FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Application No: 3818/2011

In the application between:-

KRAMER WEIHMANN & JOUBERT INC Plaintiff

and

SOUTH AFRICAN COMERCIAL CATERING AND ALLIED WORKERS UNION Defendant

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JUDGMENT BY: THAMAGE, AJ

HEARD ON: 7 DECEMBER 2012

DELIVERED ON: 13 DECEMBER 2012

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[1] This is an exception raised by the defendant on the basis that plaintiff's declaration is vague and embarrassing.

[2] Except for opposing the exception, plaintiff raised point in *limine* on the basis that the matter is not properly before the court since there is a non-compliance with the rules of this court, and that there has been no application for condonation neither did the parties agree on indulgence. In essence, the delivery of an exception is out of time.

[3] Summons against defendant were served upon the defendant on 7 October 2012, defendant duly entered appearance to defend. Plaintiff filed its declaration on the 24 April 2012, defendant failed to plead hence notice of bar was delivered on 25 May 2012. On the 1st June 2012 defendant filed a notice to remove cause of its complaint in terms of rule 23, the plaintiff proceeded with application for default judgment which application was opposed successfully on the 16 August 2012. On the 31 August 2012, plaintiff served defendant with notice of bar and subsequently on the 5 September 2012, the present application for exception was filed.

[4] Rule 23(1) reads as follows:

> "Where any pleadings is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within a period allowed for filing any subsequent pleading, deliver an exception thereto and may set it down for hearing in terms of paragraph (f) of subrule 5 of rule 6: Provided that where a party intends to take

> an exception that a pleading is vague and embarrassing he shall within the period allowed as aforesaid by notice afford his opponent an opportunity of removing the cause of complaint within 15 days: Provided further that the party excepting shall within 10 days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver an exception."

[5] I dismissed plaintiff's point *in limine* and reserved my reasons. I thus now give reasons for my ruling. An exception in itself is a pleading and is accordingly subject to the rules governing pleadings in general – see **BARCLAYS NATIONAL BANK LTD v THOMPSON** 1989 (1) SA 547 (A) at 553. Defendant had issued and delivered a notice in terms of rule 23(1) to the plaintiff. The defendant should therefore after the expiring date of 15 days, delivered his exception.

[6] Since an exception is a pleading, a notice of bar under Rule 26 is necessary before a plaintiff can object to a late exception. See **TYULU AND OTHERS v SOUTHERN INSURANCE ASSOCIATION LTD** 1974 (3) SA 726 (E). See also **HARMS CIVIL PROCEDURE IN THE SUPREME COURT**, B23.5.

[7] Plaintiff did serve a notice of bar although not barring the defendant to deliver his exception but to deliver a plea on the 31 August 2012 and on the 5 September 2012 (3 days later) an exception was delivered. Even if the notice of bar was for the defendant to deliver an exception, still the exception was delivered on time.

[8] In the premise, as I have indicated earlier, the point *in limine* was dismissed.

[9] The cause of complaint as per notice of exception is basically as follows:

> That Plaintiff failed to give the date or dates, failed to give place, names of the representatives and/or officials of the defendant. Further the nature of representation alleged and when such representation of the defendant was duly authorised.
>
> Secondly, defendant's cause of complaint is that it is not clear as to whether the allegation pertains to the conduct of the defendant, that plaintiff represented defendant on many actions

applications and legal proceedings without being specific and lastly that mention was made of the Magistrate Court, High Court, Labour Court and Supreme Court without specifically mentioning the names of the said courts.

[10] Mr Grobler argued that the plaintiff's declaration is not vague and embarrassing and that defendant is in a position to can plead to same. He further submitted that further details of plaintiff's claim are on annexures 1 to 71 of the simple summons as well as the declaration that the plaintiff's summons and documents should be read as a whole. The plaintiff had a general authority to provide legal services to the defendant since the year 2000 hence the issue of the nature of instructions does not hold any merits, he further submitted that it is irrelevant to point out the names of the court as plaintiff instituted proceedings based on taxed costs, taxed by the Law Society. That defendant is able to plead by stating that they do not have knowledge of the averments and put the plaintiff to the proof thereof.

[11] The onus is on the excipient to show both vagueness amounting to embarrassment amounting to prejudice. See **LOCKHAT AND**

OTHERS v MINISTER OF THE INTERIOR 1960 (3) SA 765 (D) at 777. The prejudice that would be suffered by the defendant should be serious before the court could uphold the exception. See **LEVITAN v NEWHAVEN HOLIDAY ENTERPRISES CC** 1991 (2) SA 297 (C) at 298A.

[12] The point raised by the defendant that there are no particulars of individuals who instructed the plaintiff is not of such a nature that it would make the defendant embarrassed to plead. Plaintiff on his declaration stated that he got a general authority from the defendant during 2000, hence the defendant is in a position to admit or deny that.

[13] The averment by the defendant that it is not clear as to whether plaintiff's action is based on the conduct of the defendant is also without merits. Plaintiff on his summons clearly states that the cause of action is for professional services rendered.

[14] Lack of particularity as regards "many actions, applications and legal proceedings," according to my view, plaintiff will not be substantially prejudice by same. See **LOCKHAT v MINISTER**

OF THE INTERIOR *supra* at page 777B, much goes the same with the plaintiff's lack of naming the courts as plaintiff is proceeding on the fees assessed by the Law Society, this averments can only be relevant as to determine the scale used to arrived at a particular amount. In the premise, I am also of the view that the cause of complainant cannot stand.

[15] Of concern is the fact that there are no dates within which plaintiff rendered professional services and the parties involved in the litigation. These two aspects are vital to enable the defendant to plead and lack of same would amount to the defendant substantial embarrassment and serious prejudice. The names of the parties involved will put the defendant in a position to can identify the matters and thus also to can plead thereof. It is correct that in some of annexures 1 – 71, the names of the parties appear but in some not, only the case number. Defendant will not be able to identify the matter by merely looking at the case number.

[16] In the circumstance, I come to the conclusion that defendant requires for purposes of pleading the names of the parties

(litigants) involved in all 71 matters, as well as dates upon which professional services were rendered.

ORDER

[17] The following order is thus made:

17.1 Exception is upheld;

17.2 Plaintiff is granted leave to amend its declaration

17.3 Plaintiff to pay costs.

S. J. THAMAGE, AJ

On behalf of plaintiff:	Adv. S. Grobler Instructed by: Kramer, Weihmann & Joubert BLOEMFONTEIN
On behalf of defendant:	Adv. N. Rali Ralikhuvhana Instructed by: Mabalane Seobe Inc. BLOEMFONTEIN

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