

SOUTH AFRICA / JUDGMENT

# A.V.D.W v Van Der Westhuizen Attorneys (5333/2017) [2024] ZALMPPHC 31 (2 April 2024) [2024] ZALMPPHC 31

## COURT

Limpopo High Court, Polokwane

## BEFORE

T. Deane

## CASE / FILE NUMBER

5333/2017

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## REPUBLIC

## OF SOUTH AFRICA

## IN

## THE HIGH COURT OF SOUTH AFRICA

## LIMPOPO

## DIVISION, POLOKWANE

## CASE

## NO: 5333/2017

## (1)

## REPORTABLE: YES/NO

## (2)

## OF INTEREST TO THE JUDGES: YES/NO

## (3)

## REVISED.

## DATE:

02/04/2024

## SIGNATURE

In

the matter between:

A[...]

V[...] D[...] W[...]

PLAINTIFF

And

VAN

DER WESTHUIZEN ATTORNEYS

DEFENDANT

This

judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The date of this judgment is deemed to be 02/04/2024.

## JUDGMENT

DEANE AJ

### Introduction

and Relevant Background

- [1] This is an opposed application in terms of the Uniform Rule 30, wherein the Plaintiff launched his application in terms of Rule 30 to set aside the Defendant's exception as an irregular step.
- [2] The background to the current application is that the current matter is part of a long standing dispute between the parties. It has its origins in a divorce dispute from what can be deduced from the documents filed of record.
- [3] Regarding the matter before me, I have to admit that what seemed quite complicated on papers and from the arguments on behalf of both parties was actually one that was quite simple on further analysis.
- [4] The succinct issue before me is summarised as follows:
- [4.1] The Defendant filed their plea and counterclaim on 18 September 2017.
- [4.2] The Plaintiff was barred from filing a plea to the Defendant's counterclaim.
- [4.3] The Bar was eventually uplifted and the Plaintiff thereafter filed a reply and plea to counterclaim on 17 February 2023.
- [4.4] On 1 March 2023 the Defendant filed an exception to the Plaintiffs Particulars of Claim.[1]
- [4.5] On 17 March 2023 the Plaintiff served a notice to remove cause of complaint against the Defendant's exception.[2]
- [4.6] The defendant did not and has not removed said cause of complaint.

[4.7] On 26 April 2023 the Plaintiff launched this application in terms of Uniform Rule 30 to set aside the Defendant's exception as an irregular step.

[5] The Applicant seeks the following order:

1. Condonation for the late filing of its notice to remove cause of complaint
2. That the Defendant's exception, served on 1 March 2023, is an irregular step
3. That the Defendant's exception be set aside.
4. Costs on an attorney and own client scale
5. Further and/or alternative relief

RE: Condonation

[6] Firstly, regarding the condonation for the late filing of its notice to remove cause of complaint. From the papers before me, what can be ascertained is that the notice to remove cause of complaint should have been filed on 15 March 2023 but was filed on 17 March 2023.

[7] I have looked at the reasons for the late delay given[3] together with the supporting annexures[4] including the Confirmatory affidavit[5] and am satisfied with the reasons provided for the delay and that at all times it was intended to file the notice timeously. The

### reasons

as articulated together with the fact that the notice was served only 2 days late makes me inclined to grant condonation for the late filing of the notice to remove cause of complaint.

RE: Irregular Step

[8] It cannot be overstated that Rule 30 of the Uniform Rules of Court, which confers upon the aggrieved person the right to set aside the irregular step, is concerned with the forms and not the substance of the matter. The party against whom the relief is sought is first and foremost afforded an opportunity to remove and cure the cause of complaint.[6] An application in terms of rule 30 will be granted only where the irregular step causes prejudice to the person seeking to set it aside. It follows that there is no prejudice if the further conduct of the case is not affected by the irregular step.[7]

[9] I was asked to only deal with the exception insofar as the court does not uphold the irregular step proceeding.

### Analysis

[10] Firstly I am inclined to highlight the particular situation I am faced with herein.

[11] Currently the papers before this court is not in order.

[12] Specifically the particulars of claim is not on file.

[13] Having said that from the papers before me the relevant portion of the Defendant's exception reads as follows:[8]

"13. The Defendant further contends that upon every interpretation these rights to claim or claims can reasonably bear that it is impossible for the Plaintiff to aver the necessary allegations to sustain a cause of action.

14. In the premises the Defendant therefore contends that the summons does not disclose a claim valid in law; and leave to amend would be of no avail to the Plaintiff

Wherefore the Defendant prays for an order:

1. That the exception be upheld with costs.
2. That the Plaintiffs summons and action be dismissed with costs;
3. Further and/or alternative relief'.

[14] Seeing that the particulars of claim is not in front of me I must note that there is therefore no exception before me. However, it has been argued by the Applicant that the Defendant's exception is directed at the particulars of claim[9] and that the Defendant, in their answering affidavit concedes that the particulars as it stands is not excipiable.[10]

[15] Uniform Rule 23(1) states that:

"Where any pleading is vague and embarrassing, or lacks the averments which are necessary to sustain a cause of action or defence, as the case may be. The opposing party may, within the period for filing a subsequent pleading, deliver an exception thereto and may apply to the Registrar to set it down for hearing "

[16] What is clear from the papers is that the Defendant has already filed a plea and has already made their election and can therefore not take an exception against the particulars of claim.

[17] Having further regard to the pleadings before me, the reply is clearly a reply against the plea.

[18] The prejudice in this matter therefore becomes selfevident and constitutes a gross abuse of the Rules of Court.

[19] As mentioned above, the absence of the particulars of claim means that I am unable to regard the pleadings in its totality and consequently that there is no exception before me.

[20] Even if there was a valid exception before me the issue remains that this court is not supplied with the particulars of claim to properly address this issue.

[21] Accordingly after considering the facts attendant to this application as well as the legal provisions that regulate pleadings and irregular steps, it is clear that there is a case for a rule 30 application to succeed.

[22] I accordingly make the following order:

22.1. Condonation for the late filing of the Applicants notice to remove cause of complaint is granted.

22.2. That the Defendant's exception, served on 1 March 2023, is an irregular step.

22.3. The Defendant's exception is set aside.

22.4. Costs on an attorney and own client scale.

T. DEANE

ACTING JUDGE OF THE HIGH COURT,

POLOKWANE; LIMPOPO DIVISION

#### APPEARANCES

FOR THE PLAINTIFF: Adv. J Janse van Rensburg INSTRUCTED BY: Rorich Wolmarans & Luderitz Incorporated FOR THE DEFENDANT: Adv. A.J. la Grange INSTRUCTED BY: Van Der Westhuizen Attorneys DATE OF HEARING: 08 March 2024 DATE OF JUDGEMENT: 02 April 2024

[1] Record p. 16.

[2] Record p. 28.

[3] Index Rule 30 Application pp. 1214 paras 34 39

[4] Index Rule 30 Application pp. 3335.

[5] Index Rule 30 Application pp. 3637.

[6] Afrocentrics Projects and Services (Pty) Ltd t/a Innovative Distribution v State Information Technology Agency (SITA) SOC Ltd and Others

[2023] ZACC2.

[7] TransAfrican Insurance Co Limited v Maluleka 1956 (2) SA 273 (A) at 276FH [1956] 2 All SA 382 (A); Sasol Industries (Pty) Limited t/a Sasol 1 v Electrical Repair Engineering (Pty) Limited t/a LH Marthinusen 1992 (I) SA 466

[8] Index to Exception pp. 1314.

[9]Record

p. 45 para 7 of the Answering Affidavit.

[10] Record p. 45 para 8 of the Answering Affidavit.

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Prepared on 10 October 2026 · Esheria