

BLESSING CHAFANZA
versus
TENDAI SHAYAMANO

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 21 February 2017 & 3 June 2020

Exception

B Nyamwanza, for the plaintiff
T Nyamuderera, for the defendant

NDEWERE J: The plaintiff issued summons against the defendant on 3 July 2015. It stated as follows:

- “To: The defendant named above;
The plaintiff named above has instituted proceedings against you claiming an Order
- i) declaring that a partnership existed between the plaintiff and defendant
 - ii) declaring that the partnership dissolved from the date of the separation of the parties
 - iii) for the sharing of the property acquired during the subsistence of the union.
- A statement of the plaintiff’s claim is set out in the Declaration, a copy of which is annexed to this summons.”

The summons proceeded to call on the defendant to enter appearance, if he wished to defend the action within ten (10) days after service of the summons.

The defendant entered appearance to defend on 12 August 2015. On 26 August 2015, the defendant requested further particulars. The plaintiff furnished the particulars on 27 August 2015.

The defendant filed an exception on 8 September 2015. He excepted as follows:

“1. The summons are defective as they do not comply with the requirements of r 11 (c) of the High Court Rules 1971.

1.1 The summons and declaration do not set out the nature and extent of the cause of action hence the defendant cannot plead to a cause of action that has not been expressed in the summons, and that has been vaguely expressed in the declaration.

2. The summons and declaration are in contravention of r 11 (b) of the High Court Rules 1971.

2.1 The summons do not disclose the defendant's address as should be expressed as provided for in r 11 (b) of the High Court Rules 1971."

The defendant prayed for the dismissal of the plaintiff's claim with costs on a higher scale.

After several unsuccessful attempts by the parties to settle the case out of court, the exception was argued on 21 February 2017.

The defendant maintained his argument that the summons were fatally defective while the plaintiff maintained her argument that the summons were proper.

Rule 11 of the High Court Rules 1971 provides as follows:

"Before issue every summons shall contain:

- (a) The full name of the defendant and his residence or place of business and if he is sued in a representative capacity, the capacity in which he is so sued. Where the defendant's full name is unknown to the plaintiff, that fact should be stated and his name and initials, or his name and such of his initials as are known, should be given.
- (b) ...
- (c) A true and concise statement of the nature, extent and ground of the cause of action and of the relief or remedies sought in the action.
- (d) ..."

Rule 12 (1) says the summons shall be in Form No. 2 or, in Matrimonial Causes, in Form No. 30A at the option of the plaintiff...

I looked at the summons issued by the plaintiff. It contained the full name of the defendant and his residential address. It therefore conformed to r 11 (a) of the High Court Rules.

With regards to r 11 (c), the summons avers that a partnership existed between the plaintiff and defendant and that the partnership dissolved from the date of separation of the parties. The fact of separation was indicated on the face of the summons but the actual date of the separation was given in para 3 of the declaration as February 2014. She then prayed for the distribution of the property acquired during the union. Thereafter, the plaintiff stated that a statement of her claim is set out in the Declaration, a copy of which is annexed to the summons.

In my view, the summons provided a true and concise statement of the nature, extent and grounds of the cause of action. The summons gave the alleged partnership as the cause of action. Details and the nature of the partnership are provided in the annexed declaration.

Therefore, the summons provided the defendant with sufficient information about the cause of action; enabling the defendant to plead to the summons.

In paras 5 and 11, the defendant said the summons failed to make sufficient and material averments as to the legal basis upon which the plaintiff's claim arose.

In my view asking for more than what is already in the summons and declaration is tantamount to insisting that the plaintiff pleads the evidence of her claim as well as raise legal arguments in the summons. Evidence and legal arguments are for a later stage. They are not supposed to be contained in the summons.

In my view the exception has no merit. Consequently;

1. It is ordered that the exception be and is hereby dismissed.
2. The defendant is ordered to plead to the summons within 12 days from the date this order is served upon him.
3. The defendant shall pay the plaintiff's costs of the exception on the ordinary scale.

Mageza & Nyamwanza, plaintiff legal practitioners
Lawman Chimuriwo Attorneys, defendant's legal practitioners