



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO. 806/2019

In the matter between:

SWAZI TRUCK AND BUS (PTY) LIMITED

Plaintiff

And

FEEDMASTER SWAZILAND

Defendant

Neutral Citation: *Swazi Truck and Bus (Pty) Limited v Feedmaster Swaziland*
(806/2019) [2020] SZHC 55 (2nd April 2020)

CORAM: **N.M. MASEKO J**

FOR THE DEFENDANT: Mr. M. Dlamini

FOR THE PLAINTIFF: Mr. S. Jele

HEARD: 12th July 2019

DELIVERED: 2nd April 2020

Preamble: *Civil Law – Trial Practice – irregular proceedings in terms of Rule 30 – Defendant objecting that Plaintiff has failed to comply with Rule 18 (4) and Rule 18 (6) in that the Particulars of Claim of the Combined Summons does not contain a clear and concise statement of the material facts to enable the Defendant to plead and that the Plaintiff has not alleged whether the contract relied upon was oral or written and where, when and by whom it was entered into on behalf of the parties – Rule 18 as read together with Rule 30 compliment each other.*

RULING ON RULE 30 APPLICATION

[1] On the 16th May 2019, the Plaintiff issued a combined summons against the Defendant for payment of the sum of E186 788-59 being in respect of services rendered by the Plaintiff at the instance of the Defendant.

[2] The Defendant filed and served its Notice to Defend the Action on the 20th May 2019.

[3] On the 24th May 2019, the Defendant filed its notice in terms of Rule 30 in the following manner:

1. That the Plaintiff's claim constitutes an irregular step in one of the grounds stated below;
2. In terms of Rule 18 (6) a plaintiff who relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded and if written a true copy thereof or the part relied on in the pleading shall be

annexed to the pleading. In this matter there has been no compliance with this sub-rule as:

2.1 Although the Plaintiff in paragraph 4 of the particulars of claim states that the agreement was oral, there are no averments on where, when, and by whom was this alleged contract entered into on behalf of either the Plaintiff or the Defendant.

3. In terms of Rule 18 (4) every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim with sufficient particularity to enable the opposite party to reply thereto. The Plaintiff's particulars of claim does not comply with this sub-rule for the following:

3.1 The Plaintiff only attaches a few documents all of them as "Annexure SB1" under paragraph 5. However, neither the said documents show how the amount of E186 788-59 is reached (instead they reflect a total of E115 316-95) and

3.2 Even in paragraph 6 there is neither any clarification nor invoices attached to justify the sum of E186 788-59.

4. By reason of all the foregoing the Defendant is unable to plead properly to the allegations contained in the particulars of claim. The plaintiff's failure to comply with the provisions of Rule 18 renders the pleading an irregular step in terms of Rule 30.

[4] On the 5th June 2019, the Plaintiff filed a Notice to Oppose the Rule 30 Application.

[5] During arguments Mr. M. Dlamini, Counsel for Defendant submitted that the Plaintiff's summons did not comply with Rule 18 (6) in that the particulars of claim does not contain any averment as to where, when and by whom was this alleged contract entered into on behalf of either the Plaintiff or the Defendant.

[6] Counsel submitted further that the Plaintiff's particulars of claim do not state whether the contract was written or oral as per the dictates of Rule 18 (6). Counsel submitted that the failure to comply with Rule 18 (6) thus constitutes an irregular step in terms of Rule 30 of the Rules of Court.

[7] Mr. M. Dlamini submitted further that Rule 18 is framed in such peremptory terms in that it requires a plaintiff seeking to rely on a contract, to first state whether same is oral or written and where and when and by whom it was concluded. He submitted that where a plaintiff fails to adhere with these peremptory requirements the pleading shall be deemed to be an irregular step and thus the Defendant

would be entitled to move an application to have the summons declared irregular.

[8] Rule 18 (b) of the Rules of Court provides as follows:

“A party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.”

[9] Counsel for the Defendant submitted further that the Plaintiff’s Summons do not comply with Rule 18 (4) in that, the particulars of claim do not contain clear and concise statements on the material facts upon which the Plaintiff relies for his case so as to enable the Defendant to reply or answer thereto. Counsel submitted that in paragraph 5 of the Particulars of Claim the Plaintiff attaches a bundle of documents marked Annexure SB1 as proof of its claim. He submits that the said documents only reflect a total amount of E62 000-00 as opposed to the total amount of E186 788-59 that is claimed in paragraph 6 of the Summons.

[10] Mr. S. Jele, Counsel for the Plaintiff in his submissions submitted that, the present application is made under Rule 30 of the High Court Rules, which provide that when any proceedings on the part of one of the parties is irregular or improper, the other party may move that it be set aside or cancelled, and that the Court may thereupon make such an order as it seem fit.

[11] He submitted further that the Rule seems to confer discretion to the Court to condone any such irregularity. He submitted further that parties and their legal Counsel should not be encouraged to lightly disobey the Rules of Court which are an important element in the machinery for the administration of justice. He submitted further that technical objections should also not be permitted in the absence of prejudice to interfere with the expeditious and if possible, inexpensive decision of cases on the real merits.

[12] Mr. Jele referred to the case of **MLAMULI NSIBANDE v COMMISSIONER OF POLICE, High Court Case NO. 1793/2005** where SB Maphalala J (as he then was) stated as follows at paragraph 5 of the judgment:

'I am persuaded by the arguments enunciated in Herbstein et al (supra) that,

“it is clear that the Court has a discretion whether or not to grant the application even if the irregularity is established. The attitude generally adopted by the Court is that it is entitled to overlook in proper cases, any irregularity in procedure which does not work any substantial prejudice to the other side”’.

[13] Mr. Jele submitted therefore that there is no prejudice that has been occasioned on the Defendant as regards the particulars of claim of the summons and that this Court should dismiss the Defendant’s application in terms of Rule 30.

THE APPLICABLE LAW

[14] **HERBSTEIN AND VAN WINSEN** in their work titled *THE CIVIL PRACTICE OF THE HIGH COURTS OF SOUTH AFRICA 5TH EDITION JUTA 2012* at pages 735 to 736 deals with irregular proceedings in this manner and I quote;

“Rule 30 affords a party to cause the opportunity to have set aside an irregular step which has been taken and which is prejudicial.

The rule thus affords a party an opportunity of compelling the opponent to abide by the rules of Court on pain of having any step irregularly taken set aside. The object of the rule is to provide a procedure whereby a hindrance to the future

conduct of the litigation, whether created by non-observance of what the rules of Court intended or otherwise, is removed.

The prejudiced party must apply to Court under Rule 30 and allow the Court to exercise the discretion conferred upon it to decide what is to be done in relation to the irregular step. Where the irregular step causes no prejudice, it is best ignored or corrected by some non-litigious means, since an application to set it aside is likely to be dismissed”.

[15] I must state that the Rule 30 of the Republic of South Africa is slightly different to our Rule 30 in the Kingdom of Eswatini, notwithstanding that it makes it easy to cross-reference both the Rules and the authorities associated therewith.

[16] I must state that it is a fundamental right of every defendant to be supplied with information, documentary or otherwise in order to enable him or her to meet a case which has been alleged against him/her in any summons. A defendant has a right to be made to fully understand a case which he or she has to meet. Where crucial information is lacking in the Plaintiff's summons, which causes difficulty on the part of the Defendant to plead to the summons, that is prejudice. There can be no greater prejudice for a party to fail to plead to a summons simply because certain mandatory averments and documentary evidence and/or any other form of evidence is lacking or has not been furnished

to by the Plaintiff. A Plaintiff, in any civil action is under a legal obligation to comply with Rule 18 (4) where the particulars of claim must contain a clear and concise statement of the material facts upon which the plaintiff relies for his/her claim, with sufficient particularity to enable the defendant to plead thereto.

[17] In *casu* the Plaintiff claims an amount of E186 788-59 from the Defendant for services rendered. It is clear that whatever relationship that existed between the parties during the period in question (if such relationship existed), it was a contractual relationship. Rule 18 (6), then provides that where a plaintiff relies on a contract to sustain its claim against a defendant, the plaintiff must allege whether such contract was oral or written and with whom it was concluded, and when it was concluded, and where it was concluded. If such contract was written then a true copy thereof ought to be attached to the summons.

[18] It appears in *casu* therefore that -

- (i) The claim is for E186 788-59 whereas the documents attached as Annexure SB1 only amount to E60 00-00.

- (ii) The Plaintiff has not alleged with whom, when and where was the contract concluded.
- (iii) The Plaintiff has not alleged whether the contract was oral or in writing, and that if in writing there is not true copy thereof attached to the summons.

[19] It is my considered view that these requirements are provided for in Rule 18 of the Rules of Court and must be complied with to enable the Defendant to appreciate the case it has to meet. I would not have exercised my discretion judiciously if I were to ignore these requirements because they are material and go to the root of Plaintiff's claim against Defendant which this Court in the long run must adjudicate upon.

[20] The Plaintiff is under a legal duty to provide this crucial information to the Defendant to enable the Defendant to meet its case. For example, all documentary evidence and other information must be provided to the Defendant in order for it to appreciate the case that it has to meet. Even if it means preparing a bundle of documents, so be it, as long as it

would enable the Defendant to appreciate how the Plaintiff had arrived at the claim of E186 788-59.

[21] Further, the Plaintiff must allege the nature of the contract that was entered into, and who represented the respective parties, and where and when such contract was entered into. These are basic and fundamental requirements that are laid down by the Rules of Court and are in no way technicalities which this Court can simply overlook. They are mandatory and their absence clearly causes prejudice to the Defendant in that it would not be in a position to plead its case.

[22] It is clear from the authorities on this subject that the overriding factor is the presence or absence of prejudice, which factor guides the Court to exercise its discretion judiciously. It is true that the rules are made for the courts and not the other way round, but it must always be appreciated that the rules were made to enable litigation to flow fairly and impartially so that the courts dispense justice fairly to the parties.

[23] In the case of TILANA ALIDA v DR STEPHEN PAUL GROBBLER AND ANOTHER Case No. 3074/2016 (FSHC) Bloemfontein, Rampan J stated as follows at paragraph 18 of the judgment when dealing with importance of compliance with the uniform Rules of Court and I quote:-

“[18] The purpose of the Uniform Court Rules is to regulate the litigation process, procedures and exchange of pleadings. The entire process of litigation has to be driven according to the rules. The rules set the parameters within the course of litigation has to proceed. The rules of engagement, must therefore, be obeyed by litigants. However, dogmatically rigid adherence to the Uniform Court Rules is as distasteful as their flagrant disregard or violation. Dogmatic adherence, just like flagrant violation defeats the purpose for which the Court Rules were made. The prime purpose of the Court Rules is to oil the wheels of justice in order to expedite the resolution of disputes. Quibbling about trivial deviations from the Court Rules retards instead of enhancing the civil justice system. The Court Rules are not an end in themselves”.

[24] Rule 30 provides as follows:

- “30 (1) A party to a cause in which an irregular step or proceeding has been taken by any other party may, within fourteen days after becoming aware of the irregularity, apply to Court to set aside the step or proceeding; provided that no party who has taken any further step in the cause with knowledge of the irregularity shall be entitled to make such application.*
- (2) Application in terms of Sub-rule (1) shall be on notice to all parties specifying particulars of the irregularity alleged.*
- (3) If at the hearing of such application the Court is of the opinion that the proceeding or step is irregular, it may set aside in whole or in part, either*

as against all the parties or as against some of them, and grant leave to amend or make any such orders as to it seems fit.”

[25] I must state that Rule 30 is complimented by Rule 18 (12) which provides as follows:-

18 (12) 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.

[26] As I have mentioned above herein, it is important that the rules of Court be observed in order to maintain a fair exchange of the pleadings in litigation and this would ultimately result in a fair and just adjudication of matters by the Courts.

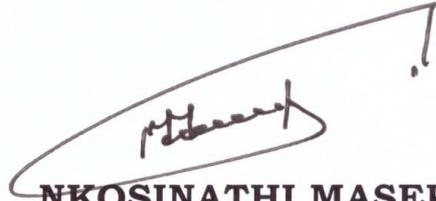
[27] In the **MLAMULI NSIBANDE** case (*supra*) which I was referred to by Mr. Jele for the Plaintiff. His Lordship SB Maphalala J (as he then was) states as follows at paragraph 6 of his judgment, and I quote:-

*‘Furthermore I fully agree with the trenchmarks remarks by Schriener JA in TRANS-
AFRICAN INSURANCE CO. LTD v MALULEKA 1956 (2) SA 273 (A) at 278 F-G as follows:*

“Technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits”’.

[28] On these basis, I am therefore of the considered view that the Rule 30 Application be upheld in part in line with the following order:

1. The Rule 30 Application is upheld in part.
2. The Plaintiff is granted leave to amend its Particulars of Claim of the Summons to be compliant with Rule 18 Sub-rules (4) and (6)
3. The Plaintiff is to supply the Defendant with a bundle of documents containing all the invoices and other documentary evidence in its possession to enable the Defendant to meet its case.
4. Orders 2 and 3 to be complied with within 10 days from date hereof.
5. Costs are reserved.

A handwritten signature in black ink, appearing to read 'Nkosinathi Maseko', is enclosed within a large, hand-drawn oval shape. The signature is written in a cursive style.

**NKOSINATHI MASEKO
JUDGE OF THE HIGH COURT**