

REPUBLIC OF NAMIBIA



IN THE 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) [2024]

NAHCMD 154 (5 April 2024)

Coram: PRINSLOO J

Heard: 26 March 2024

Delivered: 26 March 2024

Reasons: 5 April 2024

ORDER

1. The exception is upheld.
2. The action is therefore dismissed with costs.

EX TEMPORE JUDGMENT

PRINSLOO J:

Introduction

[1] This court, on 25 September 2023, delivered a ruling on an exception raised by the defendants against the plaintiff's particulars of claim, which was upheld.¹ The plaintiff proceeded to amend his particulars of claim on 27 September 2023, which was still excipiable in the defendants' view, and it accordingly delivered a further exception on 3 November 2023. The defendants maintain that the plaintiff's particulars of claim still discloses no cause of action. The matter was again set down for argument of the exception.

[2] At this point, I should point out that the plaintiff has been noticeably absent from the court proceedings since November 2023, despite Mr Vlieghe's best efforts to secure his presence by serving the relevant court orders on the plaintiff (including the order in respect of today's hearing). The plaintiff did not remove the subject of the defendants' complaint but instead chose to file a multitude of documents not relevant to the exception raised. He remains absent from court. The court directed that the application be heard nonetheless.

Legal principles applicable to exceptions

¹ *Goveia v Bernard* (HC-MD-CIV-ACT-CON-2023/02689) [2023] NAHCMD 595 (25 September 2023).

² *Van Straten N.O and Another v Namibia Financial Institutions and Another* (SA 19/2014) [2016] NASC 10 (8 June 2016).

[3] The locus classicus on exceptions is *Van Straten N.O and Another v Namibia Financial Institutions and Another*,² where the court held:

[18] Where an exception is taken on the grounds that no cause of action is disclosed or is sustainable on the particulars of claim, two aspects are to be emphasised. Firstly, for the purpose of deciding the exception, the facts as alleged in the plaintiff's pleadings are taken as correct. In the second place, it is incumbent upon an excipient to persuade this court that upon every interpretation which the pleading can reasonably bear, no cause of action is disclosed. Stated otherwise, only if no possible evidence led on the pleadings can disclose a cause of action, will the particulars of claim be found to be excipiable.'

Background

[4] The plaintiff's initial claim against these defendants was what he referred to as compensatory damages (or trespassing damages) in the sum of N\$700 000 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 costs of suit.

[5] In my judgment dated 25 September 2023, I discussed the particulars of claim and pointed out the following:

[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.

...

[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.

...

[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.'

[6] The plaintiff chose to ignore the guidance of this court and filed an amended particulars of claim along the same lines of the original particulars of claim. This resulted in the defendants raising a further exception consisting of three grounds of exception in the following terms:

'Ground 1

1. The plaintiff is cited, under paragraph 1, as a major male person, d.b.a (doing business as) "Joesph Goveia" but it is pleaded that he is the "living beneficiary" and "living grantor" that is appearing "propria persona", and the "bona fide authorised agent". No facts are alleged as to how standing is established, or what rights the "living beneficiary" and / or "living grantor" has.
2. No explanation is provided as to the difference between Jospeh Goveia, the natural person, and the person acting as the "living beneficiary" and / or "living grantor".
3. At paragraphs 3 and 8 of the amended particulars of claim it is pleaded that the plaintiff is appearing "propria persona, third party intervener, third party herein, bona fide authorised agent". No explanation is given as to how the plaintiff appears as a third party and / or agent in this action.
4. At paragraph 8 of the amended particulars of claim it is pleaded that the "real party of interest" is a "private trustee for the living man name Joseph Goveia trust, a living grantor, living beneficiary for the public sovereign trust". The same uncertainty remains as to what standing the "private trustee" of the plaintiff has in the action.

5. At paragraph 11(g) it is pleaded that the plaintiff has become the “beneficiary claimant by operation of commercial law”.

6. Generally, it is not pleaded with any degree of certainty or clarity whom the plaintiff is or how the plaintiff (if properly identified) has a right to sue one or more of the defendants, or acquired this right. It is not clear from the particulars of claim how standing to sue the defendants is established.

7. The particulars of claim are accordingly excipiable on the basis that locus standi is not established.

Ground 2

8. It is unclear what cause of action the plaintiff attempts to rely upon for the relief claimed.

9. No basis in law and/or fact is pleaded or disclosed –

9.1 On which to hold any of the defendants liable for any of the relief claimed;

9.2 To sustain a valid and recognised cause of action against any of the defendants;

9.3 On which to sustain the relief sought by the plaintiff against the defendants;

10. Mention is made at paragraphs 11(a) and (b) of an employment contract entered with B2Gold Otjikoto Mine, a party which is not cited or sued in this action.

11. At paragraphs 12 and 13, reliance is placed upon the exercise of a “private administrative remedy”. Allegations are made that the defendants are “estopped”, and that the plaintiff has established “judgment by estoppel”.

12. Neither the plaintiff nor the defendants, ex facie the pleadings, are administrative officials and the conduct complained of is not administrative action. Grounds for an administrative review are not established on the pleadings.

13. No basis in fact or in law is made out to sustain a claim based on contract and/or under administrative law.

14. Rule 45(5) has not been complied with as the allegations in the particulars of claim are not clear, concise, and the particularity is not sufficient enough to enable the defendants to reply thereto.

15. Generally, no case is made out in fact or in law and no cause of action exists, for the relief sought.

Ground 3

16. The plaintiff alleges, at paragraph 18, to have suffered certain damages.

17. As part of the relief sought the plaintiff claims, inter alia, for the Court to “find the facts and execute on the law of the contract”, and that “the plaintiff’s facts upon the defendants are bound by principles of res judicata and estoppel”, and that the defendants should pay “compensatory damages” of N\$ 700,000,000.00.

18. No basis in fact or in law is made out to sustain the relief claimed or to quantify or explain how the compensatory damages that are claimed are computed and/or arrived at.

19. 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.

20. The relief sought in the action is accordingly not sustainable.’ (sic)

Discussion

Ground one: Locus standi

[7] In para 1 of his amended particulars of claim, Mr Goveia describes the plaintiff as follows (I quote verbatim):

‘[1] That the term plaintiff is d.b.a terms JOSEPH GOVEIA is a major mail person, currently is a foreign claimant, non-resident alien, non-neutralized citizen, non-amended citizen residing at Erf 2260, without prejudice, Otjomuise, Stockholm Street, Windhoek, Khomas, and Republic of Namibia. The term plaintiff living status is a state Citizen Propria Person, free Preamble Citizenry of sovereign state, free Preamble Citizen of the Land mass Republic for Namibia, De Jure Citizenry, a term Namibian National, sui juris / Lawful capacity free of all legal disability, d.b.a JOSEPH GOVEIA©™® has established as non-resident alien residency, a non-neutralised citizen, non-amendment / non-corporate citizen, non-civilly dead entity citizen in REPUBLIC OF NAMIBIA for over the years.

[2] The plaintiff, I do nothing in word person not a term and I do no need to appear to be here, IAM here; in Propria Persona capacity, with the proof of life, for cestui qui vie trust, constructive trust, IAM appearing in Propria Persona.

[3] the plaintiff is a life, living beneficiary and a living grantor, speak and write term in English tongue, is appearing in Propria Persona, third party intervener / third party herein, bona fide authorised agent for a Common Law of the land copy righted property TRADE NAME / JOSEPH GOVEIA©™®, a fictitious, non-living fictional, legal entity, artificial person.' (sic)

[8] In para 8 of the amended particulars of claim the plaintiff is referred to inter alia as 'a private trustee for the living man named Joseph Goveia trust, a living grantor, living beneficiary for the public sovereign trust, foreign situ trust, *cestui qui vie* trust, Birth Certificate trust'.

[9] I fully agree with the defendants' contention that considering the multitude of entities referred to it is unclear in what capacity Mr Goveia is appearing. It is not clear what natural person or legal entity possesses or holds the alleged rights which are being relied upon for the relief sought.

[10] On every possible interpretation of the particulars of claim, it is not clear what role or interest the plaintiff is cited, Mr Joseph Goveia, has in the action, and as a result, I find that this ground of exception is well taken and must be upheld.

Second ground

[11] The defendants submitted that there is no recognisable cause of action identified against any of the defendants and that it is still not clear whether the claim is based in contract, delict, an employment relationship or otherwise.

[12] The plaintiff, in his amended particulars of claim, referenced several rules of the High Court as well as sections of the Civil Proceedings Evidence Act 25 of 1965 and Articles under the Constitution of the Republic of Namibia; however, it is not clear for what purpose.

[13] Rule 45 of the Rules of the High Court provides in ss 5 that:

'(5) Every pleading must be divided into paragraphs, including subparagraphs, which must be consecutively numerically numbered and must contain a clear and concise statement of the material facts on which the pleader relies for his or her claim, defence or answer to any pleading, with sufficient particularity to enable the opposite party to reply and in particular set out -

- (a) the nature of the claim, including the cause of action; or
- (b) the nature of the defence; and
- (c) such particulars of any claim, defence or other matter pleaded by the party as are necessary to enable the opposite party to identify the case that the pleading requires him or her to meet.' (emphasize provided)

[14] The plaintiff's particulars of claim is yet again a jumble of legalise strung together in an attempt to form a coherent claim but unfortunately the plaintiff did not succeed and the complaint by the defendants that they do not know what the plaintiff's cause of action consists of, has merit.

[15] The plaintiff refers to a private administrative remedy process and in the same sentence refers to 'private to private process as a private administrative side'. The plaintiff avers that he has exhausted his private administrative remedy and that he has established 'judgment in estoppel' against the defendants. On the other hand the matter appears to be a labour dispute and that the plaintiff claims that he was unfairly dismissed.

[16] I agree with Mr Vlieghe that the relief pleaded is confusing and not sustainable. No case is made out in fact or in law for the relief sought.

Third ground

[17] In Paragraph 18 of the particulars of the plaintiff, he alleges that he suffered the following damages:

- '(i) Breach of contract lacked disclosure, bona fide agreement, bilateral conditions,
- (ii) Deprivation of rights of due process of Law, denial of equal protection of the laws.
- (iii) Deprivation of infringement natural man's right of freedom to contract, and

(iv) Misrepresentation, such as represent the life, living man in state common law term, term Inherent Natural Rights as a fiction/civilly dead capacity, means they have misrepresent the term plaintiff as a dead entity, legal status as an artificial character.'

[18] In his relief the plaintiff claims payment in the amount of N\$700 000 000 for damages. There is however no indication how the plaintiff arrived at that sum as he failed to set out the damages he is suing for to enable the defendant to reasonably assess the quantum thereof. I will not even venture into what the 'damages' purport to be.

[19] This ground of exception was also well taken in my view and should be upheld.

Conclusion

[20] The judgment delivered by this court on 25 September 2023 made it clear that the plaintiff was granted an opportunity to amend his particulars of claim but it remains excipiable.

[21] It is unfortunate that the plaintiff did not adhere to the court rules while filing the amended particulars of claim. Even though the plaintiff is not legally trained, adherence to the court rules is essential in order for him to be successful in his claim. This matter is no different from any other litigant before this court and to ensure adherence to the rules of court when submitting its claim for adjudication. The argument that lay litigants are not legally trained only obtains leniency from this court to a certain point, but this court, as any other court, must be guided by the rules of court and law and cannot by its own undertaking, do and allow whatever it pleases without checks and balances. A court does not make law by itself but merely implements it as the law provides.³

[22] Order:

³ *Garoes v Beukes* (HC-MD-CIV-ACT-OTH-2018/00470) [2019] NAHCMD 63 (22 March 2019) para 24.

1. The exception is upheld.
2. The action is therefore dismissed with costs.

J S Prinsloo
Judge

APPEARANCES:

PLAINTIFF:

J Goveia (absent at hearing)
In Person,
Windhoek

DEFENDANTS:

S Vlieghe
Of Koep & Partners,
Windhoek