274/13

1. The exception is dismissed.
2. The defendant (excipient) is ordered to pay the costs of the exception.

In Case No. 38278/13

1. The exception is dismissed.
2. The defendant (excipient) is ordered to pay the costs of the exception.

A handwritten signature in black ink, appearing to read 'C.P. Rabie', with a stylized, cursive script.

C.P. RABIE

JUDGE OF THE HIGH COURT

6 JULIE 2014