



UNIVERSITEIT-SELLENBOSCH-UNIVERSITY
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**IN THE STUDENT COURT
OF
SELLENBOSCH UNIVERSITY HELD IN SELLENBOSCH**

16 October 2013

In the matter between:

MJ Dippenaar	1 st Excipient
Renita Van Zyl	2 nd Excipient
and	
Ziyanda Stuurman	1 st Respondent
Wiaan Visser	2 nd Respondent

JUDGMENT

MAJIEDT C (Rive LF and Van Zyl CE concurring)

- [1] The order set out at the end of these reasons for judgment was made on 15 October 2013. I indicated at the time that I would provide reasons for the order later. Those reasons now follow.
- [2] The matter before me is an exception raised by the first and second excipients to the particulars of claim dated the 7th of October 2013 in which the respondents in this application, Ziyanda Stuurman and Wiaan Visser, are

the plaintiffs. Mr Wynand Spruyt and Hugo Murray appeared on behalf of the excipients.

- [3] The Exception records 13 items of exception; the first six (6) relates that the particulars of the claim does not disclose a cause of action and the remaining seven (7) averments states that the particulars of the claim are vaged and embarrassing.

Legal principles of application

- [4] In *Benson and Simpson v Robinson*¹ the general principles of pleading were explained by Wessels J -"The plaintiff must not set out the evidence upon which he relies, but he must state clearly and concisely on what facts he bases his claim and he must do so with such exactness that the defendant will know the nature of the facts which are to be proved against him so that he may adequately meet him in court and tender evidence to disprove the plaintiff's allegations."

- [5] Beck's: Theory and Principles of Pleading in Civil Actions at page 47 sets the position as follows:-
"The fundamental principles which govern all pleadings can be summarised as follows:
(a) Pleadings must be brief and concise and couched in summary form.
(b) Pleadings should state facts and facts only, that is to say they should not contain statements of either law or the evidence required to establish the facts. The inclusion of any other facts is irrelevant and irrelevant facts are liable to be deleted from a pleading if embarrassing to the opposite party. ...

On the other hand an exception to a pleading is not justified merely because it contains some unnecessary words if those words do not embarrass the opposite party, and where unnecessary matter is pleaded in a declaration the defendant is entitled to answer it in his plea."

APPLICATION OF THE AFORESAID LEGAL PRINCIPLES

- [6] In essence the averments set out at paragraphs 11, 13.2, 13.3 and 13.4 to the particulars of claim viewed either individually or as a whole consists entirely of evidence.
- [7] Paragraphs 11, 13.2; 13.3 and 13.4 in the Particulars of Claim reads as follow:

¹ 1917 WLD 126.

11. The election has to make use of positive voting as this is prescribed by and defined in section 1(3) of the Student Constitution. Under merits, however, the Plaintiffs will argue that this was not the case and that the procedure followed undermined a purposive interpretation of the positive voting requirement.
- 13.2 Multiple candidates were elected on the same ballot for multiple positions on the University Council. The Plaintiffs submit that this was incorrect as the constitution clearly envisages one candidate being elected with a majority of the votes for one position at a time as set out in section 1(3) of the Student Constitution.
- 13.3 Furthermore that the decision to simultaneously vote for multiple positions renders the underlying rationale for section 1(3) null and void as the framework for positive voting relies on only one position being elected at a time. Whereas 7 votes out of 13 constitutes an absolute majority in terms of voting for one position in that it cannot be superseded; 7 votes out of 26 for two positions constitutes a weak majority as it can still be superseded.
- 13.4 Electing multiple candidates at a time is in itself not problematic, apart from being unconstitutional, other than that it opens the door for several irregular outcomes from the election. In this election it would have been possible for up to three candidates to receive an "absolute majority". Although this instance did not occur in this election, the example serves to prove that the procedure used was fundamentally flawed as it provides for outcomes which should be impossible. A framework which makes use of only a single candidate being elected at a time cannot be imposed on an election where multiple candidates are elected simultaneously.

An analysis of the aforementioned paragraphs clearly constitute like the excipients mentioned in their application nothing more than *facta probantia*, as the Court is not requested in the particulars of claim to interpret section 1(3) of the Student Constitution.² Therefore the particulars of claim do not reveal a cause of action.

[8] Even if the court were to allow the respondents a wide berth in their pleadings, the pleadings presently amounts entirely of evidence which would make it almost impossible if not wholly impossible for any opposing litigant to discern the nature of the cognizable action and the facts which are to be proved so that they can be adequately met in court and evidence tendered to disprove them.

[9] In view of the fact that the Constitution³ is underpinned with the precepts of procedural fairness which runs throughout the constitution like a golden thread, the court faced a conundrum whether to order the respondents to amplify their Particulars of Claim with a cause of action, (which was lacking).

² Student Constitution of Stellenbosch University as amended in 2011.

³ Constitution of the Republic of South Africa, 1996.

- [10] In the circumstances the court concludes that the excipients would be significantly prejudiced, in the prosecution of their defence if the pleadings as presently constituted were allowed to stand.
- [11] Accordingly the court is inclined to uphold exception one (being 1.1 in the Application for an Exception); that the particulars of claim do not disclose a cause of action.
- [12] It is ordered as follows:

12.1 The first exception (being 1.1) raised in the Application for an Exception to the effect that no cause of action is disclosed in the particulars of claim is upheld.

12.2 The respondents/plaintiffs is granted leave to amend their particulars of claim dated 7 October 2013 within two months of the date of this order is sent via email to the respondents/plaintiffs, failing which the claim is dismissed. However, if the respondents/plaintiffs opt to amend their particulars of claim, the matter will only come before the 2013/2014 Student Court members for adjudication which are elected on the 6th November 2013.

Shue
Louise Rive

Maje
Cernyn Majeck

E. Zyl
Elize van Zyl