IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No. : 1680/2004

In the matter between:

IMPERIAL CARGO (PTY) LTD Plaintiff

versus

SUPAGROUP (PTY) LTD Defendant

HEARD ON: 6 JUNE 2006

JUDGEMENT BY: MILTON AJ

DELIVERED ON: 6 JUNE 2006

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[1] Mr. van der Walt, on behalf of the plaintiff, has brought an application in terms of Rule 33(4) to request separation of two issues.

1.1 To separate merits in quantum which has by agreement been decided by the parties in their Rule 37 conference.

1.2 To have the issue regarding the plaintiff's *locus standi* to stand over to be decided at a later stage.

[2] His contention is that this issue can easily be separated and the trial may be continued on the issue of negligence which is the other issue in contention and which he avers there will be no damage suffered.

[3] Mr. van der Walt has sketched a lengthy history of the plaintiff's various stages of rationalisation, detail of which I do not deem necessary to expand in detail. The long and the short of it is that the plaintiff's company has gone through various stages of rationalisation whereby their transport business was extensively enlarged and for which substantial documents were required. This applied to all the vehicles then acquired by the company and which would be registered in their various companies and/or subsidiaries.

[4] Mr. van der Walt has indicated that there are documents in the rationalisation chain, for want of a better word, that are not available and which will definitely be able to be produced at a later stage. The documents are crucial to proving the

locus standi of the plaintiff. He indicated that a key witness, a director of the plaintiff, will also be giving evidence to the procedure of rationalisation and therefore also *locus standi*, but that he is not available today, hence the request to continue on the negligence issue only.

[5] Mr den Hartog, on behalf of the defendant, has opposed the application, indicating that he only received knowledge of the application five minutes before the trial was to begin and secondly that he was under the impression that Mr. Rudman would be here today to give evidence as was indicated to his attorneys in a letter from plaintiff dated 26 May 2006. He also indicated that Mr. Rudman's evidence, without the necessary documentary evidence, would also be futile.

[6] It is clear from the pleadings that the *locus standi* of the plaintiff has been in dispute as far back as 2004, when so pleaded. Mr. van der Walt indicated the difficulties that the plaintiff has as a big company to orchestrate proper instructions and a further problem is that his attorney's instructions are forthcoming from an insurance firm who has panel attorneys not always geographically situated in the

same city as themselves. This hampers the proper and timeous instructions.

[7] Mr. den Hartog has indicated that it would appear that the plaintiff is not prepared for trial and is looking for an escape by bringing this application today. I am inclined to agree with him.

[8] The application in terms of Rule 33(4) was only allowed for issues of law but has transformed to include facts and law. This rule has specifically been applicable to motor vehicle cases like the present where quantum and merits can easily be decided separately. This has an added advantage of shortening the trial since the defendant usually concedes if the merits are proven, to settle on the amount claimed or other amount agreed upon without having to enter the court again. This saves substantive court time and costs.

[9] The Rule has now been extended to such an extent that the separation made by any party must be ordered unless it appears that the question cannot conveniently be decided separately. Convenience means here appropriate not easy

and must be fitting and fair to the parties concerned. There are several quoted cases in this regard all appearing in Harms (loose leaf) **Civil Procedure in the Supreme Court** on pp. B-228 and are referred to in **DENEL (PTY) LTD v VORSTER** 2004 (4) SA 481 (SCA) p. 483 where the following was said:

> "In conclusion:
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> 'Rule 33(4) of the Uniform Rules – which entitles a court so try issues separately in appropriate circumstances – is aimed at facilitating the convenient and expeditious disposal of litigation. It should not be assumed that that result is always achieved by separating the issues. In many cases, once properly considered, the issues will be found to be inextricably linked even though at first sight they might appear to be discrete. And even where the issues are discrete the expeditious disposal of the litigation is often best served by ventilating all the issues at one hearing, particularly where there is more than one issue that might be readily dispositive of the matter. It is only after careful thought has been given to the anticipated course of the litigation as a whole that it will be possible properly to determine whether it is convenient to try an issue separately. But where the trial court is satisfied it is proper to make such an order – and in all cases it must be so satisfied before it does circumscribed in its

> order so as to avoid confusion ... [A]nd when issuing its orders a trial court should ensure that the issues are circumscribed with clarity and precision.'"

[10] I am of opinion that the issue regarding *locus standi* cannot be separated from the rest of the case as this is a real issue and should plaintiff not be able to prove *locus standi* for whatever reason, it would mean that the time spent in court to lead evidence on negligence, would be wasted. A separation is usually to shorten the proceedings. The issue of *locus standi* is extricably linked to the facts of the matter, an issue that plaintiff has the onus of proving. This matter is not ripe for hearing. It transpired that documents were discovered late; that not all documents have been discovered and that the request for separation might be a tactical manoeuvre to escape a request for postponement.

[11] The plaintiff is a party who initiated the court proceedings and he placed the matter for trial. He therefore has the responsibility to see to it the matter is ready for trial. It would appear that the plaintiff has failed to carry out his obligations

in this regard and by ordering a separation it would not be convenient in this matter.

[12] The application is therefore dismissed with costs.

D. MILTON, AJ

On behalf of plaintiff:	Adv. C.G. van der Walt Instructed by: Honey & Partners BLOEMFONTEIN
On behalf of defendant:	Adv. A.P. den Hartog Instructed by: Lovius Block BLOEMFONTEIN

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