

CIV/T/572/93

IN THE HIGH COURT OF LESOTHO

In the matter between.

TEFO MOEKETSE

Plaintiff

and

'MATHABANG ALRINA NQOKO
LAKESIDE HOTEL

1st Defendant
2nd Defendant

RULING

Delivered by the Honourable Mr Justice T Monapathi
Acting Judge on the 23rd February 1994

The matter was postponed to today on the 21st February, 1994 for argument by Mrs Kikine for Exceptient/Defendants and Mr. Mafantiri for Respondents/Plaintiff The Exception as filed on the 17th December 1993 was framed as follows

" 1

The 1st Defendant excepts in terms of Rule 29 of the High Court rules to the Plaintiff's summons and declaration as being vague and embarrassing and disclosing no cause of action against her in that it

is not clear in what capacity she is being sued

2

In paragraph 5 of the declaration it is alleged that Plaintiff was employed by the 2nd Defendant Plaintiff therefore has failed to impute the responsibility for his dismissal to the 1st Defendant It is not also clear why the 1st Defendant is being wrongly cited.

3.

Wherefore 1st Defendant prays that Plaintiff's claim against her be dismissed with costs, alternatively that Plaintiff be ordered to amend the summons to disclose a cause of action or to remove the cause of embarrassment and that the Plaintiff pay the costs of this exception and the amendment " (my underlining)

On receipt of the Exception the Plaintiff on the 20th December 1993 filed an objection on the Exception framed as follows

" 1

Plaintiff objects to defendant's exception in that the purported exception does not comply with the requirements of Rule 29 Rule 29 expressly provides that a party excepting must give the other party seven days to rectify the mistake failing which an exception

will be taken

2.

The defendants have not given the plaintiff seven days to rectify the mistake but instead they directly excepts contrary to Rule 29." (my underlining)

It is clear that the Court was faced with a seemingly complex argument that was mostly to do with technicalities I thought it was complex but later turned out during the Counsel's arguments that some aspects were merely obscure. I thought this was very unfair to this Court which has an onerous duty of doing the following in such matters

- (a) To endeavour to resolve obscurity and render clear decisions and in case of doubt to favour validity
- (b) To remove sources of irritation and causes for further litigation
- (c) To guard against anything tending to delay proceedings and avoid unnecessary costs

In the Defendants' exception I have underlined those statements which show that it is alleged that

- (a) There are no clear averments in Plaintiff's

declaration which show why and in what capacity the 1st Defendant is being sued

- (b) There are no facts or alleged actions which support any liability imputed to 1st Defendant either as a person or as a Managing Director of the 2nd Defendant.
- (c) 1st Defendant should not have been joined in the circumstances stated above

There was no doubt that the Plaintiff understood the 1st Defendant's complaint. But he complains that the 1st Defendant went about it the wrong way

With regard to the Defendants' objection Mr Mafantiri briefly developed his submissions, to say that

- (a) Where the 1st Defendant complained of a vague and embarrassing declaration she could not suddenly file an exception without a notice in terms of Rule 29(2)
- (b) If then the Plaintiff failed or neglected to comply after the said notice it is only then that an exception can be filed
- (c) Moreover in terms of Rule 29(3) a party whose pleading

is being attached as not complying with any rule of Court must first be asked to comply. This has not been done either

- (d) If the 1st Defendant had alleged in her exception that "the declaration lacks such averments which are necessary to sustain an action or defence" (see Rule 29(1)) as against that "the Plaintiff's summons and declaration as being vague and embarrassing" (see Rule 29(2)), the Plaintiff would not have objected the 1st Defendant going straight away to file an exception

This interpretation by Mr Mafantiri seems to be valid. In any event he stood at the risk of his claim being wiped off if the exception succeeded. In that event one would sympathize with the Plaintiff who most probably wants his cause to be ventilated as soon as possible. He is most probably oblivious to these lawyers' technicalities and concepts. He wants his claim to be heard in Court.

As said before it was quite clear to the plaintiff what the substance of the exception was. Having felt that Mr. Mafantiri's objection was valid I made the following orders after argument

- (a) That the exception be regarded as a notice in terms of

Rule 29(2) and that the Plaintiff shall remove the alleged complaints and amend his declaration accordingly This he must do within 7 days.

(b) That in the event of the Plaintiff being unable or failing to comply with the above order or doing so in a manner unsatisfactory to Defendants, Defendants shall reinstate the exception in its entirety or an amended form, but in any event Defendants shall plead over

(c) The 1st Defendant shall pay the costs of hearing of the exception

I was reminded of the case of KUTLOANO BUILDING CONSTRUCTION vs MASEELE MATSOSO AND ANOTHER C of A (CIV) No.16 of 1984 where Schutz JP said at page 7

"I am afraid that my decision may smack of a triumph of formalism over substance But forms are often important and the requirement of the sub-rule are such Bad as the declaration, so were the notices of exception for the intended purpose. The Plaintiff had taken his life in his hands by filing his declaration But so in turn did the two Defendants when they filed their exceptions, and, as at the Battle of Founteroy,

they had to face firing first "

These are obvious similarities with the present matter

These rules of Court are almost always sufficiently clear. A search in the law reports at most time yields good results on the interpretation of the rules in other jurisdictions. But like all concepts of the law they sometimes, depending on the different claims, prove difficult to handle. One would demand just sufficient compliance with the rules. This is sometimes not achievable. On the other hand one finds some practitioners who adopt a sharply technical approach to the interpretation of this rules. I wish this could be avoided. But then the question is always not whether a point is technical but whether it is valid. I suppose it should not be difficult to make this, sometimes fine distinctions to a pleading that is vague and embarrassing as against one that lacks sufficient averments to support a claim or a defence, as against one that does not disclose a cause of action or defence and finally, as against the one that does not comply with the rules of Court, in order to handle the Rule 29 effectively.

To give a notice in terms of Rules 29(2) and 29(3) or to ask for particulars before excepting is not an easy path



T MONAPATHI
Acting Judge

23rd February, 1994

For the Plaintiff Mr Mafantiri (H E Phoofolo & Co)

For the Respondents Mrs Kikine (Naledi Chambers)