

THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil case No. 4090/2006

In the matter between

KHANYISILE MASEKO

Plaintiff

Vs

MUNICIPAL COUNCIL OF MBABANE

Defendant

Coram

Banda, CJ

For the Plaintiff

Mr. Masuku

For Defendant

Mr. Jele

JUDGMENT

[1] The applicant who is the plaintiff in the main action, excepts to the defendant's amended plea on the grounds that such plea does not contain averments necessary to disclose a defence to the plaintiffs claim as contained in the plaintiffs particulars of claim. The applicant contends that the defendant's averments constitute a bare denial that is excipiable in the following respects namely that -

- (i) the defendant generally denies that the plaintiff wares were confiscated
- (ii) that the defendant generally denies the computation of the plaintiffs earnings.
- (iii) that the defendant generally denies that the confiscation was unlawful and
- (iv) that the defendant generally denies that the plaintiff suffered damages.

[2] In the alternative the applicant has contended that paragraph 5 of the defendant's amended plea be struck out on the grounds that it contains contradictory matter.

[3] The defendants have denied the applicant's contentions and have submitted that the amended plea does not offend against the Rules governing pleadings.

[4] Rule 22 of the High Court Rules governs the manner in which a plea may be pleaded and Rule 22(2) is of particular relevance in this application and it states as follows:-

"The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of those facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies."

[5] Mr. Masuku has submitted that the defendant's amended plea does not disclose facts to support a defence and that it is a general denial and merely seeks to paraphrase the plaintiff's averments. He has contended that general denials are not sufficient to disclose defendant's defence and that the amended plea does not only contain bare denials but that it is self contradictory and that such matters should be expunged from the plea. In particular Mr. Masuku has cited paragraph 5 of the defendant's amended plea as contradictory.

[6] Mr. Jele for the defendant first made a brief reference to the general rules regarding pleadings. He has submitted that the plea

makes it clear that the defendants are a municipality who have a duty under the law to apply and enforce certain Regulations and Rules. He submitted that the defendant's plea is premised on a legal basis which gives them power to confiscate goods that are sold in contravention of the Regulations. He has argued that paragraph 5 of the amended plea is not contradictory and that it raises matters that must be dealt with on evidence at the trial. He submitted finally that what the applicant should have sought was to apply for further and better particulars which are available to the applicant under the Rules rather than apply for an exception. He has submitted that the application has no merits and should be dismissed.

[7] Pleadings impose on the parties to litigation a primary responsibility to state in their pleadings all the necessary particulars of any claim, defence or other matter pleaded. If any pleading does not state such particulars or state only some or insufficient or inadequate particulars, the Rules enable the Court to order a party to serve either -

- (i) particulars or further and better particulars of any claim, defence or other matter pleaded or
- (ii) a statement of the nature of the case relied on
- or
- (iii) both such particulars and statement; vide Rule 21(1) of the High Court Rules.

[8] It is, therefore, an essential principle of pleadings that particulars should be given of every material allegation contained in the pleading. The function of particulars of pleading is to carry into operation the

overriding principle that litigation between the parties and particularly the trial should be conducted fairly, openly and without surprise and to reduce costs. *ASTROVLANIS COMPANIA NAVIERA SA v LINARD* [1972] 2 AER 647

The function of pleadings is -

- (i) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved.
- (ii) to prevent the other side from being surprised at the trial.
- (iii) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial.
- (iv) to limit the generality of the pleadings.

[9] Briefly the plaintiffs case against the defendant was this:

- (i) that the confiscation of the plaintiffs wares was unlawful.
- (ii) that the plaintiff was assaulted.
- (iii) that the plaintiff suffered loss of earnings.
- (iv) that the plaintiff suffered damages from pain and suffering.

[10] I have carefully studied the defendant's amended plea which has been impugned in this application and, in my view, I can find no basis

for the attack. Each of the main claims against the defendant has been specifically denied and in some respects the basis of the denial has also been given. The Rules of pleadings require a party to deny each material allegation made and the defendants have clearly done that in their amended plea to which exception is being taken. In my view the defendant's denials are of sufficient precision to enable the plaintiff to know what is the case she has to meet. The defendant's denials are specific and can leave the plaintiff in doubt about their effect.

[11] I have also considered the contention that paragraph 5 of the defendant's amended plea is contradictory and that it does not address the arguments raised in paragraph 5 of the plaintiff's claim. It is difficult to understand the plaintiff's contention on the nature of defendant's paragraph 5 of the amended plea because paragraph 5 specifically addresses the averment of confiscation and gives the basis for it. The defendant's amended plea clearly satisfies the principles enunciated in the case of *HLONGWANE v METHODIST CHURCH OF SOUTH AFRICA* 1933 WDD 169. See also the principles discussed at page 464 and 465 of *HERBSTEIN & VAN WINSTEN*, 4th Edition of Civil Practice of the Supreme Court of South Africa. I can find no merit in the applicant's contention. It was open to the applicant, if she so wished, to apply under the rules of pleading for further and better particulars and she did not do that. I am satisfied that the defendant's amended plea does disclose the facts on which the defence will be based and the plaintiff ought to know what case she will have to meet at the trial. I am satisfied and I find that this application has no merits and it is accordingly dismissed with costs.

Pronounced at the High Court sitting at Mbabane this 29th day of June

2007.

R.A. BANDA
CHIEF JUSTICE