



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Case No. 1238/2012

In the matter between:

**SKHUMBUSO MAKHAZA MAZIYA**

**PLAINTIFF**

**And**

**SWAZILAND ELECTRICITY COMPANY**

**1<sup>ST</sup> DEFENDANT**

**SWAZILAND ROYAL INSURANCE**

**CORPORATION**

**2<sup>ND</sup> DEFENDANT**

*Neutral citation:*

*Skhumbuso Makhaza Maziya v. Swaziland  
Electricity Company & Another (1238/2012)  
[2014] SZHC 188 (7<sup>th</sup> August 2014)*

**Coram** : **M. E. SIMELANE, AJ**

**Heard** : **1<sup>st</sup> August 2014**

**Delivered** : **7<sup>th</sup> August 2014**

**Summary**

*Exception – summons alleged not to comply with Rule 18(10) – proper procedure for objection should have been in terms of Rule 30 – particulars comply with Rule 18(10) – exception dismissed with costs.*

---

---

**JUDGMENT  
(EXCEPTION)**

---

- [1] The Plaintiff issued Combined Summons against the Defendant for a personal injury claim in that on or about 28<sup>th</sup> August 2008 at or near Manjengeni / Malibeni area he was electrocuted by electricity cables that were intentionally and or negligently left lying on the ground unattended thereto by the 1<sup>st</sup> Defendant's personnel.
- [2] He further avers that the staff of Defendant took him to Dvokolwako Clinic but due to complication or worsening of his condition he was transferred to Manzini Clinic. He was admitted for four (4) days and became an outpatient up until November 2008.
- [3] Further the Plaintiff pleads that he is 41 years of age.

[4] He pleads further that on or about December 2010 he was again taken to the Manzini Clinic for further medical check up but the 1<sup>st</sup> Defendant is refusing to release the medical reports compiled by Doctor Groom despite demand.

[5] The Plaintiff further avers that after the electrocution his health condition has changed and cannot work as he did before. He suffers from back pain, weak knees, heart pain, weak memory and mental disorder which he experiences each and every day. He claims to be permanently disabled as a result of the electrocution by the electricity.

[6] He now claims E2 500 000.00 (Two Million five hundred thousand Emalangi) which the 1<sup>st</sup> Defendant is refusing to pay broken down as follows;

a) Pain and suffering E 100 000.00

b) Permanent disfigurement

(head, hand and leg) E 100 000.00

c) Loss of enjoyment of amenities

of life E 350 000.00

d) Estimated future medicals                      E 150 000.00

E2 500 000.00

[7] The Defendants filed an exception after requesting further particulars relating to when and at what time the electrocution took place. They further requested particulars as to how was the Plaintiff electrocuted.

[8] The request for further particulars was responded to showing that the electrocution happened at night at around 02000 hours when the Plaintiff tried to drink from the water as the cables were in the water.

[9] The Defendant thereafter moved an exception which reads as follows:

- “1. That the Particulars of Claim offends Rule 18(10) in that:*
- a) The Plaintiff has not pleaded the extent of his alleged injuries and whether the same are permanent or temporary.*
  - b) The Plaintiff has failed to plead the nature and extent of the said injuries.*
  - c) The Plaintiff has failed to disclose the duration of the alleged pain and suffering and which injuries caused it.*
  - d) The Plaintiff has failed to disclose how the amounts being claimed are arrived at, in respect of the amenities of life.*

- e) *The Plaintiff claims all round globular figures with no explanation as to how these are arrived at.*
- f) *The Plaintiff has omitted to plead the full description of the alleged disfigurement and whether it is temporary or permanent.*
- g) *The Plaintiff has failed to state his date of birth.”*

[10] The Defendant argued that the Plaintiff’s Particulars of Claim lacked averments to sustain a cause of action hence it should be upheld with costs.

[11] It must be noted that the Defendant complains about failure to comply with Rule 18(10).

[12] The said Rule 18 has its own regulatory mechanism if there has been no compliance thereof which is found at Rule 18 (12) which reads as follows:

*“If a party fails to comply with any of the provisions of this Rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with Rule 30.” (underlining my emphasis).*

[13] On this point alone the exception ought to fail but if I am wrong I also hold that the exception ought to fail because there is compliance with Rule 18(10) by the Plaintiff.

[14] The said Rule 18(10) reads as follows:

*“Rules relating to Pleading generally.*

*18. (10) A plaintiff suing for damages shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof:*

*Provided that a plaintiff suing for damages for personal injury shall specify his date of birth, the nature and extent of the injuries, and the nature, effects and duration of the disability alleged to give rise to such damages, and shall as far as practicable state separately what amount, if any, is claimed for —*

*(a) medical costs, and hospital and other similar expenses, and how these costs and expenses are made up;*

*(b) pain and suffering, stating whether temporary or permanent and which injuries caused it;*

- (c) *disability in respect of—*
- (i) *the earning of income, stating the earnings lost to date and how the amount is made up and the estimated future loss and the nature of the work the plaintiff will in future be able to do;*
  - (ii) *the enjoyment of amenities of life, giving particulars and stating whether the disability concerned is temporary or permanent; and*
- (d) *disfigurement, with a full description thereof and stating whether it is temporary or permanent.”*

[15] The exception requires the Plaintiff to plead evidence which in terms of civil procedure would be most embarrassing (**Cumes v Cumes and Others 1950 2 SA 15 (C)**).

[16] The following statement by **Bony J** in **Jones v Hamilton & Haw (1886) 5 EDC 222 at 228** explains the position:

*“There is a distinction between giving evidence of a fact and stating that fact...Stating that a thing was done is stating a*

*fact...giving the details of how it was done would be giving evidence of it.”*

The facts which must be pleaded are therefore material facts. The pleadings of the material facts of the case therefore constitute the necessary averments; anything else will constitute unnecessary averments and may be liable to be struck out.

[17] I hold further that the mention of the age of the Plaintiff without stating the date of birth does not run contrary to clause 18(10) for the intention thereof is to get the age of the Plaintiff.

[18] The Plaintiff seeks general damages which are presumed, and it is accordingly not necessary to do more than to allege it generally. A Defendant is not entitled to any further particularity. **(Reid NO v Royal Insurance Co Ltd 1951 (1) SA 713 (T).**

[19] The alleged offending paragraphs must be looked at as whole and no paragraphs must be read in isolation. I therefore hold that the Particulars of Claim do comply with the requirements of Rule 18 (10).



[20] In order for the exception to succeed the excipient must prove that in whichever way the contents of the pleadings are interpreted it would still be excipiable. This is not the case in the present matter.

[21] It is against this backdrop that the Defendant's exception has to be evaluated in order to decide the way forward – is the matter to proceed on trial where all issues may be canvassed and where the Plaintiff has to prove its allegations as contained in its particulars of claim combined in the summons, or it the matter to now be given a hard blow, terminating further proceedings on the particulars of claim as it now stands.

[22] Having heard well prepared arguments by most able counsel on either side and having read the papers filed of record and having considered the authorities of law advanced before this court, I am of the considered view that the Defendant should not now be given the liberty to step out of the arena by upholding its exception. It should file its plea, thrown down the gauntlet and have the full merits of the case decided by the court at the conclusion of a trial on the merits. The Plaintiff might conceivably be in a position to justify and prove

its case against the Defendant. It is, my considered view, not the position that the particulars of claim are either so vague and embarrassing or lack the necessary averments to sustain a cause of action that the Defendant cannot plead to it, nor that there is no prima facie cause of action raised in the particulars of the claim against the Defendant. By so saying, there is no conclusion that the Plaintiff shall ultimately succeed in his claim. There is a triable issue which requires proper ventilation and exposure on trial and only thereafter could a verdict be made by the court. The Defendant might also be in a position to successfully resist the claim against it during the course of a trial. **(Essor Limited v First National Bank Swd Ltd – High Court (unreported) case 4323/06)**

[23] Wherefore the exception is dismissed with costs.

---

—  
**MBUSO E. SIMELANE**  
**ACTING JUDGE**