

**IN THE HIGH COURT OF LESOTHO  
(COMMERCIAL DIVISION)**

**HELD AT MASERU**

**CCT/0560/2021**

In the matter between –

**REITUMETSE MPHUTLANE t/a MATSILI CAR RENTAL PLAINTIFF**

**And**

**WBHO-LSP JOINT VENTURE**

**DEFENDANT**

**Neutral Citation: Reitumetse Mphutlane t/a Matsili Car Rental Plaintiff  
and WBHO – LSP Joint Venture [2022] LSHC 214 Comm. (6 September  
2022)**

**CORAM: M. S. KOPO J**

**HEARD: 08<sup>TH</sup> AUGUST 2022**

**DELIVERED: 06<sup>TH</sup> SEPTEMBER 2022**

## **SUMMARY**

*Civil Procedure – exception application in terms of Rule 29(2) – exception on the ground of vagueness- what constitutes?*

## **ANNOTATION**

### **Books**

Erasmus H J, et al. *Erasmus Superior Courts Practice*. 1997. Juta and Co. Ltd

### **Cases**

#### **Lesotho**

Selae Mphutlane Leqele v Storm Mountain Diamonds. (CIV/T/558/18) [2019]  
LSHC 62 (12 December 2019)

#### **South Africa**

Jowell v Bramwell-Jones 1998 (1) SA 836

### **Statutes**

High Court Rules No. 9 of 1980

# RULING

## [A] Introduction

1. In this matter, Plaintiff, a sole trader trading under the style name of Matsili Car Rental, has instituted summons against the defendant in this court. The Defendant has, in this matter raised an exception against the pleadings as drafted for the plaintiff.

2. In the summons, the plaintiff claims:

- a. *Restoration of Plaintiff's vehicle, Toyota HI ace DSL 2007 Model.*
- b. *Alternatively, payment of M172, 000.00 (One hundred and seventy-two thousand) as the fair market value of the vehicle*
- c. *Cost(s) of suit*
- d. *Further and/or alternative remedy*

3. Defendant instituted a Notice of Appearance to Defend but did not file a plea. It however filed a Notice of Exception on the basis that prayers a, b and c under paragraph 7 of the declaration are not clear as to whether they are based on contractual or delictual claim. For that reason, therefore, the pleadings are vague and embarrassing on the following grounds;

- a. *For lack of necessary averments regarding the claim for "liability of Defendant for loss of the Plaintiff's vehicle;*
- b. *For lack of necessary averments regarding the claim for "Restoration of Plaintiff's vehicle (Toyota HI ace, DSL 2007 model) to the initial condition it was before the accident";*

- c. *For lack of necessary averments regarding the claim for “alternative payment of M172 000.00 (One Hundred and Seventy-two Thousand Maloti) as the fair market value of the vehicle before the crash”;*
- d. *The pleading lack the necessary nexus between Defendant and loss and restoration of Plaintiff’s vehicle, that is, whether the claim is grounded delictually or contractually.*
- e. *The Defendant cannot clearly discern the cause of action in this regard, and is as such unable to plead to the whole Declaration.*

## **[B] DEFENDANT’S CASE**

4. As has been shown above, Defendant argues that in paragraph 7 (a) of the Declaration, plaintiff claims that that defendant is liable for loss of plaintiff’s vehicle. However, what defendant takes exception on, is that (as Defendant puts it) it is not clear if under paragraph 7 (a), plaintiff is basing its claim on delict or contract since liability can arise out of contract or delict.
5. Moreover, Defendant argues that in paragraph 7 (b) of the declaration, plaintiff prays for restoration of the vehicle in question to the condition it was before the accident, and on the face of it, the said claim is premised on *aquillian* action. However, the declaration alleges breach of contract.
6. Finally, defendant argues that the fact that Plaintiff claims, in the alternative, payment of One Hundred and Seventy-two Thousand Maloti (M172, 000.00) as a fair market value of the vehicle before the crash, is confusing on whether it is delictually or contractually based. The premise of the argument is that alternative payment of the sum of money

presupposes contractual remedy for breach of contract but qualifying the amount as value of the vehicle before the crash is confusing as to whether it is delict or contract.

### **[C] PLAINTIFF'S CASE**

7. It is Plaintiff's case that when the pleadings are read holistically, it is clear that the claim is based on contract. For that reason, therefore, it was argued for the Plaintiff that the Defendant has failed to establish grounds that the pleadings are vague and embarrassing. It is Plaintiff's case that there is no averment that a cause of action is not disclosed. Moreover, Plaintiff argues that cause of action is established and any clarification that Defendant seeks will be cured through further participation in trial.
8. The above argument by Plaintiff is premised on the argument that the Notice of Exception should have clearly laid to bare how the Declaration is vague and embarrassing or how it does not raise a cause of action.

### **[D] THE LAW**

9. The Defendant's case is based of Rule 29 (2) of the High Court Rules. That Rule reads thus;

*(a) Where a pleading is vague and embarrassing, the opposing party, within the period allowed for the delivery of any subsequent pleading, deliver a notice to the other party whose pleading is attacked, stating that the pleading is vague and embarrassing setting out the particulars which are alleged makes the pleading vague and embarrassing, and calling upon him to remove the cause of the complaint*

*within seven days and informing him that if he does not do so an exception would be taken to such a 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.*

10. Indeed, it has been held that when the pleading is not clear as to whether the cause of action is based on a contract or delict, such a pleading is vague and embarrassing<sup>1</sup>. My brother Mokhesi J is also in sync with this in **Selae Mphutlane Legele v Storm Mountain Diamonds**<sup>2</sup>, the case cited in the heads relied on by Advocate Selimo for the Defendant. This aspect of the law is therefore trite.

## **[E] ANALYSIS OF THE PLEADINGS IN ISSUE**

11. Advocate Leisanyane argued that the Plaintiff's Declaration is clear that the claim is based on contract from paragraph 4 to 6 therein. Indeed, upon perusal of the said paragraphs, it becomes clear that the plaintiff, expressly, was clear that the act upon with the claim is based on, caused the breach of contract. Paragraph 4.4 in particular may be quoted. It reads as follows;

*Some moments after the vehicle was parked, and having assessed its mechanical fault, the defendant's employees boarding the vehicle sought to coerce the plaintiff's driver to continue driving to their destination. Upon his refusal, and indication that it would be risky to drive the vehicle in the condition that it was, one of the defendant's employees,*

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<sup>1</sup>Ref Erasmus H J et al. Superior Court Practice. Juta & Co, Ltd. 1994. B1-155 wherein the learned authors relied on a number of judicial decisions under footnote 3 therein.

<sup>2</sup>(CIV/T/558/18) [2019] LSHC 62 (12 December 2019)

*wilfully, negligently, without authorisation and **in conflict with the transport service contract of the parties herein**, drove the plaintiff's vehicle (my emphasis).*

12. This paragraph is clear and express. One need not imply anything from its reading. In fact, the entire reading of the Plaintiff's Declaration, when read as a whole as it has to in ascertaining if it is vague and embarrassing<sup>3</sup>, it becomes clear that consistently, Plaintiff keeps on saying that it is founding its claim on breach of contract.

13. In conclusion therefore, it is clear that the exception is misplaced. The cause of action is clear. For this reason, therefore, the following order is made.

14. The exception is dismissed with costs.

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**M.S. Kopo J.**  
**Judge of the High Court**

**For Plaintiff: Adv. L. Leisanyane**

**For Defendant: Adv. K. J. Selimo**

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<sup>3</sup>Jowell v Bramwell-Jones 1998 (1) SA 836