

SAKUNDA ENERGY (PRIVATE) LIMITED
and
SAKUNDA LOGISTICS (PRIVATE) LIMITED
and
KUDAKWASHE REGIMOND TAGWIREI
versus
MAYOR LOGISTICS (PRIVATE) LIMITED
and
JUSTICE MAYOR WADYAJENA

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE, 15 February 2018 & 25 April 2018

Opposed Application

W T Pasipanodya, for the applicants
DA Machingura, for the respondents

HUNGWE J: In November 2017 the plaintiff (respondent in this application) instituted action against the defendant (the present applicant) claiming the payment of certain amounts of money due and payable in terms of a compromise agreement entered between the parties. The defendant has still not filed a plea. It has however filed two request for further particularity to the claim. This is an application to compel the furnishing of further particulars in terms of Order 21 Rule 141(b) of the High Court Rules, 1971. The last of such requests was filed on 29 November 2017 wherein the plaintiff insisted that the particulars requested were not necessary for the defendants to plead.

The defendants then filed the present application. The plaintiff opposes the application to compel.

In terms of the rules of court, particulars of a claim may be supplied on the principle that:

“A litigant is entitled to know the cause 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.”

The particulars to which a litigant is entitled, however, are particulars of averments forming part of the opposing case; or put another way, particulars of matters in respect of which the onus is on the opponent. A litigant is not entitled to request particulars of matters the onus in respect of which is upon himself. Where particulars are sought, the incidence of onus is important and particulars will not be ordered of matters which form no part of the plaintiff's cause of action or which relate to matters extraneous to the *facto probanda* put forward by the plaintiff.

(See *Trinity Engineering (Pvt) Ltd v Commercial Bank of Zimbabwe Ltd* 2000 (2) ZLR 385).

The defendant, applicant in the present case clearly seeks matters that are not necessary for them to plead. The bulk of the matters are apparently matters on which they bear the onus. Clearly, this amounts to a fishing expedition where the defendants hope that information that they may use during cross-examination might be disclosed. That is not the purpose of seeking further particulars. In any event, the defendants have not averred that without the information requested they would be embarrassed in their pleading. Such an averment is necessary in that they would have to demonstrate in what way they would be embarrassed thereby necessitating the furnishing of the requested particulars.

Having failed this hurdle, I dismissed the application with costs at the hearing.

Manase & Manase, applicant's legal practitioners
Machingura Legal Practitioner, respondents' legal practitioners