

HWANGE COLLIERY GASIFICATION COMPANY
versus
HWANGE COLLIERY COMPANY LIMITED

HIGH COURT OF ZIMBABWE
MWAYERAJ
HARARE, 27 January 2015 & 27 May 2015

Exception

T. Mpofo, for the plaintiff
J. Samukange, for the defendant

MWAYERAJ: The plaintiff issued summons against the defendant claiming payment of \$10 701 629-85 plus interest thereon at the rate of 15% per annum calculated from the 1st February 2010 to the date of payment in full pursuant to an alleged breach of contract by the defendant. The defendant duly entered appearance to defend on 1 July 2014 and proceeded to file an exception to the plaintiff's summons and declaration on the grounds *inter alia* that the summons and declaration did not disclose a cause of action in respect of the defendant.

It is clear from order 3 r 11 that apart from the name and address of the plaintiff and defendant and date the summons must contain the nature and causes of action and relief sought. Rule 11 is clear as it reads:

“Before issue every summons shall contain

(a)

(b)

(c) a true and concise statement of the nature, extent and grounds of the cause of action and the relief or remedies sought in the action.

(d)

It is important to put into perspective the summons and declaration. The essential element of the pleading in the declaration can be summed up as follows.

1. The plaintiff and defendant entered into an agreement on 3/12/09 whereby the plaintiff delivered to the defendant warf coke
2. Between 3rd December 2009 and January 2009 plaintiff delivered 3 392 286

tonnes of warf coke valued at US\$1 014 293-51.

3. The parties agreed that interest will be 15% per annum from 1st February 2010 to date of full settlement.
4. Plaintiff continued to deliver warf coke on various dates between January 2010 and 31 August 2010.
5. Both parties have been engaging each other continuously with a view to resolve the issue of payment amicably. Defendant has made several verbal undertakings to make good its end of the bargain to no avail.
6. Despite demand the defendant has refused, ignored or neglected to pay the amount of US\$10 701 629-85 plus interest calculated from 1st January 2010 at 15% per annum.

It is this scenario depicted by the summons and declaration which the defendant/excipient argues does not conform with the rules of this court and that the summons and declaration is vague and embarrassing as it does not disclose a cause of action.

It is important at this stage for due consideration to be given to purposes of pleadings. It is settled by definition that pleadings should be concise and to the point. The pleadings must inform the parties of the points and issues between to enable each to know in advance what case they are faced with. By nature long winding and argumentative pleadings are not only failing to comply with the rules of the court but defeat the whole purpose of pleadings. Pleadings must be clear and to the point. They need only identify the branch of the law under which the claim or defence to it is made and should not contain evidence.

Order 21 r 137 and order 3 r 11 as read together with decided case by this court clearly show that it is not proper in drafting pleadings for the parties to tell long winding stories and evidence in pleadings. In the case of *Fungai Nhau v Memory Kafe and Anor* HH 73-15 Mathonsi J in dismissing a special plea in Bar/a barment emphasised the need for legal practitioners in formulating pleadings to bear in mind the purpose of pleadings. He quoted with approval the case *Chifamba v Mutasa and Ors* HH 16/08 wherein Makarau JP (as she then was) underscored the need for pleadings to be precise and concise. I find solace in the sentiments echoed by the Honourable Judges and fully subscribe to the views of Makarau JP in *Chifamba v Mutasa and Ors* HH 16/08 wherein she stated:

“the purpose of pleadings is not only to inform the other party in concise terms of precise nature of the claim they have to meet but pleading also serve to identify the branch of law under which the claim has been brought. Different branches of the law require different matters to be specifically pleaded in the claim to be sustainable under that action”.

In casu a reading of the summons and declaration reveals the plaintiff is alleging breach of a contract based on goods sold and delivered but not paid for in full. It is clear from the pleading that the cause of action is disclosed and the nature of relief sought is also very open and clear. The concise nature, extent and ground of cause of action can easily be discerned from the summons and declaration. The summons and declaration's object is settled that it must inform the defendant of the nature of the legal claim or demand he is required to meet. The position is clearly spelt out by the learned Authors Herbstein and Van Winsen in their book. The *Civil Practice of the Supreme Court of South Africa* 4th ed at 395.

The authors by no chance suggest that pleadings should contain evidence and arguments on the disputed facts. The pleadings must be concise and to the point. The summons and declaration in this case sets out the cause of action and outlines what it is based on. It cannot be read as meaningless but in clear conformity with order 3 r 11(c) of the High Court Rules 1971. The case of *Pietpotgier tersrust White Lime Co v Sand and Co* 1916 TPD is also instructive on what should be contained in a summons and declaration to enable the defendant to plead.

There appears to be no merit in the exception raised which appears to have been raised for declaratory purposes. The exception cannot succeed and I find no reason why the excipient should not be visited with costs in the circumstances. Moreso given there is no real embarrassment in the summons and declaration which cannot be cured by asking for further particulars.

It is accordingly ordered that the exception be and is hereby dismissed with costs.

Venturas & Samukange, plaintiff's legal practitioners
Mawere & Sibanda, defendant's legal practitioners