

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/566/2015

In the matter between

MATHALEA LEROTHOLI

PLAINTIFF

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

1st DEFENDANT

THE DIRECTORATE TO CORRUPTION AND

ECONOMIC OFFENCES

2nd DEFENDANT

MINISTRY OF JUSTICE AND HUMAN RIGHTS

3rd DEFENDANT

MINISTRY OF LAW AND CONSTITUTIONAL

AFFAIRS

4th DEFENDANT

THE ATTORNEY GENERAL

5th DEFENDANT

JUDGMENT

CORAM:

HON. J. T. M. MOILOA J.

DATE OF HEARING:

15 AUGUST 2016

DATE OF JUDGMENT:

15 NOVEMBER 2017

SUMMARY

In terms of Rule 18(15) High Court Rules a Plaintiff must plead his claim in concise statement of material facts he relies upon in support of his claim in sufficient detail to disclose a cause of action. In other words a plaintiff's claim must be such as to enable defendant to know what case he has to meet. A plaintiff should not plead evidence.

ANNOTATIONS

Legislation

1. Prevention of Corruption and Economic Offences Act No.5 of 1999
2. High Court Rules 1980

Cases

1. Durr vs SAR & H 1917 CPD 287 @ 287

Text Books

1. Beck's Theory & Principles of Pleading in Civil Actions, (5th Edition by I. Isaacs)

[1] Plaintiff in this matter issued summons against Defendants for M10,000,000 (ten million Maloti) allegedly for malicious prosecution and interest thereon on 18.5% per annum and costs of suit. The claim is based on alleged malicious prosecution of Plaintiff by 1st and 2nd Defendant in respect of several alleged contravention of **Section 34 of Prevention of Corruption and Economic Offences Act No.5 of 1999**. In some instances the amounts were different while in others the co-accused of Plaintiff were different. The charges were in some cases fraud, in others it was theft and contraventions of **Section 34** brought against Plaintiff.

[2] Plaintiff's Declaration in her combined summons from paragraph 8 to 15 inclusive virtually outlines the evidentiary backdrop of her case. Plaintiff's Paragraph 8 and 15 have taken 3 pages of A4 size. Defendants filed Notice of Intention to Defendant and applied for striking out of Paragraphs 8 to 15 of the Declaration citing **Rule 29(5) (a) and (b) of the High Court's Rules 1980**. In essence Defendant's complaint is that Plaintiff has pleaded evidence instead of pleading her cause of action.

[3] I quote verbatim paragraphs 8 to 15 of Plaintiff's Declaration to which the Defendant objects:-

“8.1 On or around February 2006 Plaintiff with three accused was charged with two counts of fraud or contravention of section 34 of DCEO Act No.5 of 1999 and alternatively theft of several counts. She faced this charges in CRI/T/61/06 and she was ordered to pay a bail deposit of M2,000.00 Maloti which she paid. She allege that this was the first remand at the Magistrate Court and the investigating officers were the second defendant and the prosecutor was from the office of the first defendant.

8.2 Sometimes around May 2006, Plaintiff alleges she was at the workshop at Cabanas with her colleagues, around lunch time when she was against arrested by second defendants on a new charge of fraud with several counts or contravention of section 34 of the DCEO Act No. 5 of 1999 and alternative charge of theft with several counts. It was in CRI/T/62/06. She was ordered to pay a bail deposit of M2,000.00 which she paid. She was charged with six other accused. Plaintiff alleges that this time in May the charges were the same and the only difference was the amount.

8.3 Plaintiff claims that around June 2006, the Second Defendant took her again to court, on two counts of fraud or contravention of section 34 of DCEO Act No. 5 of 1999 and alternatively theft with several counts. It was in CRI/T/987/06, she was again ordered to pay a bail deposit of M2,000.00, the investigating officers were the second defendants and she was prosecuted by her office of the first defendant.

8.4 Plaintiff alleges that on the same day she faced a charge of contravention of section 34 of fraud with several counts and alternatively theft with several counts. It was in CRI/T/988/06. Plaintiff claims that it was on the 6th June 2006 when his legal representative brought it to the attention of the remanding Magistrate that the charges had been unnecessarily splitted and prayed the remaining court to release plaintiff and other accused on their own recognizance since they had paid a lot of money on the bail deposits nevertheless plaintiff was ordered to pay a bail deposit of M500.00 in CRI/988/06.

8.9 *Plaintiff alleges that from February to June 2006 she did not commit new acts of crime. Plaintiff also claims she did not commit new acts on the 6 June 2006 which instigated the defendants to split the charges. She claims that on the same day on a different charge sheet she was remanded with a charge of fraud and alternatively theft with several counts in CR 989/06. She paid a bail deposit of M1000.00.*

8.10 *Again in CR 990/06 (CR 933), she was again ordered to pay a bail deposit of M500.00. the remanding Magistrate was the same who remanded the other four charge sheet, on the 6th June 2006, the investigating officers were the 2nd defendants, and the prosecutor was the office of the 1st defendant. Plaintiff maintains that all these people were aware that the offences were of the same nature, and bail deposit on each separate charge sheet was not made for proper administration of justice but merely to done unreasonable to misuse the due process of the law.*

8.11 *Plaintiff claims that all these separated counts and splitted charges were the result of the same investigations which occurred around the same period and this are reflected by the RCI of the same period and the same year. She alleges the unnecessary splitting was a clear intention on the part of the defendants to misuse the state property and impair the dignity, which she holds defendants jointly and severally liable.*

8.12 *Plaintiff alleges that the splitted cases was also a clear intention on the defendants to instigate malicious prosecutions so that she could exhaust all her finances and for plaintiff to end up in detention due to insufficient funds. Plaintiff claims that to prevent this malicious conduct on the part of defendants she had to engage legal representatives and her finances were exhausted to the extend that in some cases she had to represent herself in person. She thus hold all the defendants liable for her financial loss.*

8.13 *Plaintiff claims that in all these splitted charges and counts, the perpetrators had confessed to committing the crimes and the defendants elected to make them accomplice or witnesses and to make plaintiff an accused person for no reasonable and probable cause. Plaintiff further allege that the prosecution was based on fabricated or perjured evidence of these perpetrators who wanted to run away from being prosecuted and this torture plaintiff emotionally as an accused person.*

-9-

Plaintiff alleges and the intention to instigate malicious prosecution by the defendants was started at the time of arrest when in one of the splitted charges in case CRI/T/62/06 she was suspected with six accused and plaintiff became seventh to the number of suspect and the defendants detained her alone in a police cell.

-10-

Plaintiff alleges that the past nine years all these cases were being unreasonably postponed by the defendants to some extent that CRI/T/61/06 was struck out and

CR990/06 charges were withdrawn or removed from the roll by the court, due to the hesitant conduct of the defendants, to finalise this splitted charges.

-11-

Plaintiff maintains that in all these six cases which were unnecessarily splitted only one case reached to finality namely CR 989/06 which decision turned on plaintiff's favour and the defendants appealed in CRI/A/09/13 and plaintiff succeeded in proving her innocence even on appeal by the defendants. Plaintiff maintains that all the defendants misused their prosecution powers and powers of investigations by causing unnecessary splitting and separation of counts, this included the misuse of discretionary powers of the remanding Magistrate to order different bail deposits in a case which had been consolidate with different counts and thus all failed the prosecution.

-12-

Plaintiff alleges that in the process of prosecution for the past nine years, she suffered prejudice and irreparable damage to her integrity or dignity and her name as a serial fraudster while in fact the defendants could have exercised their powers diligently to consolidate the trials and the charges to avoid the harm. Plaintiff hold all the defendants jointly and severally liable for the damage to her dignity.

-13-

Plaintiff maintains that the six cases were splitted for unreasonable and probable cause mainly to harass plaintiff emotionally. Plaintiff holds all the defendants jointly and severally liable for emotional suffering for this past nine years. She further alleges that as a Holder of Masters degree the splitted cases had withheld her professional life and she missed out a lot of important job opportunities as she was bound to wait for the finalization of this splitted cases which were brought for unreasonable and probable cause.

-14-

Plaintiff alleges that she exhausted all her finances in the process and she could not qualify for pro deo representations and the process put her life in danger of imprisonment or detention as she represent herself and she hold all the defendants jointly and severally liable for putting her life in harm and for the financial loss.

-15-

Plaintiff alleges that during the time of her arrest in this spitted cases she was not informed of her rights and her arrest traumatized her and her family to the extent that her family learned through her colleagues that she had been detained. She alleges she was kept alone in a dark cell with no toilet facilities. Plaintiff holds all the defendants jointly and severally liable for this harassment and trauma.”

I could not help but reproduce verbatim the manner in which Plaintiff drafted her Declaration to the Summons in order to appreciate exactly to what pleading of Plaintiff's cause if any, Defendant objected to.

- [4] In terms of **Rule 18(5) of High Court Rules** a Plaintiff is required to plead his claim in concise statement of material facts he relies upon in support of his claim in sufficient detail to disclose a cause of action. **Rule 20(3) and (4)** require that every pleading shall be divided into paragraphs. Each paragraph must be consecutively numbered. Secondly, every pleading must contain a clear and concise statement of facts upon which the pleader relies for his claim defence or answer, as the case may be, with sufficient particularity to enable the opposite party to reply thereto. Thus the Plaintiff's claim must be such as to enable the defendant to know what case he has to meet. The Rules of court embody the elementary principles of pleading and not the detailed principles on which pleadings are to be drawn. A pleader must have a sound knowledge of the principles of substantive law on which his action or defence is based. In **Benson and Simpson vs Robinson 1917 WLD 126 Wessels J.** nicely set out the general principles of pleading as follows:-

“The Plaintiff must not let out the evidence upon which he relies, but he must state clearly and concisely on what facts he bases his claim and he must do so with such exactness that the defendant will know the nature of the facts which are to be proved against him so that he may adequately meet him in court and tender evidence to disprove the plaintiff's allegations.”

Pleadings as we have seen above must be concise and couched in summary form. Sometimes it is said that pleadings should be as brief as the nature of the case will permit and prolixity must be avoided.

- [5] Pleadings should state material facts only and not evidence to establish those facts. Evidence must not be pleaded. The inclusion of any other facts is irrelevant and irrelevant facts are liable to be struck off a pleading as embarrassing to the other side. A century ago today, **Kotze J in a DURR vs SAR & H 1917 CPD 284 @ 287:**

“It is trite rules of pleading that a defendant is entitled to know what the case is which he has to meet. He is not entitled to know the evidence, but he may demand to know what are the grounds upon which the claim is based.”

- [6] A good pleading must state Plaintiff’s cause of action and must set it out concisely in such manner that Defendant can clearly see what the case he has to meet is and the defendants plea must be equally stated concisely in such manner that the Plaintiff can clearly understand the Defendant’s defence to the claim. A Defendant must plead his defence issuably. Now, to enable a defendant to plead issuably Plaintiff himself must plead his cause of action clearly and concisely – see **Rule 20(4) and (5)** as well as **Rule 21(2) and Rule 22(3)**. Quite apart from it being the requirements of these Court Rules, it is in fact a common law cardinal principle of pleading that parties must plead causes, (or defence as the case may be) and not evidence.

[7] **Conclusion**

In the instant case Plaintiff has simply pleaded evidence and not bothered to comply with the requirements of **Rules 18(5), 20(4), 21(2) and 22(3)**. I am not persuaded that Counsel who drafted these pleadings for Plaintiff bothered to familiarise herself/himself with the requirements of these Rules or authorities explaining them from as long ago as 1917. No skill in drafting pleadings in accordance with requirements of **Rule 18(5) and**

Rule 20(4) is exhibited in Plaintiff's declaration. In the circumstances I uphold the objection of Defendants to paragraphs 8.1, 8.2, 8.3, 8.4, 8.9, 8.10, 8.11, 8.12, 8.13, 9, 10, 11, 12, 13, 14 and 15 strike them out as constituting evidence and as superfluous and embarrassing to Defendants.

[8] **Costs:**

I consider that this is a case where costs must follow the result. I award costs to Defendant.

J. T. M. MOILOA
JUDGE

For Plaintiff: **Adv. M. Lesupi**

For Respondents: **Adv. H. Nathane KC**