

WORSTAKE ENGINEERS (PRIVATE) LIMITED
T/A MOREWEAR MANUFACTURING
versus
ABEL JABANGWE
and
THE OFFICE OF THE REGISTRAR OF COMPANIES
& OTHER BUSINESS ENTITIES

HIGH COURT OF ZIMBABWE
MANYANGADZE J
HARARE, 8 February & 30 June 2022

Opposed Matter

Mr *T Muchineripi*, for the applicant
Mr *G Chifamba*, for the 1st respondent

MANYANGADZE J: This is an application for a compelling order, in terms of which the applicant seeks the supply of further and better particulars from the first respondent.

The application is made in terms of Order 21, r 141 (b) of the then applicable High Court Rules, 1971, which read as follows:

“at any stage of the proceedings the court may –

a)

b) order either party to furnish a further and better statement of the nature of his claim or defence, or further and better particulars of any matter stated in any pleadings notice or written proceeding requiring particulars”

The same provision is now located in r 10 (b) of the High Court Rules of 2021.

The brief facts forming the background to this matter are largely common cause. The applicant is a defendant in a case filed by the first respondent under Case No. HC 1300/20, in which the first respondent is plaintiff. In that case, the plaintiff instituted an action in which he seeks *inter alia*, that his status as a member and director of the applicant be restored. This action was prompted by the alleged fraudulent filing of Form CR 14 by the applicant, stating that the first respondent had resigned as a director of the applicant.

In response to the summons issued under HC 1300/20, the applicant (as defendant) filed a notice of appearance to defend on 26 February 2020. This was followed by a request for further particulars filed on 6 March 2020. The further particulars are stated as follows:

1.1 “Proof of payment for the allegedly subscribed shares or equity is requested?”

1.2 How many shares does the plaintiff allegedly own in first defendant company and proof of payment of the totality of the shares in same is requested so as to give him a direct and substantial interest in defendant’s internal affairs and the relief he seeks and to demonstrate his *Loci standi in Judicio* to sue the defendant herein?

1.3 How many of defendant’s board meetings did the plaintiff allegedly attend from inception up to date?

1.3(1) Copies of the board meeting minutes to support or buttress his alleged attendances and to justify his assertions that he has authority to sue as he has done herein?”

On 12 March 2020, the first respondent responded by averring, under “Plaintiff’s Further Particulars” that the particulars request by the applicant were not necessary for it to plead.

The applicant filed a request for further and better particulars. The first respondent insisted the particulars sought were not necessary for the applicant to plead. This stance on the part of the first respondent prompted the applicant to file the instant application.

The law governing the request for and submission of further particulars is clear. Such particulars are requested for the purpose of enabling the defendant to plead. They are not sought in order for the party requesting them to formulate or beef up his or her or its defence. The court has been referred to a number of cases in which the principles are set out.

In *Time Security (Pvt) Ltd v Castle Hotel (Pty) Ltd* 1972 (3) SA 112 (RA) MACDONALD ACJ expressed the applicable principles in the following terms at, pp 114-115A:

“A litigant is entitled to know the case or defence he has to meet: not only to know whether he should admit or deny the particular allegation. He is entitled to be placed in the position of being able to decide whether to persist in his claim or defence. This aspect has, perhaps, not been sufficiently emphasized in the decided cases. A litigant must not be put in the embarrassing position of being forced to resort to a bare denial by the lack of particularity; a denial which, in the light of particulars supplied at a later stage, he might well be obliged to withdraw, or qualify. He should be in the position honestly to deal with the matter and either to admit or deny an allegation in the light of the particulars furnished”.

Whilst a party is entitled to be adequately informed of the case or defence he has to meet, he must not use or rely on this procedure for unwarranted inquisition into the other party's evidence. This is especially so where the cause of action has been pleaded with reasonably sufficient clarity. This is what was discouraged in *Pardon v Muller* 1961 (2) SA 211 (A), where the court stated, at 215H:

“Properly used in appropriate cases, the further particulars procedure is a useful procedure. It's true function however, is neither to afford a refuge for the slovenly pleader nor to be the vehicle of what in reality amounts to a fishing expedition”

In *casu*, has the procedure been used properly?

As already indicated, the applicant seeks, among other particulars, the number of shares the first respondent owns, the number of board meetings attended and copies of board minutes.

First respondent's declaration states that he owns one share, along with six other members of the applicant. It is not clear why applicant wants to know how many shares the first respondent owns, in light of this averment in the declaration.

There is also a request for copies of board meeting minutes, showing what meetings the first respondent attended. This means the first respondent has to supply a whole bundle or bundles of minutes dating back to 2016, when the company (applicant) was incorporated. This seems to be what the authorities referred to or described as an unnecessary inquisition into the other party's evidence. The applicant, in my view, has not demonstrated why it requires such information *at this stage of the proceedings*. It has not shown in what way it has been disabled from filing its plea without those minutes.

There is the broad and general averment, in para (5) of the applicant's heads of argument, that:

“the requested further and better particulars and their supply will enhance the smooth administration of justice.”

It is not clear in what manner “*the smooth administration of justice*” will be enhanced by the sort of particulars requested.

It appears the applicant is asking the first respondent to adduce evidence, not just particulars for purposes of pleading.

In my view, the information requested goes beyond the scope of what is required in a plea. The first respondent cannot be faulted for stating in para 7 of his heads of argument, that the said particulars,

“are being requested by the applicant in order to formulate its defence which is not the purpose of further particulars.”

In the circumstances, I am unable to uphold the application to compel the supply of further and better particulars. I will however, not go so far as to grant costs on a punitive scale. The applicant’s failure to justify its application does not necessarily amount to a gross misuse of the procedure governing the supply of further particulars.

In the result, it is ordered that;

- 1. The application for an order to compel the first respondent to supply further and better particulars be and is hereby dismissed.**
- 2. The applicant bears the first respondent’s costs**

Muchineripi and Associates, applicant’s legal practitioners
Mugomeza & Mazhindu, respondent’s legal practitioners