



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

CASE NO: 13778/2013

In the matter between:

R[...] G[...] W[...]

PLAINTIFF

and

L[...] C[...]

DEFENDANT

JUDGMENT

THATCHER AJ:

[1] The plaintiff and the defendant were married to each other in 1991. Two children were born of the marriage, namely I[...], a boy, born on [...] 1993, and B[...], a girl, born on [...] 1995. The plaintiff and the defendant were divorced in this court on 13 June 1996 and an order was made that the plaintiff pay maintenance to the defendant for the minor children at the rates of R425,00 and R300,00 per month for I[...] and B[...] respectively. In 1997, the magistrates' court in Pinetown increased

the maintenance to a total of R1 550,00 per month and the maintenance was again increased in terms of a consent order on 4 August 2009 so that the plaintiff was obliged to pay maintenance to the defendant at the rate of R7 200,00 per month per child.

[2] On 11 December 2013, the plaintiff brought an action in this court in which he made two claims. In claim one, he alleged that “from June 2010 to date” he, in the mistaken belief that the maintenance payable by him was to increase by the Weighted Consumer Price Index on an annual basis, made increased maintenance payments in accordance with that index. In consequence, he alleges, he has paid an amount of R49 571,28 in excess of his obligations in terms of the maintenance order. He alleges in paragraph 10 of his particulars of claim as follows:

“In the premises the Defendant has been unjustly enriched, and the Plaintiff requires reimbursement of the aforesaid amount of R49 571,28 by the Defendant.”

[3] In his second claim, the plaintiff alleges, in summary, the following:

- (a) In December 2012, I[...], having turned 18 on 29 June 2011, completed his matric, left the defendant's home and moved to Port Elizabeth to attend an aviation school;
- (b) as of 1 January 2012 the plaintiff ceased making payments in terms of the maintenance court order because that obligation to pay the defendant had lapsed by operation of law on the 29 June 2011, and instead the plaintiff funded I[...]'s board and lodging and the costs of those studies or a portion of them, from 1 January 2012;
- (c) taking into consideration the obligation to pay R7 200,00 per month, for the period 1 January 2012 to date, an amount of R331 732,33 has been paid by the plaintiff “in excess of this maintenance obligation”. It can be discerned from this that the maintenance obligation in terms of the maintenance court order for that period is a total of R172 800,00

(the period 1 January 2012 to the end of 2013, 24 months at R7 200,00 per month) or if the payments increased by the Weighted Consumer Price Index it would be more than R172 800,00;

- (d) the defendant has launched an application for payment of arrear maintenance relating to the period 1 January 2012 to date (a period of 24 months);
- (e) if the defendant succeeds in her application for arrear maintenance, she will have been unjustly enriched in the amount of R331 732,33 and if she is not successful, she will have been unjustly enriched in the amount of R272 529,50 being 50% of all expenses incurred by the plaintiff on behalf of I[...] from 1 January 2012 to date.

[4] The defendant delivered an exception to the particulars of claim, raising five causes of complaint. At the hearing, Ms *Konigkramer*, who appears for the defendant/recipient, indicated, that she did not intend proceeding with the first cause of complaint. This was a wise decision as there was patently no merit in this point.

[5] The second and third causes of complaint related to the first claim. As I understood them, they were as follows:-

- (a) the plaintiff had failed to plead all the essential elements of an enrichment action, namely that the defendant must be enriched, the plaintiff must be impoverished, the defendant's enrichment must be at the expense of the plaintiff, and that the enrichment must be unjustified or *sine causa*;
- (b) maintenance for a child is a payment of expenses for the child and both parents have an obligation to contribute towards those expenses. The plaintiff was required to plead that the payment to the defendant had enriched her. Not only had he failed to plead this, but also given the fact that the increased payments were maintenance for a dependent

child, “the plaintiff had failed to plead and allege a completed cause of action, alternatively it is vague and embarrassing”.

[6] The fourth and fifth causes of complaint relate to the second claim of R331 732,33 alternatively R272 529,50.

[7] The defendant’s fourth cause of complaint is that on the plaintiff’s own version he has not paid any amount to the defendant in respect of maintenance for I[...] since 1 January 2012, but despite this, pleads that the defendant would be unjustifiably enriched and the plaintiff is entitled to repayment of the amounts claimed. In addition it is alleged the plaintiff has not pleaded all the essential elements of an unjustified enrichment action.

[8] The defendant’s fifth cause of complaint is that it is not apparent *ex facie* the particulars of claim how the sums of R331 732,33 or R272 529,50 are calculated and neither is it apparent how either of these sums could be amounts in excess of his maintenance obligations to the defendant and accordingly the claim is vague and embarrassing..

[9] Counsel for the defendant argued that the exceptions to both claims ought to be upheld with costs, and that the plaintiff be ordered to deliver amended particulars of claim.

[10] In terms of Rule 18(4), every pleading must contain a clear and concise statement of the material facts upon which the pleader relies for his claim “with sufficient particularity to enable the opposite party to reply thereto.” The pleading should be so phrased that the other party may reasonably and fairly be required to plead thereto. *Trope v South African Reserve Bank* 1992(3) SA 208 (T) at 210G. A pleading contains sufficient particularity if it identifies and defines the issues in such a way that it enables the opposite party to know what they are. *Nasionale*

Aartappel Koöperasie BPK v Price Waterhouse Coopers Inc. 2001(2) SA 790 (T) at 798F–799J. Obviously the degree of particularity will depend upon the circumstances of each case.

[11] In *Lockhat & Others v The Minister of the Interior* 1960(3) SA 765 (D) at 777 D, Henochsberg J summarised the approach to exceptions to declarations as follows:-

“As long as a declaration reasonably states the nature, extent and grounds of the cause of action, the court will not as a rule strike out paragraphs as vague and embarrassing, provided the information given is reasonably sufficient and provided it does not appear to the Court that the paragraphs cannot be pleaded to by the defendant. “

[12] Turning to claim one, the plaintiff alleges that he mistakenly paid more than he was obliged to and accordingly the defendant has been unjustly enriched. It is true that there is no precise allegation that the plaintiff paid the defendant R49 571,21 in excess of what he was obliged to pay and that he was correspondingly impoverished and she correspondingly enriched in that amount. However it is alleged that the plaintiff made payment in terms of the divorce order which surely must mean that he paid and that the payments were made to the defendant. There is sufficient definition of the issues enabling the defendant to know what they are.

[13] It is also true that one cannot discern exactly how the amount of R49 571,28 is calculated, but it is clear from paragraphs 8 and 9 of the particulars of claim that that amount is calculated using the Weighted Consumer Price Index over the relevant period. It is open to the defendant in a request for further particulars for the purposes of preparation for trial to seek particularity on how the amount of R49 571,28 is calculated.

[14] In any event, the claim is not one for damages. If it was, there would have to be compliance with Rule 18(10), the purpose of which is to ensure that in damages

claims the plaintiff sets out the claim “in such a manner as will enable the defendant reasonably to assess the quantum thereof.” *Grindrod (Pty) Ltd v Delport* 1997(1) SA 342 (W) at 346G. Here Rule 18(4) only has to be complied with and in my view it has been.

[15] Dealing with the second complaint about the first claim, it is true that both parents have an obligation to contribute towards the expenses of the child. However it is open to the defendant in her plea to plead as much, and in her plea to disclose the amount of maintenance she has received from the plaintiff for the child and to disclose whether the payments alleged by the plaintiff to have been made in error were in fact used to maintain the child so that she, the defendant, has not been unduly enriched.

[16] In the circumstances, the exception to the first claim must fail. I turn now to the second claim.

[17] I have summarised the second claim above. Ms *Konigkramer* contended that the cause of action relied upon in the second claim did not subsist at the time of the issue of the summons. I did not understand this to have been raised as one of the five grounds for the exception. Be that as it may, I do not think that it renders the claim excipiable. I say so because the plaintiff has pleaded that there is pending an application by the defendant for payment of arrear maintenance from the period 1 January 2012 to date. The plaintiff further pleads that if the defendant succeeds in that application she will be unjustly enriched in the amount of R331 732,33 because that is the amount in excess of the maintenance order that the plaintiff has paid not to her, but to I[...] for I[...]’s maintenance. In the alternative the plaintiff pleads that if her application in the maintenance court fails, he in any event has a claim against her for one half of the expenses incurred by the plaintiff on behalf of I[...] from 1 January 2012 to date, namely R272 529,50. Whether this is a claim properly described as a claim for unjust enrichment or whether it is a claim by the plaintiff against the defendant arising from their joint responsibility for maintaining I[...] is

unclear. However the pleading identifies the issues in such a way that the defendant is in a position to know that they are. Obviously this claim cannot be adjudicated before the maintenance court proceedings are determined. When those proceedings are concluded, presumably claim two would be amended. In the meantime, the defendant is able to discern what the issues are and can plead to them.

[18] Ms *Konigkramer* further alleged that claim two was vague because it was not apparent *ex facie* the particulars of claim how the sums of R331 732,33 and R272 592,50 were arrived at or calculated. For the reasons set out above regarding the inability to discern how the amount of R49 571,28 is calculated, it is unnecessary for the plaintiff in his particulars of claim to set out how the sums of R33 732,33 and R272 592,50 were arrived at or calculated. The defendant may request further particulars for the purposes of preparation for trial as to how amounts are calculated.

[19] I am according of the view that there is no merit in the exception to the second claim.

[20] Insofar as the question of costs is concerned, I see no reason to depart from the Rule that costs follow the result. Accordingly I make the following order:-

The defendant's exception to the plaintiff's particulars of claim is dismissed with costs.

Date of Hearing	:	10 March 2015
Date of Judgment	:	18 March 2015
Counsel for Plaintiff	:	Adv. W.N Shapiro
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