



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, BHISHO)**

Case No: 385/2020

In the matter between:

SABELO NOHAJI

Plaintiff

And

**THE MEMBER OF THE EXECUTIVE COUNCIL
FOR TRANSPORT, EASTERN CAPE**

First Defendant

**HEAD OF DEPARTMENT, DEPARTMENT OF
TRANSPORT, EASTERN CAPE**

Second Defendant

JUDGMENT

BESHE J:

[1] Plaintiff is suing the defendants for damages he alleges he suffered as a result of an unlawful decision/s taken by them, which resulted in his application for a Professional Driving Permit being rejected. This in turn cost him his job.

[2] In their plea, the defendants raised a special plea alleging that this court does not have jurisdiction to deal with the matter, based on what is alleged by the plaintiff in his particulars of claim. Apparently, because the plaintiff states that the address of the defendants is in King William's Town.

[3] The plaintiff in turn raised an exception to the special plea on the basis that it lacks the necessary averments that are necessary to sustain a defence and or is vague and embarrassing.

[4] As I gather following a court order in this regard, defendants filed an amended special plea and plea over. In the said amended special plea in respect of lack of jurisdiction, the following averments are made:

“The plaintiff states in his particulars of claim that the defendants’ addresses are at 32 Cowan Close, Stellenbosch Park, Schornville, King William’s Town. The above Honourable Court does not have jurisdiction to entertain this matter as it does not fall within the area of jurisdiction of this court.

The Court with competence is the Grahamstown Division of the Eastern Cape High Court. The plaintiff has not alleged facts which support his assertion that the whole cause of action arose within the jurisdiction of this court. The plaintiff makes reference to King William’s Town and to Buffalo City Metropolitan Municipality which both do not fall within the jurisdiction of this court.

The defendants have not consented to the jurisdiction of this court.”

[5] Even though this is not raised in plaintiff’s notice of exception, in argument plaintiff submitted that the exception was also premised on the ground that a complaint regarding lack of jurisdiction should be raised by means of an exception and not a special plea. In this regard, reliance was placed on the decision in ***Makhanya v University of Zululand***¹. In that matter it was stated that jurisdictional challenges will be raised by an exception or by a special plea. Later, the court states that *“in other cases the existence or otherwise of jurisdiction to consider, the case will appear from the particulars of claim and in those cases the challenge will be raised by an exception”*.

[6] It is however trite that an objection that a court lacks jurisdiction is ordinarily raised by way of a special plea, but that if the lack of jurisdiction appears from the summons, the defendant is entitled to raise an exception to the summons on the basis that no cause of action is disclosed.² A reading of

¹ 2010 (1) SA 62 SCA at 71 paragraph 29 – 31.

² See Erasmus Superior Court Practise 2n Edition Van Loggerenberg Volume 2 D1-278.

the *Makhanya* decision referred to above shows that the issue was whether it was the High Court or the Labour Court / Commission for Conciliation Mediation and Arbitration that had jurisdiction to adjudicate the matter. This was depended on the nature of the claim as formulated on the particulars of claim. In other words, at play was the issue of whether based on the nature of the appellant's claim it was justifiable in an ordinary High Court or the Commission for Conciliation Mediation and Arbitration. This is the scenario that the court envisaged would be conveniently raised in an exception to the particulars of claim as opposed to a special plea. That is not the case in the matter under consideration. A special plea in my view is the correct way to complain about lack of jurisdiction in this matter.

[7] There is also no merit in the complaint that defendants' plea in this regard lacks the necessary averment and or is vague and embarrassing.

[8] Accordingly, the exception is dismissed with costs.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff : Adv: Y Ndamase
Instructed by : CINGA NOHAJI INC.
29 Gladstone Street
Office 7 & 8 Central Square Building

EASTLONDON

Ref: CN/sn/0299/sp

For the Defendants : Adv: D V Pitt
THE STATE ATTORNEY
17 Fleet Street
Old Spornet Building
EAST LONDON
Ref: 901/20-P13 (Mrs Tyani)

Date Heard : 16 September 2021

Date Reserved : 16 September 2021

Date Delivered : 17 September 2021