

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**CIV/T/469/2017**

In the matter between:

**NTHOANA MARY MZAMANE**

**PLAINTIFF**

**and**

**LAND ADMINISTRATION AUTHORITY**

**DEFENDANT**

**RULING ON EXCEPTION**

**CORAM: BANYANE J**

**HEARD: 09/02/2021**

**DELIVERED: 23/06/2021**

**Summary**

*Exception - on grounds that summons and declaration disclose no cause of action - distinguished from an exception taken on the ground of vagueness and embarrassment - the two should not be conflated - exception dismissed with costs.*

**Annotations**

**Cases cited**

1. Ramakoro v Peete LAC (1980-84) 94
2. Qhomoko v Kahlolo CIV/T/298/00
3. Colonial Industries Ltd v Provisional Insurance Co Ltd 1920 CPD 627
4. Fair Oaks Investment Holdings (Pty) Ltd v Oliver 2008 (4) SA 302 (SCA)
5. Evins v Shiled Insurance Co Ltd 1980 (2) SA 814(A)
6. Mckenzie v Farmers' Cooperatives Meat Industries Ltd 1922 AD 16
7. Andrews v Pillay 1954 (2) SA 136
8. Trope v South African Bank 1993 (3) SA 264

### **Subsidiary Legislation**

1. High Court Rules 1980

## **BANYANE J**

### **Introduction**

- [1] The plaintiff sues the defendant for an amount M 5 000 000.00 as compensatory damages for the wrongful and negligent registration of another lease and or encroachment over plot number 14272-036 registered in her names.
- [2] In her declaration, she avers that she is the registered title holder of plot number 14272-036 situated at Sekamaneng. That in July 2016, she discovered that the defendant's predecessor; Land Survey and Physical Planning (LSPP), registered a certain lease number 14272-180 measuring about 901 square metres in favour of one Motlalepula Nkhabu in 2007. That this registration and or allocation of rights encroached on a substantial portion of her plot. She avers that consequent upon this registration, the said Nkhabu constructed a house on her portion of land and even sued her in certain proceedings at Berea District Land Court for cancellation of her lease.
- [3] She attributes the registration resulting in an encroachment, to the negligence or remissness of the defendant. She also contends that as a result of this negligence, she continues to suffer economic loss because she pays ground rent for the piece of land described in her lease document while she enjoys limited usage of it due to the encroachment caused by the wrongful registration.

#### **Defendant's opposition**

- [4] The action is opposed by the defendant. In August 2017, the defendant requested further particulars. These included inter alia, issues whether the land was surveyed by the state or privately surveyed, whether the plaintiff had a form C prior to the registration of her lease, whether the plaintiff's complaint relates to registration or allocation of the land in favour of Mr Nkhabu, what action the plaintiff took during the period of Mr Nkhabu's construction, and the basis for claiming the amount M5 000. 000.00.

- [5] A response thereto was filed wherein the plaintiff stated that her case is not that the defendant allocated the land to Mr. Nkhabu but is as pleaded under para 4.1-4.4 of her declaration.

### **The exception**

- [6] The 5<sup>th</sup> defendant subsequently took an exception to the summons and declaration on the ground that they lack the necessary averments to sustain a cause of action. It avers that the plaintiff failed to disclose whether her claim is based on registration or allocation as the two have different connotations.

### **Submissions**

- [7] The excipient contends that allocation of land vests in land allocating authorities wherea its mandate is to register interests in land and issue leases accordingly.
- [8] On its behalf, Mr Malunga argues that the grounds upon which the plaintiff basis her claims are unclear; i.e whether her claim is based on wrongful allocation or registration. He is of the view that the two terms cannot be used simultaneously because they create confusion. He contends on this basis that the plaintiff's declaration does not disclose a cause of action.
- [9] Citing the case of **Qhomoko v Kahlolo CIV/T/298/00**, he submitted that the exception must succeed because the plaintiff failed to cure the defect in her declaration by supplying further particulars requested on this issue.
- [10] He submitted that the defendant is, as a result of the confusion prejudiced because it is unable to plead to the plaintiff's summons and declaration as they stand.

[11] The plaintiff's counsel, Advocate Lebakeng submits on the other hand that the exception is bad in law because firstly the excipient failed to state or particularize the averments which are said to be lacking, secondly that the exception is based on what clearly is the defendant's defence, namely that it is not vested with land allocation powers but registration of rights only. Thirdly that the defendant knows clearly the case it has to meet.

[12] He contends that the plaintiff's claim is based on wrongful and negligent registration and or encroachment on the plot to which she already holds title. That she clearly pleaded that during the month of July 2016, she discovered that the defendant's predecessor registered a lease in favour of one Motlalepula Nkhabu in 2007. That this registration and or allocation of rights encroached on part of her land.

[13] Addressing the defendant's argument to the effect that registration and allocation have different connotations and that it does not allocate land, he contends that these do not on their own warrant the defendant to raise the exception under Rule 29(1)(a). He is of the view that these issues can validly be raised in the plea.

[14] Relying on **Colonial Industries Ltd v Provisional Insurance Co Ltd 1920 CPD 627**, he submitted firstly that an excipient must make out a very strong and clear case for the exception to succeed, and secondly that an exception must only be taken for the purpose of raising a substantial question of law which may have the effect of settling the dispute between the parties. Thirdly that it is the duty of the court when an exception is taken to first see if there is a point of law to be decided which will dispose the case in whole or in part.

### **Consideration of the exception**

**[15]** Exceptions are governed by Rule 29 of the High Court Rules 1980. It reads;

- (1) (a) Where any pleading lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party, within the period allowed for the delivery of any subsequent pleading, may deliver an exception thereto.  
(b) The grounds upon which the exception is founded must be clearly and concisely stated.
- (2) (a) where any pleading is vague and embarrassing, the opposing party, within the period allowed for the delivery of any subsequent pleading, deliver a notice to the party whose pleading is attacked, stating that the pleading is vague and embarrassing setting out the particulars which are alleged makes the pleading so vague and embarrassing, and calling upon him to remove the cause of complaint within seven days and informing him that if he does not do so an exception would be taken to such pleading.  
(b) If the cause of complaint is not removed to the satisfaction of the opposing party within the time stated, such party may take an exception to the pleading on the grounds that it is vague and embarrassing. The grounds upon which this exception is founded must be fully stated

**[16]** An exception of no cause of action is justifiably raised when the excipient admits all his opponent's facts but successfully challenges the conclusion based on those facts. **Ramakoro v Peete LAC (1980-84) 94.**

**[17]** An excipient must therefore establish that upon any construction of the particulars of claim, no cause of action is disclosed. **Fair Oaks Investment Holdings (Pty) Ltd v Oliver 2008(4) SA 302(SCA).**

[18] Rule 18(5) of the High Court Rules 1980 requires the plaintiff's summons to contain a concise statement of the material facts relied upon by the plaintiff in support of his claim, in sufficient detail to disclose a cause of action.

[19] It is therefore fundamental that a plaintiff in his summons must allege facts, the proof upon which entitles him to the relief which he claims.  
**Andrews v Pillay 1954(2) SA 136 at 137 G-H.**

[20] The term cause of action is ordinarily used to describe the factual basis, the set of material facts that begets the plaintiff's legal right of action. **Evins v Shield Insurance Co Ltd 1980(2) SA 814 A at 825G.** It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved by the plaintiff in order to support his right to the judgement.  
**Mckenzie v Farmers Cooperatives Meat Industries Ltd 1922 AD 16 at 23.**

[21] With regard to a declaration, Rule 21(2) provides that the declaration must set forth the nature of the plaintiff's claim, the conclusions of law which the plaintiff claims he is entitled to deduce from the facts therein and the prayer for the relief claimed.

[22] It will be observed that the excipient's complaint is directed at the usage of the terms "allocation" and "registration" simultaneously, that the two create a confusion because the reader is unable to gather whether the plaintiff's complaint pertains to one of them or both.

**22.1** Framing the ground for exception in the manner in which it did, it seems the excipient fails to appreciate the distinction between an exception raised on grounds envisaged under Rule 29(1) on the one hand and 29(2) on the other. It is clear in my view that his ground relates to vagueness and embarrassment and would properly be

raised under 29(2)(b), after the requisite notice (under 29 (2) (a)) to the plaintiff to remedy the complaint.

**[23]** An exception to a pleading on the ground that it is vague and embarrassing strikes at the formulation of the cause of action and not its legal validity. **Jowell** (*supra*) at **p899**. It involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. The second is whether the vagueness causes an embarrassment of such a nature that the excipient is prejudiced. **Trope v South African Bank 1993(3) SA 264 at 273**.

**23.1** The expression vague in the context of pleadings also means a statement is either meaningless or that it is capable of more than one meaning. Where the ground relied on by the pleader cannot be gathered from the pleading, such pleading is embarrassing. See in this regard **Ramakoro v Peete** (*supra*) at **p 98**.

**[24]** Upon a close examination of the defendant's ground for the exception as well as submissions made on its behalf, it is clear in my view that the complaint is directed at the case formulation, which according to the defendant is confusing by reason that it cannot be gathered whether the plaintiff's case is based on registration or allocation. It seems the excipient conflates the grounds under 29(1) with vagueness leading to embarrassment under 29(2)(b).

**[25]** As correctly observed by the plaintiff's counsel, the ground for the exception we are dealing with is not vagueness of the pleadings but that the pleadings disclose no cause of action.

**[26]** My reading of the plaintiff's summons and declaration reveals that the she has alleged / pleaded material facts giving rise to the reliefs

sought. These are set out under paragraph 2 and 3 of this Ruling. An exception under Rule 29(1) is therefore dismissible.

**Order**

**[27]** In the result, the exception is dismissed with costs.

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**P. BANYANE  
JUDGE**

For Plaintiff: Advocate Lebakeng

For Defendant: Advocate Malunga

