

Short notes on:

EXCEPTIONS RAISED DURING LITIGATION PROCEEDINGS

Introduction

Litigation proceedings in itself is an acrimonious procedure and Parties to the proceedings try to have it finalized as soon as possible, alternatively, they try to drag out the proceedings to cause undue delays for various reasons. Where a summons or a pleading has an inherent defect, a Party may raise an exception thereto. The objective of an exception is essentially to shorten the legal proceedings on the basis that it would be unfair or prejudicial to continue the proceedings because of the defect.

Rule 23 of the Uniform Rules of Court makes provision for a litigant to raise an exception in the High Court. There are two grounds of exception that can be raised, and it is imperative to be able to distinguish between the two.

The first exception that can be raised, is where a Party states that the summons or pleading lacks the necessary averments to sustain an action (or defense, as the case may be). The second exception that can be raised is that the pleading is vague or embarrassing. So, what exactly do these exceptions mean?

Lacks averments necessary to sustain a cause of action

A Party raising this exception is essentially saying that there are insufficient facts contained in the summons or pleading that are able to sustain a cause of action. The purpose of the particulars of claim or pleading must be clear in that it alerts the court to all the issues upon which it places its reliance, thus a certain degree of precision is required. In the event that there is more than one claim in the pleadings, each claim must in itself disclose a cause of action. If the material facts thereof are common to each claim so pleaded, the material fact must be repeated alternatively there must be express reference thereto.

Vague and embarrassing

Rule 18(4) of the Uniform Rules of Court states that “every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defense or answer to any pleading as the case may be, with sufficient particularity to enable the opposite party to reply thereto.” It therefore follows that one’s summons or pleadings must be clear in that upon which the other Party must respond to. Should this be unclear, the other Party may raise this exception as referred to above.

However, in dealing with exceptions raised, the Court will look at whether the lack of particularity amounts to it being vague in the context of the exception. Further, the Court must assess whether the party excepting to the pleading will be seriously prejudiced should it uphold the exception or not. When assessing an exception for vague and embarrassing, the Court must look at the pleading as a whole, rather than a particular paragraph therein. The exception raised must therefore speak to the pleading as the whole cause of action. Should the Court find that the party excepting will not suffer serious prejudice should it not uphold the exception, the exception will be dismissed.

Conclusion

It is imperative that all documents / pleadings that are filed during the litigious process is clear and concise. It should be of such particularity that the Court will be able to adjudicate the matter on the papers alone, under the presumption that all of the material facts or allegations are contained therein.

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