

MBALABALA PROPERTIES (PRIVATE LIMITED)  
**versus**  
JIMMY GAZI

HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 13 JUNE 2017 AND 22 JUNE 2017

**Opposed matter**

*C Nunu* for the applicant  
*S Collier* for the respondent

**MOYO J:** This is an application made to compel the supply of further particulars to the plaintiff's summons and declaration.

The particulars requested are as follows:

Ad para 4.1.

- 1.1 Did the plaintiff pay the tuition fees and other charges? If so when were such payments made and how much was paid? Plaintiff is also requested to provide the names of the late Nkala's daughters for whom the said payments were allegedly made.
- 1.2 Was the said Nissan Terrano vehicle delivered? If so when was it delivered?
- 1.3 Were the said 30 head of cattle delivered? If so, when and where they were delivered?
- 1.4 Were the 16 sheep delivered? If so, where were they delivered?
- 1.5 Was the sum of GBP 2000-00 paid and if so when and how was it paid?
- 1.6 Was the amount of ZAR 30000-00 paid and if so when and how was it paid?
2. Ad para 10

Was this acknowledged in writing? If so a copy is requested.

I have put the particulars requested as amended through the defendant's letter dated 6 September 2016.

This amendment it would appear was to address the grammatical errors in the request for further particulars.

The plaintiff refused to supply the particulars requested for in relation to paragraph 4.1, that is plaintiff refused to supply the particulars as requested in paragraph 1 of the request for further particulars.

The plaintiff supplied a copy of the acknowledgement of debt. Plaintiff averred in his response that the particulars requested for in terms of paragraphs 1.1 to 1.6 of the request were matters of evidence and therefore were unnecessary to enable defendant to plead. It is trite that in such applications applicant must show that the particulars so requested are necessary to enable it to plead and that without them, the applicant is unable to plead meaning fully to the plaintiff's claim.

It is obvious that whether a request for further particulars is justified and necessary in the circumstances is a matter that varies from case to case with each case depending on its own facts.

In this matter the plaintiff averred that an agreement was entered into, he set out the obligations to be performed by either party. He averred that he indeed performed his part of the bargain and that defendant failed to perform his part. I also take note of the fact that the first question asked in paragraphs 1.2 to 1.6 in fact relates to an averment already answered in paragraph 5 of the declaration. I say so for, the net effect of the questions asked is to the effect of enquiring whether or not the plaintiff performed his own obligations under the contract. Plaintiff has already told us that he did so in paragraph 5 of his declaration but defendants still want him to supply that information again in the request for further particulars. Such a request is superfluous in my view for why should plaintiff be asked if he performed his obligations when in fact he has already averred that he did? Is this necessary to enable the defendant to plead? The answer to this question is NO. This to a certain extent reflects on whether or not defendant did discern the aspects of the plaintiff's claim before proceeding to seek further particulars. It appears defendant did not for it would then not ask a question on information that is already provided.

This conduct on its own shows that the defendant did not really apply its mind to which particulars are absent but necessary to enable it to plead. What makes it worse for the applicant is that the affidavit and the heads of argument save for that clarity is being sought on the particulars they do not show how applicant will be embarrassed in attempting to plead to the claim.

The rest of the questions relate to the manner of performance of plaintiff's obligations when and how they were performed. I hold the view that the manner of performance of a contract is not necessary to plead as it is proof of the averment that the obligations were duly performed.

I am persuaded by the words of NDOU J in the case of *Carlo Franchi v Dixon A. Mohammed* HB 17/05 wherein he held that the particulars requested did not affect the defendant's ability to plead. He said the following:

“When asking for further particulars, the applicant is required to show that without such particulars he will be embarrassed in attempting to plead and that he must make plain to the court the precise embarrassments which he alleges he will suffer.”

In that case he held that the applicant seemed to be carrying out inquisitorial forays upon the respondent.

I hold the view that the averments made by the plaintiff in his declaration in relation to paragraphs 1.2 -1.6 of the request are sufficient to inform the applicant of the nature of plaintiff's claim as well as the basis thereof.

I hold the view that the how and when the plaintiff performed his obligations in terms of the agreement is a matter that plaintiff will address by way of evidence during the trial.

I am also persuaded by the views of KAMOCHA J in the case of *Maksimorich v Dominguez and Another* HB 94/15. I am alive to the fact that further particulars can also be requested for precision and clarity. The only information required by the applicant which could pass the test of precision and clarity are the names of the Nkala daughters whom plaintiff paid for their education at Solusi University and the total sums so paid. Refer to *Time Security v Castle Hotel* 1972 (1) RLR 155. I believe the only information that appears to be necessary for

the defendant to plead are the names of the daughters that plaintiff allegedly paid school fees for and the total amount that was paid.

The rest of the information I hold the view that it delves into the manner of performance of the contract and that in my view is evidential in nature and thus not necessary to enable defendant to plead.

I will accordingly order that plaintiff supplies the names of the Nkala daughters whose school fees was paid by the plaintiff as well as the total sums so paid. I say so because it is essential for defendant to know which daughters had their school fees paid by the plaintiff as it is possible that Nkala may have had many daughters who attended Solusi University. Again, the total sum paid for these daughters is necessary to clarify and amplify plaintiff's claim in that it would then be relevant in so far as the parameters of the agreement were concerned. On the issue of costs, this being an interlocutory application with partial success I would order that costs be in the cause.

I would consequently make the following order. It is ordered that

- 1) Plaintiff be and is hereby ordered to supply the names of the Nkala daughters whose school fees were paid by him at Solusi University.
- 2) Plaintiff be and is hereby ordered to supply the total sums in tuition fees and other charges that were paid by him on behalf of the Nkala daughters at Solusi University.
- 3) The rest of the particulars sought are not necessary to enable the defendant to plead and no order is granted with regard thereto.
- 4) That costs shall be in the cause.

*Webb, Low and Barry*, plaintiff's legal practitioners  
*Calderwood, Bryce Hendrie and Partners*, legal practitioners