

WILLIAM DAVID CARLISLE WISE v E.F. HERVEY LIMITED (1985) Z.R.179  
(S.C.)

SUPREME COURT  
NGULUBE, AG. C.J., GARDNER AND MUWO, JJ. S.  
26TH JUNE AND 15TH JULY, 1985  
(S.C.Z. JUDGMENT NO.18 OF 1985)

**Flynote**

Civil Procedure - Pleadings - Cause of action - Necessity to disclose - Function of pleadings.  
Civil Procedure - Cause of action - Facts necessary to constitute cause of action.

**Headnote**

The plaintiff landlord served a statement of claim in an action against the defendant tenant for possession of farm, arrears of rent, and other relief. The defendant delivered a defence and counter-claim. The plaintiff sought to have the counter-claim struck out for not disclosing any cause of action. The counter-claim recited no relevant facts but simply set out a schedule of special damages.

**Held:**

- (i) Pleadings serve the useful purpose of defining the issues of fact and of law to be decided; they give each party distinct notice of the case intended to be set up by the other; and they provide a brief summary of each party's case from which the nature of the claim and defence may be easily apprehended;
- (ii) A cause of action is disclosed only when a factual situation is alleged which contains facts upon which a party can attach liability to the other or upon which he can establish a right or entitlement to a judgment in his favour against the other.

**Case cited:**

(1) Letang v Cooper [ 1965 ] 1 Q.B. 232.

**Legislation referred to:**

English Rules of the Supreme Court, 1979 Edn., 0.15/1/2A; 0.18/7 (1).

For appellant: Mr J. H. Jearey, D.H. Kemp and Company.  
For the respondent: E. K. Mutale of Mutale and Company.

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**Judgment**

NGULUBE, AG. C.J.: delivered the Judgment of the court.

For convenience we shall refer to the appellant as the plaintiff and to the respondent as the defendant, which is what they are in the action which is pending in the High Court. The plaintiff, as owner, has brought an action in the High Court against the defendant, as tenant, claiming

among other things, possession of a farm, arrears of rent and other ancillary relief. The issue before us concerns a counter-claim which the defendant has made in the case. In pleading such counter claim, the defendant has simply set out schedule of special damages relating to:

- (a) The value of unexhausted improvements on the land;
- (b) The value of his livestock;
- (c) The value of his plant and machinery on the farm;
- (d) The sum he had paid as rent and;
- (e) The ground rent which the defendant paid to the lands department.

The plaintiff in his reply and defence to the defendant's defence and counter-claim, and indeed at the hearing in the court below, objected that the counter-claim as pleaded disclosed no cause of action. Application was made to strike out this counter-claim and it is against, the refusal by the learned trial judge as to strike it out that this interlocutory appeal has been brought, with leave. The learned trial judge was of the view that the counter-claim had set out a factual situation which if proved would entitle the defendant to remedy against the plaintiff. The learned trial judge referred to *Letung v Cooper* (1) and cited with approval the meaning assigned to the phrase "cause of action" by Lord Diplock when he said the words meant "simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person". The learned trial judge further referred to Order 15/1/2A R.S.C. 1979 Edition, in which the words "cause of action" have been said to refer to every fact which it will be necessary for a party to prove, if traversed, to support his right to the judgment of the court. We agree entirely with these expositions of the legal requirements as to what should be alleged in order to disclose a cause of action. The issue in this case is whether the counter-claim in question does or does not meet these requirements. Perhaps it is useful to recall that, in the matter of their functional utility, pleadings are supposed to serve the useful purpose of, inter alia, not only defining the issues of fact and of law to be decided, but also to give each party distinct notice of the case intended to be set up by the other and, perhaps of greater relevance in this appeal, to provide a brief summary of each party's case from which the nature of the claim and defence may be easily apprehended.

On behalf of the Plaintiff, Mr Jearey argues to the effect that the learned trial judge erred in determining that, by setting out a bare schedule of values and costs, the defendant had thereby supplied the material facts upon which he relied for his counter-claim, as required by Order 18/7 (1) R.S.C. It is his submission that proof of these values and costs, on their own, would not entitle the defendant to any judgment and that, for the counter-claim to be a proper pleading, the defendant should have set out facts which disclose his entitlement and support his right to judgment against the plaintiff for those amounts.

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He contends that, as presented, the counter-claim is a most embarrassing pleading which leaves the plaintiff completely in the dark as to its basis. There is much force in these submissions which we find to be entirely valid.

Mr Mutale, for the defendant, had difficulty in demonstrating to this court that the counter-claim

has set out any readily recognisable factual situation which plainly or otherwise discloses the facts upon which the defendant seeks to attach liability to the plaintiff and a right or entitlement to himself. In his submissions, Mr Mutale makes a number of suggestions as to the possible causes of actions (which he contends to be implicit in the counter-claim) which, so the argument goes, are sufficiently disclosed by the pleading in issues and which show the basis of the defendant's entitlement and the plaintiff's liability to him. One such suggestion is that the claim in respect of improvements could arise under a statute. No such applicable statute was cited and, in any case, one possible Act which occurs to us, namely, the Landlord and Tenant Act, 1851, in section 3, would appear to suggest that the tenant is required to remove buildings and fixtures erected by him on the farm unless the landlord elects to purchase them. In any event, whenever a party seeks to rely on any right or remedy conferred by a statute, and though it is not necessary to mention in the pleading the statutes in question, the pleading must nevertheless set out all the material facts which, if proved, establish his right or remedy under the particular statute. A good example of this is to be found in this very case in the plaintiff's statement of claim, where he avers the relevant facts in support of a claim for double value under the Landlord and Tenant Act, 1730 but does not specifically mention that Act.

Another suggestion was that the claim just referred to is sound in equity. How this could be so was not explained; but we do have to observe, that at common law on agricultural tenant had no rights to any compensation for any improvements or acts of husbandry and it was to mitigate the harshness of the common law that there arose, in England at any rate, the various customs of the country under which the tenant became entitled to some payment. Custom (which Mr Mutale also suggested), it should be noted, has to be pleaded and proved (see generally, Woodfall Landlord and Tenant, 25th Edition, para. 2396). The defendant's suggestion in this respect can also not save the pleading as it stands.

A further suggestion was that all the claims in the counter-claim can be supported by an agreement between the parties. Here again it is an elementary rule of pleading that an agreement must be specifically pleaded.

What emerges from all this is that the counter-claim as it stands is undoubtedly a bad pleading which neither fulfils the objects of pleading nor discloses any cause, or causes of action in the sense that a factual situation is alleged which contains facts upon which the defendant can attach liability to the plaintiff or upon which he can establish a right or entitlement to a judgment in his favour against the plaintiff for the amounts

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claimed. It follows from what we have said that this appeal must succeed. The counter-claim in question is hereby struck off. If the defendant wishes to put in a proper pleading, there is liberty to apply to the Registrar of the High Court (which includes the Deputy or District Registrar, as appropriate) in the usual manner, exhibiting his proposed fresh counter-claim which should conform to the requirement of such a pleading. The plaintiff will also have his costs of this appeal, to be taxed in default of agreement.

Appeal allowed; Counter-claim struck off

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