

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

Case Title: HONORABLE ELIZABETH CELESTE BECKER (MEMBER OF PARLIAMENT) // HONORABLE JAN JOHANNES VAN WYK (MEMBER OF PARLIAMENT) & 4 OTHERS	Case No: HC-MD-CIV-ACT-OTH-2023/01442
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 18 July 2023
	Delivered on: 2 August 2023
Neutral citation: <i>Becker v Van Wyk</i> (HC-MD-CIV-ACT-OTH-2023/01442) [2023] NAHCMD 461 (2 August 2023)	
Order: 1. The plea of exception taken to the particulars of claim is dismissed with costs capped in terms of rule 32(11) of the rules of court. 2. The defendants are to file their plea on or before 31 August 2023. 3. The plaintiff is to file replication, if any, on or before 20 September 2023. 4. Parties and their legal representatives (if represented) must attend a status hearing on 27 September 2023 at 08h30 for the court to determine the further conduct of the matter.	
Reasons for the above order:	
PARKER AJ:	

[1] As to the background of the action, it serves no good purpose to repeat it here. They are set out sufficiently in the heads of argument of the plaintiff who appeared in person and that of Mr Nanhapo, counsel for the defendants.

[2] It is important to mention this fact. In June 2023 the defendants engaged the plaintiff with the request that she should amend her particulars of claim to enable the defendants to plead thereto. The plaintiff refused to amend her pleadings because in her opinion the 'particulars of claim are clear on the processes of the UPM, as clearly defined in the UPM Constitution....'

[3] The defendants have taken three exceptions to the particulars of claim. It is to the exceptions that I direct the enquiry.

[4] When determining an exception taken on the grounds that no cause of action is disclosed, two considerations ought to be taken into account. First, for the purpose of deciding the exception, the facts as alleged in the plaintiff's pleadings are taken as correct. Second, in order to succeed, the excipient must satisfy the court that upon every interpretation which the pleading can reasonably bear, no cause of action is disclosed. In other words, only if no possible evidence led on the pleadings can disclose a cause of action, will the particulars of claim be found to be excipiable.¹ I shall refer to these considerations as the 'first *Van Straten NO* considerations'.

[5] In considering whether a pleading is vague and embarrassing entails two considerations. First, whether the pleading lacks particularity to the extent that it is vague. Second, whether the vagueness causes prejudice. The nature of the prejudice would be whether the other party will be unable to plead to and properly prepare and meet the opponent's case. I shall refer to these considerations as the 'second *Van Straten NO* considerations'.

[6] In the instant matter, as regards the first and second exceptions, the words complained of in paras 4 and 5 of the particulars of claim are in the introductory paragraphs, describing the defendants. They are not in the substantial paragraphs that usually contain the cause of

¹ *Van Straten NO and Another v Namibia Financial Institutions Supervisory Authority and Another* 2016 (3) NR 747 (SC) para 20.

action, that is, the material facts 'which would be necessary for the plaintiff to prove, if traversed, in order to support his (or her) right to judgment of the court'.² The aspects in paras 4 and 5 of the particulars of claim are not 'statements of the material facts relied on by the plaintiff in support of her claim', within the meaning of rule 7(8), read with rule 45, of the rules of court. The description of parties is never material fact relied on by the plaintiff in support of his or her claim, within the meaning of the aforementioned rules of the rules of court. The first and second *Van Straten NO* considerations are meant to be applied to 'the statements of the material facts relied on by the plaintiff in support of his or her claim' in terms of rule 7(8) of the rules of court.

[7] For these reasons, I hold that the first and second exceptions are not properly taken. Accordingly, they are rejected. The first and second exceptions are, indeed, otiose. I pass to consider the third exception.

[8] The third exception relates to para 10 of the particulars of claim. The grounds of the exception are, as Mr Nanhapo submitted, the following: The plaintiff did not set out the basis on which the second and fourth defendants 'have been unconstitutionally representing their elected positions...further, the plaintiff did not set out the facts in support of the allegation that the 2nd and 4th defendants lack the mandate in the meetings. Ultimately, the claims lack necessary averments to sustain a cause of action, and/or it does not disclose a cause of action, and/or it is vague and embarrassing.'

[9] Recalling the *Van Straten NO* considerations, if the pleading is taken as correct, it seems to me clear that the allegations contained therein are sufficient. They do not lack particularity to the extent that it is vague. It has not been established that it is so vague that the defendants are unable to plead to it and properly prepare and meet the plaintiff's case and therefore prejudicial. I find that by the allegations, the defendants are sufficiently apprised as to the case that they are to meet. Paragraph 10 is neither vague nor embarrassing.

[10] The defendants plea is also that the statements in para 10 of the particulars of claim lack the necessary averments to sustain a cause of action.

[11] It should be remembered, a cause of action 'means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his or her right to judgment

² *Hikumwah and Others v Nelumbu and Others* 2015 (4) NR 955 (HC).

of the Court'.³ It should be remembered also that only if no possible evidence led on the pleadings can disclose a cause of action will the particulars of claim be found to be excipiable. It has not been established that no possible evidence led on the pleadings can disclose a cause of action.

[12] The result is that on both grounds of vague and embarrassing and lack of averments necessary to sustain a cause of action and not disclosing a cause of action, the plea of exception should fail. The defendants have failed to establish that para 10 of the particulars of claim are excipiable on both requirements of excipiability of pleadings referred to in the two *Van Staten NO* considerations.⁴

[13] Based on these reasons, the plea of exception taken by the defendants to the plaintiff's pleadings is rejected as having no merit. In the result, I order as follows:

1. The plea of exception taken to the particulars of claim is dismissed with costs capped in terms of rule 32(11) of the rules of court.
2. The defendants are to file their plea on or before 31 August 2023.
3. The plaintiff is to file replication, if any, on or before 20 September 2023.
4. Parties and their legal representatives (if represented) must attend a status hearing on 27 September 2023 at 08h30 for the court to determine the further conduct of the matter.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendant
Ms Becker	T Nanhapo

³ Loc cit.

⁴ See paras 4 and 5 above.

In Person	Of T Nanhapo Incorporated, Windhoek
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