

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
EX TEMPORE JUDGMENT**

Case no: HC-MD-CIV-ACT-CON-2023/02689

In the matter between:

JOSEPH GOVEIA

PLAINTIFF

and

ERIC BERNARD

1ST DEFENDANT

SAMUEL FILEMON

2ND DEFENDANT

LIISA KAWALI

3RD DEFENDANT

Neutral citation: *Goveia v Bernard* (HC-MD-CIV-ACT-CON-2023/02689) [2023]

NAHCMD 595 (25 September 2023)

Coram: PRINSLOO J

Heard: 6 September 2023

Delivered: 6 September 2023

Reasons: 25 September 2023

ORDER

1. Ruling on the exception raised:

1.1 Exception is upheld.

1.2 The plaintiff's particulars of claim, is struck and set aside and he is given leave, if so advised, to file amended particulars of claim by 6 October 2023.

2. Further conduct of the matter:

2.1 The case is postponed to **12/10/2023** at **15:00** for Status hearing (Reason: Amendment of Pleadings).

2.2 The plaintiff is cautioned to attend the court either in person or represented by a duly appointed legal practitioner.

EX TEMPORE JUDGMENT

PRINSLOO J:

Introduction

[1] The plaintiff is Mr Joseph Goveia, a lay litigant, who issued summons against Mr Eric Bernard, Mr Samuel Filemon and Liisa Kawali, all of whom are employees of B2Gold Namibia (Pty) Ltd, in June 2023.

[2] The plaintiff claims against these defendants what he referred to as compensatory damages (or trespass damages) in the sum of N\$700 million and further sought an order from this court to release to the real party of interest/beneficiary claimant and the authorised agent for Joseph Goveia, estate/real party in interest (presumably the sum claimed) plus the cost of suit.

[3] Serving before this court is an exception filed by the defendant against the particulars of claim of the plaintiff.

[4] The defendants' exception dated 27 July 2023 is premised on three grounds. All of the grounds are on the basis that the pleadings lack the averments necessary to sustain a cause of action against the defendants.

[5] The grounds of the exception are the following:

5.1 Ex facie the particulars of claim, the plaintiff has not established locus standi to sue the defendants. The defendants contend that as legal standing is not established ex facie the particulars of claim, this can be raised on exception.

5.2 It is unclear what cause of action the plaintiff attempts to rely upon for the relief claimed. No basis in law and/or fact is pleaded or disclosed –

- a. On which to hold any of the defendants liable for any of the relief claimed;
- b. To sustain a valid and recognised cause of action against any of the defendants;
- c. On which to sustain the relief sought by the plaintiff against the defendants;
- d. Mention is made at paragraphs 9(a) and (b) of an employment contract entered into with B2Gold Otjikoto Mine, a party which is not cited or sued in this action.

5.3 The plaintiff alleges, at paragraph 16, to have suffered damages including –

- a. Unalienable right trespass by deprivation of right;
- b. Trespass property;
- c. Personal harm;
- d. Defamation of character;
- e. Harassment by intimidation;
- f. Breach of trust; and
- g. Fraud, personification and misrepresentations.

[6] The defendants also raised the issue that as part of the relief sought, the plaintiff claims for a 'judicial review of an administrative process and remedy', for the court to 'find the facts and execute on the law of the contract' and 'compensatory damages' against the defendants of N\$ 700 million.

[7] The defendants submitted that there is no basis in fact or in law made out to sustain the relief claimed or to quantify or explain how the compensatory damages that are claimed are computed.

[8] In addition thereto, the defendants contend that rule 45(9) of the High Court Rules has not been complied with, as the defendants cannot reasonably assess the quantum of the damages claimed.

[9] The defendants therefore prayed that:

- a. The exception be upheld with costs.
- b. The plaintiff's claim be dismissed with costs.

[10] In response to the exception raised by the defendants, the plaintiff filed a notice in terms of rules '3(3), 4, 47 (1) and (2), 4A (5) and 57'. It is unfortunately not clear in terms of which rules the notice was filed because although there is a reference to rules it does not appear to be the Rules of the High Court of Namibia. Upon careful consideration of the notice it appears that the plaintiff is making reference to the High Court Act 16 of 1990 as amended.

[11] The notice by the plaintiff further appears to be a request to transfer the case instead of a response to the exception.

[12] The plaintiff states in the introduction of this notice that 'he have not consented and do not consent to these proceedings, Nisi Prius Court, Court of no record, statutory, territorial jurisdictional court venue'.

Discussion

[13] The particulars of claim of the plaintiff is fraught with footnotes and Latin maxims and quotations from the Bible.

[14] I am, however, reminded of the fact that the plaintiff is a lay litigant and having regard to what was said in *Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others*¹ where Maritz JA (as he then was) remarked as follows:

[8] The applicant is a lay litigant and, as MT Steyn J (as he then was) remarked in *Van Rooyen v Commercial Union Assurance Company of SA Ltd*² 'it would certainly be manifestly unjust to treat lay litigants as though they were legally trained . . .'. They are unlikely to 'fully appreciate the finer nuances of litigation'³ and, I should add, to completely appreciate the principles bearing on the court's jurisdiction. Bearing in mind that lay litigants face significant hurdles due to their lack of knowledge and experience in matters of law and procedure and, more often than not, financial and other constraints in their quests to address real or perceived injustices, the interests of justice and fairness demand that courts should consider the substance of their pleadings and submissions rather than the form in which they have been presented.⁴

[15] The format of the plaintiff's particulars of claim does not conform with the rules of court, however, that as such does not pose the biggest obstacle for me in this matter. What does pose a substantial problem is the substance of the particulars of claim.

[16] In *Hangula v Motor Vehicle Accident Fund*,⁵ Damaseb JP made the following observations with respect to exceptions as follows:

[16] In adjudicating an exception the court must accept the correctness of the facts as alleged by the plaintiff. The test that I must apply is this: notwithstanding the truth of the facts alleged, do those facts in law establish any sufficient case? If they don't, the exception is good and must be allowed.

¹ *Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (2) NR 753 (SC) also referred to in the matter of *Boois v State* (CA 76-2014) [2015] NAHCMD 131 (8 June 2015) para [2].

² *Van Rooyen v Commercial Union Assurance Company of SA Ltd* 1983 (2) SA 465 (O) at 480G - H.

³ Per Rabie J in *Absa Bank Ltd v Dlamini* 2008 (2) SA 262 (T) [2008] 2 All SA 405) at 268B.

⁴ See: *Xinwa and Others v Volkswagen of South Africa (Pty) Ltd* 2003 (4) SA 390 (CC) (2003 (6) BCLR 575; 2003 (5) BLLR 409) at 395B - D.

⁵ *Hangula v Motor Vehicle Accident Fund* 2013 (2) NR 358 (HC).

[17] It was held in *Denker v Cosack and Others* that the remedy of exception is only available where an exception goes to the root of a claim or defence and that the main purpose of an exception that a claim does not disclose a cause of action is to avoid leading unnecessary evidence at the trial. In that case Hoff J held that an excipient has a duty to persuade the court that, upon every interpretation that the particulars of claim can reasonably bear, no cause of action is disclosed and further that the court, for the purposes of an exception, takes the facts as alleged in the pleadings as correct.'

[18] If one goes to the root of the action, I cannot begin to point out the flaws in the plaintiff's particulars of claim. The plaintiff appears to have drafted his particulars of claim in terms of American jurisprudence which is not of any application in Namibia.

[19] To say that the plaintiff's particulars of claim is confusing is an understatement. There is no recognisable cause of action that emanates from the particulars of claim. On the one hand, it appears to be a labour dispute and that the plaintiff wishes to allege unfair dismissal but that is mere speculation on the part of the court as the plaintiff on the other hand repeatedly mentions administrative law and judicial review. The plaintiff without a doubt copied his particulars of claim from the internet and pasted same in the current application, however in the context of the proceedings before this court the particulars of claim does not make any sense. This case is not about certain facts that were not pleaded, causing the particulars of the claim to be vague or embarrassing. Rather, it is a matter where many of different principles are strung together, resulting in an incoherent jumble of words.

[20] I will refer to a number of paragraphs in the particulars of claim to illustrate what the court is referring to. These paragraphs read as follows:

'[9] That I/we the plaintiff is a live natural person/ real party of interest in the authorised agent for Joseph Goveia, estate /real party in interest and, being first duly affirmed – does duly depose, say, and declare by my signature that the following facts are true and correct to the best of my belief.

(a) On 17 March 2020 I autographed the employment contract for the B2Gold Otjikoto Mine, the employment contract was between Joseph Goveia and B2Gold Otjikoto Mine,

before signing of the employment contract for Mr Joseph Goveia and B2Gold Otjikoto mine, since I can discern what is good from evil as a living man I autographed and reserved my man rights given by God of Israel through our Master Jesus Christ under and God's Law/Common law/ Natural law of the land/ Supreme Law; the living man is real party of interest and he is the authorized agent for Mr Joseph Goveia/deceased estate (corpus), trust, legal name, legal fiction, legal person, juristic person, corporation, ens legis, debtor, third pay and statutory person, corporate person and slave, the same day I tried to explain the content of the contract to Ms Liisa Kawali in relationship to the living man but she could not understand my situation. I left the workplace before anyone knocks off around 15h00 at the afternoon.

b) On 18 March 2020, the next day in the morning Ms Liisa Kawali asked the living man to see Mr Samuel Filemon regarding the employment contract and I left the work place before knocking tie. The living man tried to explain the content of the contract to Mr Samuel Fillemon in relationship to the living man, but him (Filemon) too could not understand my situation. The same day Ms Liisa Kawali said she wants to work with the living man under employment contract which compel performance/obligation. The fact is that employment contract between Joseph Goveia and B2Gold Otjikoo Mine. All corporations; not for the living man Joseph; the family of Goveia. He living man can only give his service not obligation/compel performance under Joseph Goveia. On the same day Mr Samuel Filemon said no agent is allowed and he got the authority from management to expel the living man and deprive him of his services make a living. But common law cannot compel performance /obligation, no third party is allowed and full disclosure of the contract is imperative.

[10] That I / we the plaintiff is a live natural person is the beneficiary claimant and the authorized agent for JOSEPH GOVEIA, estate and , being first duly affirm - does depose, say, and declare by my signature that the following facts are true and correct to the best of my knowledge and belief:

10(a).....

10(b).....

10(c).....

10(d).....

10(e).....

[11] That the plaintiff has exhausted administrative remedy and comes to this court of equity with clean hands and in good faith – See Annexure **A B, C and D**.

[12] That the plaintiff has established “judgment in estoppel” against defendants as is evidenced by attached the administrative remedy process.

[13] That the plaintiff administrative remedy is res judicata.

[14] That the failure by the defendants to respond in this matter is stare decisis.

[15] That the plaintiff administrative remedy is ripe for judicial review, and there are no facts in controversy.

[16] The plaintiff suffers the following damages:

- (i) Unalienable right trespass by deprivation of right;
- (ii) Trespass property;
- (iii) Personal harm;
- (iv) Defamation of character;
- (v) Harassment by intimidation;
- (vi) Breach of trust; and
- (vii) Fraud, personification and misrepresentations

[17] That the plaintiff is entitled to relief in this equitable claim.

[18] Defendants are estopped for failure to respond to original administrative process.

[19] That the plaintiff has placed the facts and law before this honorable court.

RELIEF SOUGHT

WHEREFORE THE PLAINTIFF PRAYS FOR:

[20] That the plaintiff requests judicial review of his administrative process and remedy.

[21] That the plaintiff requests this court to find the facts and execute on the law of contract by acquiescence and law of torts before this Court.

[22] That the plaintiff requests default judgment on his administrative remedy.’

[21] Having considered the plaintiff's particulars of claim, I must find that the exception raised against the particulars of claim was well taken as the plaintiff's particulars of claim is incurably bad. The manner in which the particulars of claim is formulated does not disclose a cause of action and must be set aside. The defendants actually prayed that the claim of the plaintiff be dismissed, however, they left the decision in the hands of the court.

[22] In this regard the following passage from Erasmus *Superior Court Practice*⁶ is instructive:

'Where the exception is successful, the proper course is for the court to uphold it. When an exception is upheld, it is the pleading to which exception is taken which is destroyed. The remainder of the edifice does not crumble The upholding of an exception to a declaration or a combined summons does not, therefore, carry with it the dismissal of the action. The unsuccessful party may then apply for leave to amend his pleading. It is in fact the invariable practice of the courts in cases where an exception has been taken to an initial pleading that it discloses no cause of action, to order that the pleading be set aside and the plaintiff be given leave, if so advised, to file an amended pleading within a certain period of time. It has been held that it is doubtful whether this practice brooks of any departure; in the rare case in which a departure may be permissible, the court should give reasons for the departure. This practice *a fortiori* applies where an exception is granted on the ground that the pleading is vague and embarrassing, a ground which strikes at the formulation of the cause of action and not its legal validity.'

[23] The issue of invariable practice was discussed by Damaseb DCJ (Smuts JA and Chomba AJA concurring) in *Hallie Investment 142 cc t/a Wimpy Maerua and another v Caterplus Namibia (Pty) Ltd t/a Blue Marine Interfish*:⁷

[24] In keeping with the invariable practice as adopted by our courts, under the guidance of the Supreme Court of Namibia, the plaintiff must be afforded the opportunity to amend his particulars of claim, should he elect to do so.

[25] In the result, make the following order:

⁶ At page BI- 159.

⁷ *Hallie Investment 142 cc t/a Wimpy Maerua and another v Caterplus Namibia (Pty) Ltd t/a Blue Marine Interfish* 2016 (1) NR 291 (SC) at p304-305.

1. Ruling on the exception raised:

1.1 Exception is upheld.

1.2 The plaintiff's particulars of claim, is struck and set aside and he is given leave, if so advised, to file amended particulars of claim by 6 October 2023.

2. Further conduct of the matter:

2.1 The case is postponed to **12/10/2023** at **15:00** for Status hearing (Reason: Amendment of Pleadings).

2.2 The plaintiff is cautioned to attend the court either in person or represented by a duly appointed legal practitioner.

J S Prinsloo
Judge

APPEARANCES:

PLAINTIFF:

J Goveia
In Person, Windhoek

DEFENDANTS:

S Vlieghe
Of Koep & Partners,
Windhoek