



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 1865/2011

In the matter between:

AARON T. MAMBA

Plaintiff

And

ENOCK ZAGILA LOKOTFWAKO

Defendant

Neutral citation: **Aaron T. Mamba v Enock Zagila Lokotfwako (1834/2012)**
[2012] SZHC 24 (28th February 2013)

Coram: M. Dlamini J.

Heard: 9th November 2012

Delivered: 28th February 2013

Rule 18(10) – compliance thereof does not mean itemization of every material – summed up figure is sufficient where single transaction is concerned – itemization is a matter for evidence – material facts must be distinguished from evidence in particulars of claim.

Summary: Combined summons were lodged on behalf of the plaintiff for a claim arising out of a motor vehicle collision between defendant and plaintiff's employee. The plaintiff claims a total amount of E32,150.00. Defendant having filed notice to defend also served a notice in terms of Rule 18 (10).

[1] The matter came before me on 7th November 2012. It transpired that the defendant filed a notice in terms of Rule 30. In *replicando*, the plaintiff also served upon defendant a Rule 30 application. The contention was that defendant was out of time. On the date of hearing *wit.* 7th November 2012, the defendant, represented by Mr. I. Carmichael conceded that his Rule 30 application was irregular by reason of lapse of time and tendered costs. Defendant applied for condonation of his late filing. By consent of plaintiff, his application was granted with costs and by consent of both parties the application under Rule 30 of defendant was postponed to the 9th November 2012.

[2] On the date of argument, defendant submitted, as supported by his Rule 30 notice:

“The particulars of claim contravened Rule 18 (10) in that they do not state the following:

1.1 How the globular figure for spares, repairs and panel beating is made up;

1.2 How the globular figure for damages for loss of business is made up.”

[3] The defendant concludes by praying that the plaintiff's action be dismissed.

[4] The plaintiff's particulars of claim state as follows at paragraph 7:

“As a result of the damage caused by the defendant's employee, plaintiff suffered damages in the sum of E32,150.00 made up as follows:

- a) Spares, repairs and panel beating - E7,150.00*
- b) Damages for loss of business – E25,000.00*
E32,150.00

[5] During submission, Counsel for defendant contended that defendant could not plead sufficiently owing to plaintiff's failure to observe rule 18 (10).

[6] Rule18 (10) reads:

“A plaintiff suing for damages shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof.”

[7] My duty is to determine whether plaintiff has complied with Rule 18 (10). In other words, has the plaintiff set out sufficient particulars in his particulars of claim in order to enable defendant to reasonably assess the *quantum* of the damages thereof?

[8] Faced with a similar question, the honourable **Blienden J. in Grindrod (Pty) Ltd v Delpont and Others 1997 (1) S.A. 342** expounding on Rule 18 (10) of the Uniform Rules (South Africa) which is *pari materia* with our Rule 18 (10) stated at page 346-347:

“In my view, this latter phrase indicates a provision in the Rules relating to pleadings which enjoins any party claiming damages to provide sufficient information to enable the opposing party to know

why the particular amount being claimed as damages is in fact being claimed. ... Without this information, the defendant would not be in a position to assess the quantum of the plaintiff's claim."

[9] The last sentence by the learned judge prompts the next enquiry: Could it be said from the particulars herein by plaintiff that the defendant would not be in a position to assess the *quantum* of the plaintiff's claim?

[10] It is prudent to revisit plaintiff's particulars in this regard in order to make a full assessment of his particulars in the light of the last sentence by his **Lordship Blienden J. supra.**

a) Spares, repairs and panel beating	- E7,150.00
b) Damages for loss of business –	<u>E25,000.00</u>
	<u>E32,150.00</u>

[11] In a well prepared heads of arguments, Mr. Carmichael, for the respondent postulates that the above particulars are nothing but a bold allegation by plaintiff as they translate into globular figures which "*are not expounded upon*".

[12] He then cites the case of **Sasol Industries v Electrical Repair Engineering 1992 (4) S.A. 466** where it reads:

"In my view, if a pleading does not comply with the sub-rules of Rule 18 requiring specified particulars to be set out therein prejudice required for the setting aside of the pleading in terms of Rule 30 has prima facie been established.

[13] In *casu*, the defendant seems to be saying that the plaintiff ought to have itemized each particular and indicated cost against it rather than giving a globular figure for spares, repairs and panel beating. This was explicitly submitted by Counsel for defendant. Similarly in respect of claim under (b) for damages. He states that he ought to have itemized in the particulars of claim how he suffered loss of business and indicate a figure against such item.

[14] Seized with a similar argument **Schreiner J.** (as he then was) in **Getz v Pahlavi 1943 WLD 142** at **146** correctly held:

“It is obviously desirable that the defendant should be informed of the costs estimate or actual of the several items ... On the other hand, in some cases it may be unreasonable to require a separate allocation of different items of work because in the ordinary course they would be done together as a single job. If that is the position it is open to the plaintiff to say so. In the present the plaintiff has stated that the E450 is an estimate but it is not reasonable to suppose that an estimate of the cost of the several different kinds of repair or replacement work to be done was arrived at without itemization. The E450 must be a lump sum, a total made up of a number of items which the plaintiff will seek to establish at the trial.”(my emphasis)

[15] I understand the learned judge to be saying that the court has a duty to ascertain where a lump sum is alleged as to whether in the ordinary course of events the amount claimed would be for a “*single*” transaction. If that is the case, ordinarily a total figure may be stated. Itemization would be a question of trial. This is so because in a summons, the plaintiff is not

expected to plead evidence (*facta probantia*) but only material facts (*facta probanda*). *Facta probantia* is a matter for trial.

[16] Fortifying this position **Ploosvan Amstel J.** in **Minister Van Wet En Order v Jacobs 1999 (1) S.A. 944** at 945 held as ratio on Rule 18 (10):

“Rule stipulating minimum particulars to be furnished by plaintiff to enable defendant reasonably to estimate quantum and plead thereto – not entitling defendant to insist on specific particulars and information or proposed evidence in support of claims.”

[17] In *casu* it is clear that claim (a) is as a result of repairs to the damaged motor vehicle. That there are parts added to it, is part and parcel of repairs and therefore a “*single job*” in accordance with **Schreiner J.**’s analysis. During discovery, the mechanic receipt will be produced or during trial evidence adduced to inform defendant further. The same applies to claim (b) *wit.* loss of business.

[18] In the foregoing, I make the following orders:

1. Defendant’s application in terms of Rule 30 is dismissed.
2. Defendant is directed to pay costs.

DLAMINI M.
JUDGE

For Plaintiff: Mr. O. Nzima

For Defendant: Advocate I. Carmichael instructed by M. S. Simelane