REPUBLIC OF NAMIBIA

LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

In the matter between: Case no: HC-MD-LAB-MOT-GEN-2019/00301

GROOTFONTEIN MUNICIPAL COUNCIL	**1ST APPLICANT**
THE MINISTER OF URBAN & RURAL DEVELOPMENT	**2ND APPLICANT**

and

KLEOFAS GEINGOB	**1ST RESPONDENT**
PIETER E KHOA	**2ND RESPONDENT**
EDGAR FRANCIS	**3RD RESPONDENT**
SETH GAWASEB	**4TH RESPONDENT**
SINVULA SMART	**5TH RESPONDENT**
ERASTUS MUUNDA	**6TH RESPONDENT**
SHILUNGA HAFENI	**7TH RESPONDENT**
ANGULA ABED	**8TH RESPONDENT**
MICHAEL NAIBAB-KAYGEE	**9TH RESPONDENT**
STENLEY XOASEB	**10TH RESPONDENT**
ASSER AIDANA	**11TH RESPONDENT**
WILSON NGEAMA	**12TH RESPONDENT**
PATRICK FRANCIS	**13TH RESPONDENT**
DANIEL TSIBEB	**14TH RESPONDENT**
GERSON TJILEPA	**15TH RESPONDENT**

LAURENTIUS HOESEB	**16TH RESPONDENT**
ALFEUS JOSEPH	**17TH RESPONDENT**
PAULUS WIMMERT	**18TH RESPONDENT**
JACKSON ELI	**19TH RESPONDENT**
RUBEN ASHIPALA	**20TH RESPONDENT**
EMGARDT MBAI	**21ST RESPONDENT**
ESHLEY NGEAMA-NGEAMA	**22ND RESPONDENT**
EINO NTINDA	**23RD RESPONDENT**
JOHN ARNOLD	**24TH RESPONDENT**

Neutral citation: *Grootfontein Municipal Council v Geingob* (HC-MD-LAB-MOT-GEN-2019/00301) [2021] NALCMD 7 (12 March 2021)

Coram: GEIER J

Reserved: **18 August 2020**
Delivered: **12 March 2021**

Flynote: Labour law – Payment of benefits to employees of local authorities - Section 27(1)(c)(ii)(bb) of Local Authorities Act 23 of 1992 requiring approval of minister for payment of such benefits – Section peremptory – Provision for payment of such benefits incorporated into a settlement agreement, made an award and also an order of the Labour Court and without prior ministerial approval accordingly invalid and unenforceable. The settlement agreement and resultant Labour Court order varied accordingly

Practice – Applications and motions – Founding affidavit – Must contain all necessary averments to sustain a cause of action and lay basis for case – Affidavits constituting pleadings and evidence – The material averments necessary to sustain a cause of action differ from case to case and in particular will also depend on the type of cause relied upon. In this regard it is important for the pleader to keep in mind which necessary averments are required in a particular case in order to make out a cause of action *(the facta probanda)* and to distinguish those elements from the facts which prove each required element *(the facta probantia).*

In the present instance the case was compromised. In such circumstances the original cause of action and the facts sustaining such original cause of action can generally no longer be relied upon, once compromised, unless the right to rely thereon was reserved or where the compromise was induced by fraud, duress, justus error, misrepresentation, or by some other ground for rescission. As none of these exceptions were applicable the original cause of action and the facts sustaining such original cause of action became irrelevant. Irrelevant matter should not be pleaded – attack mounted on the applicants' pleaded case that the applicant had to plead the original cause of action and facts underlying them thus misconceived as they were rendered irrelevant by the settlement achieved.

Summary: The facts appear from the judgment.

ORDER

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a) The award of the Arbitrator in case No. NEGR 74-17, is hereby varied by deleting paragraph 3 of the Settlement Agreement which was made an award of the arbitrator and which award became an order of the Labour Court when it was filed in terms of the provisions of section 87(1) of the Labour Act, Act 11 of 2007 on 11 February 2019;

b) The aforesaid order of the Labour Court, made on 11 February 2019, is hereby varied consequentially in so far as this may be necessary.

JUDGMENT

GEIER J:

[1] Following the institution of a labour dispute, relating to the payment of 5- year-service- boni, the instituted dispute was compromised by way of a settlement

agreement concluded between the first applicant, the Grootfontein Municipal Council - the employer in this instance - and the respondents - employees of the applicant - on 7 November 2018.

[2] The settlement agreement, which also included the 5-year boni, was made an award and subsequently also made an order of the Labour Court.

[3] Consequent to an urgent application brought by the 2nd applicant, the Minister of Urban and Rural Development, during March 2019, under case HC-MD-CIV-MOT-GEN-2019/00100, and in which the Minister, inter alia, also sought an order declaring the said settlement agreement to be null and void and to be of no force and effect, [1] the first applicant apparently became aware that the second applicant's statutorily prescribed approval had been necessary for the conclusion of the settlement agreement and the payment of the said boni, and, as the prescribed precondition had not been met, it was realized that the subsequent award and court order were rendered invalid and unenforceable thereby.

[4] It was against this background that the applicants then brought the present application in which they seek orders:

> '… varying the award of the Arbitrator in case No. NEGR 74-17, by deleting prayer 3 of the purported Settlement Agreement which was made an award of the Arbitrator and which award became an order of the Labour Court when it was filed in terms of the provisions of section 87(1) of the Labour Act, Act 11 of 2007 on 11 February 2019';[2]

[1] See prayer 3 of the relevant notice of motion in case HC-MD-CIV-MOT-GEN-2019/00100.

[2] Prayer 1 of the notice of motion.

and

'… declaring that Clause 3 of the settlement agreement, purportedly entered into between the First Applicant and the Second to Twenty-fourth Respondents, dated 7 November 2018, in terms of which the dispute between the First Applicant and the Second to Twenty-fourth Respondents was purportedly settled, to be unlawful, null, void and of no force and/ or effect';[3]

[5] The applicants' case was essentially based on the statutory requirements imposed by section 27(1)(c)(ii)(bb) of the Local Authorities Act 23 of 1992 on the first applicant, who is a municipal council, and which may :

'27 (1)(c) …

(i) …

(ii) …

(bb) in the case of the municipal council of a municipality referred to in Part I of Schedule 1, after consultation with the Minister, and, in the case of the municipal council of a municipality referred to in Part II of Schedule 1 or a town council or village council, with the approval of the Minister, determine the remuneration of and provide or give pension and other benefits and housing facilities or benefits for or to its chief executive officer or

[3] Prayer 2 of the notice of motion.

> other staff members and make personnel rules in connection therewith after such consultation or with such approval, as the case may be; …'.

[6] When the settlement agreement was concluded –which then included the aforesaid 5-year- service- boni – which constitute a benefit to its staff members – this was not done in consultation and/or with the approval of the second applicant as required, which aspect the relevant Minister, expressly confirmed.

[7] Given the legal consequences that attach to the failure to comply with this statutory precondition prescribed for the validity of employment benefits afforded to staff members of local authorities - as appear from three relied upon judgments from this court, to the effect that such non-compliance results in the invalidity and unenforceability of the benefit concerned [4] - the applicants sought the relief quoted above.

[8] The respondents opposed the application.

The effect of the statutory non-compliance

[9] Although the answering papers raised certain grounds of opposition to the merits of the application, it became clear, once heads of argument had been filed on behalf of the respondents, an aspect that was also confirmed by Mr Muhongo, counsel for the respondents, at the first hearing of the matter, that the case would have to be determined on a much narrower basis and with reference to the technical objections, which will be addressed below..

[10] Suffice it to say at this stage, that Mr Muhongo's concession in regard to the applicants' case on the merits – was correctly made. So much becomes clear from the *Luederitz Town Council* decision - as followed in *Namibia Training Authority v Nangolo-Rukoro and Another* and in *Transnamib Holdings Ltd v Tjivikua and Others* - where the following was said :

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[4] See *Luederitz Town Council v Shipepe* 2013 (4) NR 1039 (LC) at [22], *Namibia Training Authority v Nangolo-Rukoro and Another* 2016 (4) NR 992 (LC) at [3] to [31] and *Transnamib Holdings Ltd v Tjivikua and Others* 2019 (3) NR 756 (LC) at [79].

'[22] The complaint cannot be properly directed at the fact that the legislature has accorded the minister the power of approval in s 27 of the terms and conditions of employment of local authority employees. As was stated by the High Court in the context of s 30(t), the legislature specifically reserved such a power of approval to the minister — in this instance in respect of employment conditions. This was presumably enacted to ensure a degree of uniformity within local authority councils or as a check upon the exercise of the powers of local authorities in according benefits to the employees. The legislature made a choice in requiring ministerial approval as a requisite for the validity of the terms and conditions of employees of local authorities. Effect must be given to that legislative choice in providing for ministerial approval for the validity of the terms and conditions of employment of local authorities. Terms and conditions (and in this instance benefits), given by local authority councils without ministerial approval which is a requisite for their validity, would in the absence of that approval be to that extent invalid and unenforceable as being in clear conflict with the wording of s 27 of the Local Authorities Act.

[23] It follows that the benefits offered by the appellant which had not been approved by the minister were invalid to that extent as being in conflict with the Local Authorities Act. The arbitrator's award seeks to give effect to such benefits and falls to be set aside in its entirety for this reason alone. …'[5]

[11] These authorities lay the main issue, underlying the applicants' case, to rest. Those parts of the settlement agreement and the relevant portions of the resultant award and the consequent elevation of the award to an order of the Labour Court, clearly cannot be sustained in the absence of the requisite ministerial approval and those portions are thus – to that extent – rendered invalid and unenforceable, subject to the outcome of the relied upon technical objections.

<u>The impact of section117(1)(d) of the Labour Act on the relief sought</u>

[12] This finding then necessitates the determination of the remaining grounds of opposition.

[13] The first grounds raised on behalf of the respondents can easily be determined as it simply relates to the impermissible manner in which the applicants had formulated the relief sought in this matter in apparent disregard with the

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[5] *Luederitz Town Council v Shipepe.*

requirements imposed by the Labour Act for declaratory relief as section 117 (1)(d) states :

> '(1) The Labour Court has exclusive jurisdiction to-
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> (d) grant a declaratory order in respect of any provision of this Act, a collective agreement, contract of employment or wage order, provided that the declaratory order is the only relief sought; …'.

[14] In this regard Mr Boonzaaier, who acts for the applicants herein submitted that:

> 'The applicants' relief as per prayer 1 of the notice of motion is premised on rule 16(5) of the Labour Court Rules to the extent that the order made is void and invalid due to the absence of ministerial approval for the leave benefits agreed upon between the first applicant and the respondents. The applicants therefore request the honourable court to vary the existing order to the extent that prayer 3 of the order that is sought to varied, be deleted in its entirety.
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> In terms of section 117(1)(i) this honourable court is in general empowered to deal with all matters necessary or incidental to its functions under this Act concerning any labour matter, whether or not governed by the provisions of this Act, any other law or the common law.
>
> The applicant's relief as per prayer 2 of the notice of motion seeks a declaratory order which can only, in terms of section 117(1)(d) of the Labour Act, Act 11 of 2007 ("the Labour Act"), be granted if the applicant does not seek the relief in prayer 1 and is sought as stand-alone relief.'
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> It is respectfully submitted that the applicant made out a case both for a variation of the order filed on 11 February 2019 in prayer 1 independent from prayer 2 as well as a case for a declaratory relief independent from prayer 1.'

[15] I cannot detect from these submissions that Mr Boonzaaier disagrees with Mt Muhongo's submission essentially to the effect that if declaratory relief is sought in the Labour Court, such declaratory relief must be the only relief that is to be sought.

[16] The point is thus well taken and it follows that the sought declaratory relief does not have to be considered, as was tentatively suggested. I further take into account in this regard that Mr Boonzaaier has, in any event, submitted that Prayer 1 of the notice of motion, is sought as 'stand-alone relief'. The entitlement to such relief thus remains to be considered

Have the applicants made out a cause of action?

[17] Mr Muhongo then argued the remaining ground of opposition, in written heads of argument, as follows:

'Have the first and the second applicants made out a case for the relief that they seek?

16. The applicants' pleaded case is crystallised in paragraphs 4 to 5 hereof.

17. The principles - the discipline in motion proceedings - of the authorities (and the consequences of their non-observance) referenced at paragraph 8 are repeated herein.

18. Applying the above principles to the applicants' pleaded case, it is submitted (having regard to the applicants' founding affidavit) that the applicants have failed to make out a case for the relief that they seek for the reason advanced below.

19. The Supreme Court[6] had, amongst others, previously observed the law related to the conclusion of compromises by persons (statutory bodies) in the position of the first applicant as follows:

> "[9] …the Fund could, in an appropriate case, compromise a claim. If, as Damaseb AJA noted, the Fund was uncertain as to its prospects of success at trial, it could quite competently settle a claim. Once that happened, that would be the end of the matter. Its effect would be the same as *res judicata* on a judgment given

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[6] *Mbambus v Motor Vehicle Accident Fund* 2015 (3) NR 605 (SC).

by consent and neither party would have any cause of action thereafter on the same facts, unless the right to rely thereon was reserved. For this reason a party cannot raise defences to the original cause of action except in cases where the compromise was induced by fraud, duress, *justus* error*,* misrepresentation, or some other ground for rescission. *Georgias v Standard Chartered Finance Zimbabwe* Ltd 2000 (1) SA 126 (ZS), at 138I–140D, quoted with approval in *Metals Australia Ltd and Another v Amakutuwa and Others* 2011 (1) NR 262 (SC) para 21."

20. From the above passage, the following emerges that:

20.1. the first applicant - for any justifiable reason and in terms of its statutory powers - is competent to compromise claims against it;
20.2. once a claim is so compromised it has the effect of *res judicata;*
and
20.3. the first applicant would be entitled to rescind an Order of this Court brought about by a compromise that is void.

21. It goes without saying that in order for the first applicant to make out a case for variation of an Order of this Court brought about by its compromise that the first applicant is duty bound to make the following allegations in its founding affidavit:

21.1. the nature and extent of the cause of action instituted or to be instituted against it;
and

21.2. the basis - with reference to the nature and extent of the cause of action instituted or to be instituted against its - upon which it alleges that the compromise was void.

22. The type of allegations in paragraphs 21.1 and 21.2 are conspicuously absent from the first applicants' founding affidavit.

23. Absent the above allegations from the applicants' founding affidavit, this Honourable Court is unable to assess whether or not the first applicant's compromise was - in the circumstances[7] of this matter - void.

24. The above submission is made on account of the complexity of this matter; it implicates the consideration and ascertainment of employment contracts, employer and employee obligations in terms of the Labour Act, 11 of 2007 (sections 50 and 86) and the Local Authorities Act, Act 23 of 1992 (section 27(c)(bb)).

25. It is only after the first applicant properly and fully pleads the matter highlighted in paragraphs 1.1, 1.2, 21.1 and 21.2, would this Court be placed to determination whether or not the compromise was indeed void.

26. On the above basis, it is submitted that prayer 1 of the notice of motion falls to be dismissed.'

[18] These arguments where countered by Mr Boonzaaier in written supplementary heads. Here it was submitted :

'The Respondents' first ground: The applicants have not made out a case for the relief they seek

[7] The omissions in the first applicant's founding affidavit highlighted in paragraphs 1.1 and 1.2. are fatal to the relief sought by the applicants in this application.

1. There are no merits in this ground for the following reasons:

1.1 The factual basis for the relief sought by the applicants is that there was no approval granted by the second applicant to the first applicant for the impugned benefit. The second applicant confirms this under oath.

1.2 The legal basis for the relief sought by the applicants is premised on section 27(1)(c)(ii) (bb) of the Local Authorities Act.

1.3 The above factual and legal basis was properly pleaded in the first applicant's founding affidavit.

2. The contention by the respondents that the applicants did not make out a case is vague and not evident from the affidavit filed by the respondents.

3. In the Supreme Court matter of *Nelumbu and Others v Hikumwah and Others*[8] Damaseb DCJ stated the following at paragraph 41:

> "Since affidavits constitute both the pleadings and the evidence in motion proceedings, a party must make sure that all the evidence necessary to support its case is included in the affidavit: *Stipp & another v Shade Centre & others* 2007 (2) NR 627 (SC) at 634G-H. In other words, the affidavits must contain all the averments necessary to sustain a cause of action or a defence. As was stated in *Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa and Others:*
>
> > 'It is trite law that in motion proceedings the affidavits serve not only to place evidence before the Court but also to define the issues between the parties. In so doing the issues between the parties are identified. This is not only for the benefit of the Court but also, and primarily, for the parties. The parties must know the case that must be met and in respect of which they must adduce evidence in the affidavits.'"(Own emphasis added).

4. The affidavit of the respondents does not indicate the basis of its defence in its answering affidavit. The basis of the defence is found in the heads of argument of the respondents in para 21.1, 21.2 and 21.3 which states that:

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[8] 2017 (2) NR 433 (SC).

"21.1. the nature and extent of the cause of action instituted or to be instituted against it; and 21.2. the basis - with reference to the nature and extent of the cause of action instituted or to be instituted against its - upon which it alleges that the compromise was void."

5. The respondent relies on the case of *Mbambus v Motor Vehicle Accident Fund* [9]. What happened in this matter is that the MVAF settled a claim which it was entitled. It however, later claimed that the deceased was at fault. The Supreme Court's complaint as per the judgement of Garwe AJA is set out in para 23-25 stating that:

"As Damaseb AJA quite correctly comments in para [72] of the judgment, no-one knows quite how, when and why the Fund had a change of heart and why it then alleged that the deceased had been at fault. We do not know whether the Fund knew, at the time it attempted to settle the matter, that the deceased had been at fault. We do not know whether this was a fact which later came to the attention of the Fund. In my view, the proceedings having been brought by way of stated case, it is undesirable and perhaps even wrong, given the divergence between the two parties on this crucial issue, to infer that the respondent must have been satisfied that the deceased had been at fault.

[24] In including the narration that the respondent was alleging that the deceased had been at fault in the stated case, the parties should have gone further to clarify what the respective position of each of the parties was on this contentious issue. Instead the matter was left hanging and, not surprisingly, the High Court proceeded on the basis that this was common cause, when in fact it was not.

[25] In the result, I am of the considered opinion that not all the facts were placed before the High Court and that the court did not have the capacity, in the absence of further clarification or evidence, to resolve the matter. Since the pith of the matter was whether the deceased had been at fault, the court *a quo* should, in the circumstances, have refused to deal with the matter as a stated case and referred it to trial in the ordinary way. The court misdirected itself in proceeding to assume that it was common cause that the deceased had been at fault.''

[9] 2015 (3) NR 605 (SC).

6. What the respondent is suggesting is that the applicants had to place all the evidence that lead to the compromise before this court. However, such a contention based on the *Mbambus* case, who had to consider the voidness of the compromise on the fault of the deceased, which is an element of the claim, which subsequent evidence had to be proof, is irreconcilable with the matter *in casu*.

7. In this matter the first applicant's claim is that the agreement and the subsequent court order is void based on the non-compliance of a statutory requirement outside the cause of the action, namely the absence of the peremptory ministerial approval, and not the cause of action between the parties that lead to the compromises entered into between the parties.

8. It is respectfully submitted that there is no merit in the contention by the respondent that the applicants have not made out a case for the relief sought.'

Is the applicants' case excipiable then?

[19] Given what the Supreme Court has authoritatively stated in *Nelumbu and Others v Hikumwah and Others,* Counsel are obviously correct when they submit for starters that the since affidavits constitute both the pleadings and the evidence in motion proceedings, the affidavits must thus contain all the averments necessary to sustain a 'cause of action' or a 'defence'.

[20] The material averments necessary to sustain a cause of action will obviously differ from case to case and in particular will also depend on the type of cause relied upon. In this regard it is important for the pleader to keep in mind which necessary averments are required in a particular case in order to make out a cause of action *(the facta probanda)* and to distinguish those elements from the facts which prove each required element *(the facta probantia).* [10]

[21] The cause of action relied upon by the applicants in this case is simple. The applicants rely on the impact of the non-compliance with the prerequisite statutory

[10] Compare : *McKenzie v Farmers' Co-operative Meat Industries Ltd* 1922 AD 16 at 23. As often cited with approval in this jurisdiction : see for example *Otjozondu Mining (Pty) Ltd v Purity Manganese (Pty) Ltd* 2011 (1) NR 298 (HC) at [66], *China Henan Intl Cooperation (Pty) Ltd v De Klerk* 2014 (2) NR 517 (HC) at [15], *Nelumbu v Hikumwah* 2017 (2) NR 433 (SC) at [40] and *Brink NO v Erongo All Sure Ins CC* 2018 (3) NR 641 (SC) at [53].

requirements set by section 27(1)(c)(ii)(bb) of the Local Authorities Act 1992 on a particular clause of the settlement agreement concluded between the parties, as elevated to an order of the Labour Court.

[22] They have pleaded their case as follows:

a) After the citation of the parties – where the applicants first explain the purpose of the application; and

b) After alleging that the court has jurisdiction, they embark on what is called a 'factual synopsis';

c) They then set out that a settlement agreement was concluded between the parties and that such agreement was made an award;

d) Some allegations are made in regard to the advice received prior to the conclusion of the agreement but that such advice did not deal with the requirements imposed by section 27(1)(c)(ii)(bb) of the Local Authorities Act 1995 and its potential effect, which aspect was thus not considered;

e) That it was only realized later, after the second applicant had brought the abovementioned application in case HC-MD-CIV-MOT-GEN-2019/00100, that the requisite ministerial approval for the payment of the boni – the to be conferred employment benefit as per the settlement agreement - had not been obtained;

f) That the dependent thus had been advised that the first applicant could, consequentially, not have concluded the settlement without such prior approval which rendered clause 3 of the agreement a nullity.

[23] Importantly the applicants then also dealt with, what they call 'legal contentions'. Here the relied upon said statutory provisions, Government Notices and Ministerial Directives where set out and the legal conclusions to be drawn from the respective non-compliances where then pleaded.[11] It was further pointed out that the

[11] This was a prerequisite : see for instance *Denker v Ameib Rhino Sanctuary (Pty) Ltd* 2017 (4) NR 1173 (SC) at [40] which cited with approval *Yannakou v Apollo Club* 1974 (1) SA 614 (A) the leading

second applicant, the Minister, had confirmed under oath that the necessary statutory consent/approval had not been obtained and that, as a result, the relevant portion of the settlement agreement relating to employee benefits, to wit the 5-year boni, was void *ab initio* and that the Labour court order should thus be varied to that extent and that the relief sought in this regard should thus be granted.

[24] Given the above I can detect no material defect in the manner in which the applicants case has been pleaded despite the fact that Mr Muhongo has complained that the *' … nature and extent of the cause of action of action relied upon …' was not pleaded and that there was a failure to set out the basis ' … with reference to the nature and extent of the cause of action instituted or to be instituted against its - upon which it alleges that the compromise was void …'* as in my view these submissions fail to take into account the legal effect brought about by a compromise and in respect of which the Supreme Court has stated:

> [9] … Its effect would be the same as res judicata on a judgment given by consent and neither party would have any cause of action thereafter on the same facts, unless the right to rely thereon was reserved. For this reason a party cannot raise defences to the original cause of action except in cases where the compromise was induced by fraud, duress, justus error, misrepresentation, or some other ground for rescission. *Georgias and Another v Standard Chartered Finance Zimbabwe Ltd* 2000 (1) SA 126 (ZS) at 138I – 140D, quoted with approval in *Metals Australia Ltd and Another v Amakutuwa and Others* 2011 (1) NR 262 (SC) para 21.'[12]

[25] It so appears that the original cause of action and the facts sustaining such original cause of action can generally no longer be relied upon, once compromised, unless the right to rely thereon was reserved or where the compromise was induced by fraud, duress, justus error, misrepresentation, or by some other ground for

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authority on this aspect and which the court did as follows : ' … a party who relies on a statutory provision need not necessarily refer to the statute or section relied on, provided that where it does not, its case must be formulated in clear terms to enable the opponent, and the court, to appreciate just what the pleader's case is with reference to the provision relied upon. As was said by Trollip JA *in Yannakou v Apollo Club* 1974 (1) SA 614 (A) at 623F – G: D

'Hence, if he relies on a particular section of a statute, he must either state the number of the section and the statute he is relying on or formulate his [case] sufficiently clearly so as to indicate that he is relying on it . . . .'

[12] *Mbambus v Motor Vehicle Accident Fund* 2015 (3) NR 605 (SC).

rescission. None of these exceptions are applicable *in casu*. The original cause of action and the facts sustaining such original cause of action thus became irrelevant in such circumstances. Irrelevant matter should not be pleaded – so much must be clear.[13] As all the attacks mounted by Mr Muhongo *vis a vis* the applicants' pleaded case relate to the original cause of action and the facts sustaining such original cause of action, as compromised, this cause of action and the facts sustaining them did not have to be pleaded by the applicants once rendered irrelevant by the settlement achieved.

[26] The applicants' case is simple and straightforward. It has been pleaded with sufficient clarity. The material facts alleged, as well as all the statutory- and case law relied upon and identified in the founding papers, militate towards the right of obtaining an appropriate judgment by the court as they support the legal conclusions which the applicants ultimately wish the court to draw and which also – and most importantly - sustain the relief they seek.

[27] Mr Muhongo has also submitted that the applicants should have pleaded 'the extent and purport of the terms of the employment relationships of the respondents and that they are governed by written contracts of employment. He criticised further that the applicants failed to plead on which date the respondents, *' … enforcing their aforesaid contractual rights, referred a dispute (the nature, extent and purport whereof was not pleaded) to the Labour Commissioner for appropriate relief (the nature, extent and purport whereof was also not pleaded).*'

[28] Part of this attack is dealt with by what I have already said in regard to the other gounds on which reliance was placed. Nothing needs to be added in this regard. If regard is then had to each particular citation of each respondent it merges that it was alleged that each cited respondent *' … is one of the employees of the 1st Applicant who on 7 November 2018 obtained an arbitration award in his favour against the 1st Applicant'.* It so appears firstly that the relationship of each respondent to the applicant was pleaded generally - to the extent that it is at least indicated that the first applicant and each of the cited 24 respondents are in an employment relationship – and – secondly - that the precise nature and extent of each employment relationship was not pleaded. Here it must however be taken into

[13] Compare for example Rule 58(1) and relevant case law.

account that the exact terms of the underlying employment contracts were rendered irrelevant by the settlement and thus did not have to be pleaded. What had to be pleaded – given the relied upon cause of action – and which was pleaded – was - that each cited respondent was a party to the settlement agreement to be varied ie. it thus appeared from the citation that each cited respondent would be a necessary party, with a legal interest in the subject matter of the dispute, whose legal interest could be affected by the order that the court could make. I cannot fault this approach and it must follow that also this line of attack cannot succeed.

[29] The conclusion that is so to be drawn from all this is that the applicants have made out a case on the papers for the relief they seek in prayer 1 of the notice of motion, that is a case on the pleadings as well as on the merits of their case.

[30] In the result the following order is made:

a) The award of the Arbitrator in case No. NEGR 74-17, is hereby varied by deleting paragraph 3 of the Settlement Agreement which was made an award of the arbitrator and which award became an order of the Labour Court when it was filed in terms of the provisions of section 87(1) of the Labour Act, Act 11 of 2007 on 11 February 2019;

b) The aforesaid order of the Labour Court made on 11 February 2019 is hereby varied consequentially in so far as this may be necessary.

H GEIER

Judge

APPEARANCES

APPLICANTS:	M G Boonzaier Instructed by Sibeya & Partners Legal Practitioners, Windhoek
RESPONDENTS:	T Muhongo Instructed by Tjitemisa & Associates, Windhoek