The consequences of pleading a non-admission

1 Introduction

The purpose of pleadings is to define the issues in dispute in a civil case, not only for the judge but also for the other party. The opponent must be properly informed of the case he has to meet (*Hillman Brothers Ltd v Kelly and Hingle* 1926 WLD 153). Consequently a party has a duty to allege in his pleadings the material facts upon which he relies (*Minister of Safety and Security v Slabbert* 2010 2 All SA 474 (SCA) 475).

It is unfair to ambush one's opponent at trial by facing him with a case different to the one presented in the pleadings. Rule 22(2) of the Uniform Rules of Court provides:

The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies.

If a party has no knowledge of assertions made by his opponent he is not in a position to either admit or deny the averments. Hence he may plead that he does not admit certain facts. If a party pleads in this manner he must in terms of rule 22(2) of the Uniform Rules of Court "clearly and concisely state all material facts upon which he relies."

There seems to be a measure of consensus by the courts regarding what constitutes a technically correct pleading when the pleader does not admit an averment. However, there is more controversy concerning what such a pleader may and may not do at the trial. The purpose of this note is twofold:

(i) To ascertain how one must plead in a situation where the pleader does not admit an averment (as opposed to denying an averment) in order for the plea to be technically correct; and

(ii) to determine whether the pleader in these circumstances is entitled to -

(a) cross examine his opponent and his witnesses on the issues that are not admitted; and

(b) call and examine one's own witnesses on the issues that are not admitted.

It is our view that the questions as to technical correctness of the pleading of non admission and the question whether such a pleader may rebut his opponent's averment by calling witnesses, are questions that are inextricably linked. The reason for this is that the manner of pleading must inform the opponent of the case he will have to meet. If the pleader adequately informs his opponent of the case he faces, this will be a technically correct pleading. Furthermore, if the plea is technically correct, the pleader should be entitled to cross examine his opponent and any witnesses his opponent may call. Whether the pleader can call his own witnesses (other than expert witnesses) is questionable.

The conclusions reached in this note are based on the premise that an important purpose of pleadings is to clearly inform one's opponent of the case he has to meet.

2 The Purpose of Pleadings

Pleadings serve the purpose of identifying the issues in a particular matter. The judge refers to pleadings in the course of a trial for the purpose of *inter alia* deciding whether evidence is admissible. Evidence that is extraneous to the issues identified in the pleadings is not relevant and therefore inadmissible. Pleadings:

[m]ust ensure that both parties know what the points of issue between them are, so that each party knows what case he has to meet. He or she can thus prepare for trial knowing what evidence he or she requires to support his own case and to meet that of his opponent.

(*Becks Theory and Principles of Pleadings in Civil Actions* (2002) 44).

In *Minister of safety and Security v Slabbert* (2010 2 All SA 474 (SCA) 478 par 11) Mhlantla JA stated:

The purpose of pleadings is to define the issues for the other party and the

court. A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at trial. It is equally not permissible for a trial court to have recourse to issues falling outside the pleadings when deciding a case.
(See *Nieuwoudt v Joubert* 1988 2 All SA 189 (SE) 194 where the court simply stated that the purpose of pleadings is to define the issues and inform one's opponent of what case he has to meet).
In order to determine whether a pleading is technically correct, the question to be posed is whether the pleading in question properly defines the issues so that the other side is in a position to ascertain what evidence it requires to pursue its case at the trial.

3 Technically Correct Pleadings

In order to establish how to plead a technically correct non-admission, it is necessary to understand how and why the Rules of Court were expanded so as to allow a party to plead a non admission. Marais AJ *in Standard Bank Factors Ltd v Furncor Agencies (Pty) Ltd* (1985 (3) SA 410 (C) 417) explains the evolution of the Rules of Court to include the possibility of a non-admission as follows:

The Rules of Court relating to pleading usually confined the defendant to one of three possible courses. He could admit, or deny, or confess and avoid the plaintiff's allegations. No specific provision was made for a non-admission (as opposed to a denial). Moreover, the Rules then in force provided that 'every allegation of fact not specifically denied in the plea shall be taken to be admitted.' The net result of all this was that a defendant who genuinely had no knowledge as to whether a particular allegation made by plaintiff was correct, was compelled to deny it in order to avoid being taken to have admitted it. It soon came to be recognised that the specific options for which the relevant Rule of Court provided were too limited and did not cater for a case which frequently arises in practice, namely the case where the defendant cannot admit an allegation because he has no way of knowing whether or not it is correct, but on the other hand, does not wish to deny it positively and so create the impression that he intends to contradict it at the trial. A practice developed of allowing the defendant, notwithstanding the silence of the Rules in this regard, to plead non-admissions instead of denials, and of regarding such a plea as sufficient to oust the presumed admission which the Rules provided should be the consequence of a failure to enter a specific denial.

Rule 22(2) of the Uniform Rules of Court now specifically provides for the option of pleading a non-admission. From this it follows that there is a distinct difference between a non-admission and a clear denial. (See *Wilson v South African Railways and Harbours* 1981 3 SA 1016 (C) 1018; *Standard Bank Factors Ltd v Furncor Agencies (Pty) Ltd* 1985 (3) SA 410 (C) 417). This distinction is necessary because of the difference in the practical effect of the respective pleadings. The view taken by Van den Heever in *N Goodwin Design (Pty Ltd v Moscak* (1992 1 SA 154 (C) 163) that the only difference between a non-admission and a clear denial is merely a matter of emphasis, begs the question as to the purpose of the rules providing for both a denial and a non-admission. This is especially so given that the option of pleading a non-admission was specifically and intentionally added to the Rules after the practice of pleading a nonadmission had developed in order to cater for situations where the pleader had no knowledge of a particular allegation and therefore was neither in a position to admit or deny the allegation. More fundamentally the view of Van den Heever J ignores the basis for the distinction, namely that the purpose of pleadings is to properly inform one's opponent of the case he has to meet.
The question as to whether a reason for the non-admission must be pleaded arose in various cases (*Wilson v South African Railways and Harbours* 1981 3 SA 1016 (C); *Standard Bank Factors Ltd v Furncor*

Agencies (Pty) Ltd 1985 3 SA 410 (C); *Nqupe v MEC, Department of Health*

& Welfare, Eastern Cape Province 2006 JOL 16933 (SE)). In *Wilson* the court held (1018) that rule 22(2) must be read in conformity with existing practice. Therefore the court found that it is not sufficient to plead a nonadmission without more. Furthermore, the court held that if it were permissible to plead a non-admission without more, there would be no reason for the rule 22(2) to provide that a pleader must admit, deny or confess and avoid. Furthermore, the court held that a plaintiff is entitled to know what the defendant's defence is and that a bare denial does not properly state what one's defence is. In *Standard Bank Factors Ltd* counsel for the plaintiff argued that since rule 22(2) requires a pleader to "clearly and concisely state all material facts upon which he relies", a pleader may only plead a non-admission on the basis of no knowledge when the facts warrant the lack of knowledge. Counsel for the plaintiff argued that where the defendant's lack of knowledge is self evident it is not necessary for the defendant to explain the reasons for the lack of knowledge. However, counsel reasoned, that in situations where it would appear *prima facie* that the defendant should have knowledge, it is incumbent upon the defendant to divulge the reasons for the lack of knowledge. Marais AJ rejected this argument (416) on the basis that it conflates technical legitimacy and ethical legitimacy. Marais AJ held that ethical legitimacy can rarely be tested at exception stage as evidence at trial stage would be necessary to determine the *bona fides* of a nonadmission based on lack of knowledge. Marias AJ therefore concluded that a non-admission which does not explain why the pleader has no knowledge is technically sound even in situations where it would *prima facie* appear that the plaintiff should have such knowledge. Marais JA held that the *Wilson* case is not authority for the proposition that a pleader must explain why he has no knowledge. It merely is authority that the pleader must state that the reason for the non-admission is a lack of knowledge. Marais AJ left the question open as to whether the court in *Wilson* was correct in its findings. The court in *Nqupe*, on the other hand, seems to agree with the arguments put forward by the plaintiff's counsel in *Standard Bank Factors Ltd. The* court held that in circumstances where the defendant should have knowledge of the facts, the pleadings should provide reasons for the lack of knowledge. In this case the defendant (employer) admitted that the plaintiff was employed by it, but pleaded a non admission, based on a lack of knowledge with regard to plaintiff's post and remuneration. The court concluded (16933) that in these circumstances, it would be incumbent on the pleader, not only to state that the basis for the non-admission is a lack of knowledge, but also to explain the reason(s) for the lack of knowledge. A failure to do so, the court held, results in the pleading being technically inadequate since the requirement in rule 22(2) that the non-admission must state clearly and concisely all material facts upon which the pleader relies would not be met. In summary the courts seem to be in agreement regarding the necessity to state the reason for the non admission. This is usually a lack of knowledge. However, there seems to be less consensus with regard to whether the pleader who pleads a non admission is obliged to not only

state the reason therefore (usually lack of knowledge), but to also state or explain the reason for the lack of knowledge. If there is an obligation on the pleader to state the reasons for the lack of knowledge there is no clarity from the case law whether or not this is necessary only in circumstances where it would appear *prima facie* that the pleader should have knowledge.

We submit that all these questions must be answered with reference to the most important purpose of pleadings, namely to inform one's opponent of the case he has to face. So for example, if a lack of explanation or reason for the lack of knowledge would result in one's opponent not knowing the case he faces, then in order for the pleading

to be technically correct, it should state the reason for the lack of knowledge.

4 Cross-examination of Opponent's Witnesses and Leading of Evidence in Rebuttal

In *Goodwin Design (Pty) Ltd v Moscak* (1992 1 SA 154 (C) 163) Van den Heever J expressed the view *obiter* that the following statement of Bullen, Leake and Jacobs (*Precedents of Pleadings* (1975) 80) is a correct reflection of the law: "there is no difference in effect between denying and not admitting an allegation. The distinction is simply a matter of emphasis, a denial being more emphatic than a non admission." Consequently, Van den Heever J concluded that a defendant who pleads a non-admission is entitled not only to cross examine plaintiff and his witnesses but also to call his own witnesses and lead rebutting evidence. She added that in the event that the defendant's witnesses are expert witnesses, the plaintiff would be given notice that they would be called in terms of the Court Rules and would therefore not be caught by surprise. Van den Heever J justifies her conclusion by arguing that if the pleader of a non-admission is not permitted to cross-examine the plaintiff or adduce evidence, the plaintiff's version would prevail by the plaintiff simply re-iterating what was stated in the pleading at the trial. This is not entirely correct. This would only be the case in situations where the court could be convinced that the plaintiff's evidence was sufficient to satisfy the plaintiff's onus of proof (Zeffert & Paizes *The South African Law of Evidence* (2009) 129-130). In order to do this the plaintiff must adduce sufficient and credible evidence to establish a *prima facie* case. A failure to do so will result in the court not accepting the plaintiff"s version even in the absence of evidence in rebuttal from the defendant (Zeffert & Paizes 132).

The view of Van den Heever J was not shared by the courts in other cases (*Ntshokomo v Peddie Stores* 1942 EDL 289; *Wilson v South African Railways and Harbours* 1981 3 SA 1016 (C) and *Standard Factors Ltd v Furncor Agencies (Pty) Ltd* 1985 3 SA 410 (C)). The reason for this was that a plaintiff faced with a positive denial can expect the defendant to lead rebutting evidence whereas a plaintiff faced with a non-admission need not, hence the difference between a non-admission and a denial

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(*Standard Factors Ltd v Furncor Agencies (Pty) Ltd* 410). The court however held that it may be going too far to contend that the defendant "need not even anticipate a challenge by way of cross-examination". In *Ntshokomo v Peddie Stores* (289), on the other hand the court held that that the pleader of a non-admission is not entitled to lead evidence or to crossexamine the plaintiff on matters that were not admitted.

The question whether a party should be allowed to cross-examine his opponent or his opponent's witness regarding a matter to which he pleaded a non-admission is dependent upon the purpose of crossexamination. Cross-examination has two purposes, "first, to elicit evidence which supports the cross –examiner's case, and second, to cast doubt upon the evidence given for the opposing party." (Zeffert & Paizes 909). It is our submission that even in circumstances where the crossexamination relates to issues where a non-admission on the basis of lack of knowledge was pleaded, the pleader should be allowed to cross examine the opponent's witness. Knowledge of facts is not necessary for cross-examination. If for example, the evidence-in-chief of the witness was flimsy or contradictory, cross-examination may cast further doubt on the credibility of the witness or the evidence without the necessity of calling one's own witness to contradict or cast doubt on the evidence. One should always be given the opportunity to cross examine an opponent or his witnesses, even if one has no knowledge of events. This is to test credibility of the witness and of the version put forward by the witness.

However, if the pleader of a non-admission based on a lack of knowledge were allowed to lead evidence to contradict the plaintiff's version, this would imply that the defendant in fact had knowledge. It is doubted that an order for costs against such a pleader, would be sufficient to remedy the potential injustice suffered by a plaintiff if the defendant were allowed to lead evidence (that is not expert evidence) in rebuttal of the plaintiff's case. This is because the plaintiff now faces a case for which he was not prepared. This runs contrary to the fundamental purpose of pleadings, namely to inform one's opponent of the case he has to face.

If this knowledge was acquired after the pleading of non-admission was entered, the defendant should simply amend his pleadings on becoming aware of new evidence. The non-admission should either be changed to a denial to or an admission, depending on the new evidence that has come to light. If the pleader fails to amend the pleadings, the pleadings, although technically correct may be untruthful and consequently unethical. Failure to amend one's pleadings should result in the defendant not being permitted to lead evidence unless it is evidence of an expert witness. If the defendant's witness is an expert witness plaintiff would in terms of the rule 36(9) deliver notice not less than 15 days before the hearing of his intention to call the expert witness and not less than 10 days before the trial must have delivered a summary of such expert's opinions and the reasons therefore. Therefore, in terms

of the Uniform Rules of Court, the plaintiff would be informed of the case he faces, albeit by short notice, thus avoiding the plaintiff being taken by surprise.

5 Conclusion

In order to satisfy the requirement of rule 22(2) of the Uniform Rules of Court, that a pleader "shall clearly and concisely state all material facts upon which he relies", the pleader of a non-admission should state why he cannot admit an allegation. This is usually that he has no knowledge. If it appears *prima facie* that the pleader should have knowledge, the pleader must explain why he has no knowledge if a failure to do so would result in his opponent not knowing what case he faces. This serves to place one's opposition in a position to apprise him or herself fully of the defendant's defence, thus fulfilling the purpose of pleadings.

The pleader of a non-admission should be permitted to cross-examine his opponent and his opponent's witnesses with regard to the matters pertaining to the non-admission. The pleader of a non-admission should also be permitted to lead evidence in rebuttal of the matters pertaining to the non-admission if such evidence is that of an expert witness. However, the pleader of a non-admission should not be permitted to lead evidence in rebuttal if that evidence is not the evidence of an expert witness. In short the pleader of a non-admission is only entitled to test the veracity of the plaintiff's case but may not lead evidence relating to the facts or happenings to traverse or contradict the plaintiff's case.

We are of the view that case law supports our conclusions. In *Ntshokomo v Pedi Stores* (1942 EDL 289 298) it was held that the pleader of a non-admission:

> [w]ould not be entitled, either by way of cross-examination or by himself leading evidence, to traverse the accuracy of any of the items in the account for the above period to the correctness of which the plaintiff has deposed.

We agree with this statement save for the bar on cross-examination to test the veracity of the opponent's evidence. Our view is supported in *Standard Bank Factors Ltd v Furncor Agencies (Pty) Ltd* (1985 (3) SA 410 (C) 417-418) where Marais AJ states *obiter* that although he agrees that a pleader of a non-admission may not lead evidence to traverse his opponent's evidence, that it may be going too far to disallow cross examination of one's opponent to test the veracity of his evidence.

However, Van den Heever J in *N Goodwin Design (Pty) Ltd v Moscak* (163) disagrees with this view. Her view is that the only distinction between a denial and a non-admission is a matter of emphasis and therefore the pleader of a non-admission is entitled not only to cross examine his opponent but also to traverse the veracity of his evidence with reference to facts by leading contradictory evidence. However Van den Heever J refrains from deciding the issue when she states *obiter* after referring to *Ntshokomo v Pedi Stores* and *Standard Bank Factors Ltd v Furncor Agencies (Pty) Ltd*: "In any event, if it is I who am wrong, both those cases differ

toto caelo from the present..." Clearly Van den Heever J is wrong. The distinction between a non-admission and a denial and the consequences thereof are manifest not only in case law but is also clearly provided for in rule 22(2) of the Uniform Rules of Court. Our contentions are supported by various authors (Becks *Theory and Principles of Pleading in Civil Actions* (2002) 81-82; Morris *Techniques in Litigation* (2010) 96-98; Marnewick *Litigation Skills for South African Lawyers* (2007) 126, 128; Van Blerk *Legal Drafting* (1998) 23).

It is a matter of simple logic that a pleader of a non-admission because of no knowledge should not be allowed to traverse the veracity of his opponent's evidence by leading new evidence. If he has no knowledge how can he lead evidence? If such a pleader were allowed to lead evidence this would be tantamount to encouraging unethical or dishonest pleading, which unethical tendency was noted in *Ngupe v MEC Department of Health and Welfare Eastern Cape* (2006 JOL 16933 SE). It is also a matter of common sense that the pleader of a non-admission should be allowed to cross-examine his opponent.

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THE CONSEQUENCES OF PLEADING A NON-ADMISSION PLEADING A NON-ADMISSION

1. Purpose / Object of a Pleading?

1.1. In ***Robinson v Randfontein Estates Gold Mining Co Ltd*** it was said that: "The object of a pleading is to define the issues; and parties will be kept strictly to their pleas where any departure would cause prejudice or would prevent full enquiry. But within those limits the Court has a wide discretion. For pleadings are made for the Court, not the Court for pleadings."

(1925 AD 173 at 198)

Thus, pleadings are 'the written statements of the parties served by each party in turn upon the other which must set out in summary form the material facts on which each party relies in support of his claim or defence as the case may be.

(Erasmus (2015) D 1 -228)

1.2. In defining the issues the pleader must therefore make sure that the pleading he or she is drafting is set out in such a way as to enable the other party to know what case it has to meet.

1.3. It is therefore essential that any pleading drawn should be sufficiently clearly phrased so that the other party may reasonably be able and required to plead to it.

(Trope v South African Reserve Bank 1992 (3) SA 208 (T) 210G)

1.4. In preparing a plea, there is a particular need for a careful analysis of the issues and facts in each particular case.

1.5. The availability of facts is an important aspect for the determination of the manner in which one approach one's plea.

1.6. The circumstances of each case differ.

2. Rule 22(2) (Uniform Rules of Court) Pre Amendment

(Standard Bank Factors Ltd v Furncor Agencies (Pty) Ltd 1985 (3) SA 410 C at 417) Explains the evolution of a non-admission.

A Defendant is not bound to admit, deny confess and avoid when he or she cannot do so. **(Van der Meulen v Van der Meulen 1913 EDL 218 at 222)**

3. Rule 22(2) Post Amendment and the manner in which a non-admission ought to be pleaded

The rule now makes provision for entering a plea of non-admission which can be done as follows:

"The Defendant has no knowledge as to the allegations herein contained, does not admit them and puts the Plaintiff to the proof thereof."

or

"The Defendant has no knowledge as to the allegations herein contained and accordingly denies them."

4. What is required of a Plea?

A party is required to admit or deny confess or avoid. He or she may have no knowledge whatever of the facts that he or she is thus called upon to deal with. When he or she is not in a position to admit or deny confess or avoid

the allegation in a particulars of claim he or she should do either of these things, but only in such circumstances. A Defendant is not bound to admit or deny confess and avoid but can plead no knowledge. When he/she do the latter the plea must reflect the true position. A non-admission should not be pleaded where it is obvious the Defendant has knowledge of the facts. **(CF Wilson v SAR &H 1981 (3) SA 1016 (C))** " Where it was said that a Plaintiff is entitled to know what the defence is, and *in casu* the denial pleaded did not constitute a defence".

In cases where it is obvious that the Defendant must know whether he or she can admit or deny a particular fact it would be untruthful pleading if he or she pleads no knowledge. Cases where it is *inter alia* obvious are: where evidence of rebuttal is present, where an agreement was entered into with Defendant personally.

A plea should contain all the necessary averments premised on available facts as to inform your opponent of your defence. Is should conform to Rule 22(2) & (3).

5. <u>What constitutes a technically correct plea?</u>

Standard Bank Factors supra where the Defendant should have knowledge of the facts, the pleadings should provide reasons for the lack of knowledge. A failure to do so, the court held results in the pleading being technically inadequate since Rule 22(2) states that the pleader must state clearly and concisely all material facts upon which is relied.

In amplification and elaboration of the aforesaid it is clear that when it appears that a Defendant has knowledge or ought to have had knowledge, a failure to amend your plea results in a technically inadequate plea as it fails to conform to Rule 22.

6. Plea of Non-Admission, Entitlement to Cross-Examination Adversary's witnesses and /or leading of evidence in rebuttal of case?

6.1. ***Goodwin Design (Pty) Ltd v Moscak*** **1992 (1) SA 154 (C) at 163.**

There is no difference in effect between denying and not admitting an allegation. The distinction is simply a matter of emphasis, a denial being more emphatic than a non-admission. It is important to note that the remark made was *obiter.*

The aforesaid view was not shared in the following matters.

6.2. ***Ntshokomo v Peddie Stores*** **1942 EDL 289.**

6.3. ***Railways and Harbours*** **1981 (3) SA 1016 (C).**

6.4. ***Standard Factors Ltd v Furncor Agencies*** **1985 (3) SA 410 (C).**

The reason for distinguishing with the Goodwin Case is that a Plaintiff faced with a positive denial can expect the Defendant to lead rebutting evidence whereas a Plaintiff faced with a non-admission need not, hence the difference between a non-admission and a denial, see ***Standard Factors Ltd v Furncor Agencies*** *infra.*

Common-sense dictates that no evidence in rebuttal can be led with the qualification of no knowledge.

The pleader of a non-admission based on a lack of knowledge isn't allowed to lead evidence to contradict the plaintiff's version. The availability of evidence in rebuttal would imply that the defendant in fact had knowledge. This would cause a plaintiff to face a case for which he is not prepared. This runs contrary to the fundamental purpose of pleading, namely to inform one's opponent of the case he has to face.

If knowledge was acquired after the pleading of a non-admission was entered, the Defendant should simply amend his/her/its plea the moment after he/she becomes aware of the new evidence. The non-

admission should be amended to an admission or a denial depending on the facts of the case. Failure to amend shall result in the defendant not being permitted to lead evidence in rebuttal. Failure to amend timeously can also result in a postponement and costs.

Whether a party should be allowed to cross-examine his opponent's witnesses regarding a matter to which he pleaded a non-admission is dependent upon the purpose of cross-examination.

Cross-examination has two purposes, "first, to elicit evidence which supports the cross examiner's case, and second, to cast doubt upon the evidence given for the opposing party."

(Zeffert & Paizes p 909.)

Regard being had to the aforesaid knowledge of facts is not necessary for cross examination. If for example, the evidence in chief of the witness was flimsy or contradictory, cross examination may cast further doubt on the credibility of the witness or the evidence without the necessity of calling one's own witnesses to contradict or cast doubt on the evidence.

One should always be given the opportunity to cross examine an opponent's witnesses, even if one has no knowledge of events. The latter is to test the credibility of the witness and of the version put forward by the witness.

7. How can a pleader of a non-admission on a lack of knowledge lead evidence in rebuttal?

8. Consequences of a failure to amend your plea timeously after you procure / obtain specific knowledge or where it appear that Defendant has knowledge?

To plead no knowledge and not admitting would very probably be punished by an adverse award of costs. The pleader of a non-admission will be prevented from leading evidence in rebuttal. The pleader of an untruthful non-admission may be faced with a postponement and an adverse cost order.

9. The effect of service of a Rule 36(9) (Uniform Rules of Court)(Expert Notices) notice in the presence of a plea of non-admission?

In the event of a Defendant filing a rule 36(9)(a) and (b) notice the Plaintiff is timeously informed of the case he has to meet and is not taken by surprise. Notwithstanding the filing of the aforesaid notice the Defendant is required to amend his or her plea and enter a denial or an admission depending on the facts. The filing of a rule 36(9) (a) and (b) notice is an exception to not being able to lead evidence in rebuttal. However it remains imperative to amendment to your plea.

10. Safeguarding your right to lead evidence despite a plea of non-admission

Despite of having no knowledge one can safeguard your right to lead evidence as follows:

"The Defendant has no knowledge as to the allegations herein contained and accordingly denies them. The Defendant reserves his/her/its right to lead evidence in rebuttal."

11. Conclusion

It is manifest that there is a clear distinction between a non-admission and a denial. A Plaintiff faced with a positive denial must anticipate and prepare for the leading by the Defendant of evidence rebutting the allegations which he has made. A Plaintiff faced with a non-admission need not do so. There is authority for the proposition that Plaintiff can anticipate a limited challenge by way of cross examination. A Plaintiff is entitled to know which of the two stances a Defendant is adopting and a plea which leaves that in doubt will be vague and embarrassing. **Standard Bank Factors limited v Furncor Agencies (Pty) Ltd supra.**

Rule 22 was amended to provide for and specifically include a non-admission. The presence of a non-admission premised on no knowledge informs Plaintiff that he can expect limited cross examination, no leading of evidence in rebuttal unless timeous notice was given in terms of rule 36(9) (a) and (b) (coupled with an amendment) or in the event that there was a reservation of one's right to lead evidence in rebuttal.

Obviate postponements and adverse cost orders, ensure compliance with Rule 22(2) & (3) as set out hereinabove and also ensure timeous amendments to your plea to correspond with your facts.

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