

ELDER SAM HUSHAI

Versus

ALPHA MEDIA HOLDINGS

And

NEWSDAY

And

THE EDITOR NEWSDAY

And

THE NEWS REPORTED NEWSDAY

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 9 NOVEMBER & 6 DECEMBER 2012

Applicant in person
T. Cherry for the respondent

Judgment

NDOU J: The plaintiff issued out summons against the defendants claiming damages for defamation in the sum of US\$1 800 000,00. The offending article is said to have been published on 16 December 2010. The summons were issued out on 28 December 2010. The defendants filed their notice of appearance to defend. Thereafter, the defendants filed a notice of exception on 16 February 2011 in the following terms:

“Be pleased to take notice that defendants hereby except to plaintiff’s summons and declaration on the following grounds:

1. The summons thereof does not comply with the provisions of order 3 Rule 11 of the High Court Rules.
2. Paragraph 3.1 of the declaration is irrelevant and superfluous, and in any event, if plaintiff was referred to as Elder Sam Mushonga in the offending article, no facts have pleaded to indicate that the readers of the words complained of would associate Mushonga with plaintiff.

3. Paragraphs 3.2; 3.3; 3.4; 3.5 and 3.6 of the declaration are evidently argumentative, vague and embarrassing and do not comply with Order 15 of the Rules of the High Court.
4. In any event no cause of action is declared in that the allegedly defamatory words are not set out in the declaration.

Whereof defendants pray that the declaration be struck down with costs.”

It is trite that the plaintiff is a self-actor and therefore allowed a certain leeway when it comes to the application of the Rules of this court. In this regard I am prepared to condone to contents of paragraph 3.2 to 3.6, *supra*, which constitute a long and rambling soliloquy which seems to refer to a criminal trial. In my view the most serious failure in the summons and declaration is a total lack of any indication of what words are being complained of. The offending words should be pleaded. A failure to plead that upon which cause of action is founded is fatal and discloses no cause of action at all – *International Tobacco Co. of SA Ltd vs Wolheim* 1953 (2) SA 603 at 613-4. This departure from the rules of this court is so egregious that, with the best will in the world, the defendants cannot properly plead to the declaration. The plaintiff needs to put his house in order in this regard. On this point alone the exception should succeed.

Accordingly, it is hereby ordered that the summons and declaration be struck down with costs.

Atherstone & Cook c/o Calderwood, Bryce Hendrie & Partners, defendant’s legal practitioners.