

SOUTH AFRICA / JUDGMENT

Bloem and Another v NWK Limited (750/2021) [2024] ZANWHC 83 (20 March 2024) [2024] ZANWHC 83

COURT

North West High Court, Mafikeng

BEFORE

A H Petersen

CASE / FILE NUMBER

750/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE

NO: 750/2021

Reportable: YES
/ NO
Circulate

to Judges: YES
/ NO
Circulate

to Magistrates: YES / NO
Circulate

to Regional Magistrates: YES / NO
In

the Rule 30 application between:	SCHALK JACOBUS BLOEM First Applicant [Id No.: 8[...]] SAREL JOHANNES PETRUS BLOEM Second Applicant [Id No.: 5[...]] and NWK LIMITED Respondent [Registration Number: 1998/007577/01] In
re (the main action) between:	NWK LIMITED Plaintiff SCHALK JACOBUS BLOEM First Defendant SAREL JOHANNES PETRUS BLOEM Second Defendant
CORAM:	PETERSEN J
HEARD:	01 March 2024
Delivered:	This judgment was handed down electronically by circulation to the parties’ representatives via email. The date and time for hand-down is deemed to be 10h00am on 20 March 2024. ORDER The application is dismissed with costs on an attorney and client scale.

JUDGMENT**PETERSEN J****Introduction**

[1] This application, runs parallel to an application brought under case number 749/2021 where the parties and issues are the same, save for the first applicant. Since the issues are the same, for that reason this judgment follows the same reasoning in the judgment under case number 749/2021, which is incorporated in this judgment, with the necessary changes where required. The application is brought in terms of Rule 30 of the Uniform Rules of Court. The applicants (defendants in the main action) were unrepresented at the hearing of the application. Only the second applicant appeared at the hearing as the first applicant was indisposed due to illness for which he was booked off medically unfit by a medical practitioner. The second applicant

confirmed that he would be representing himself and his son, the first applicant as he was the author of the application. Prior to the appearance of the second applicant for this application, both applicants were legally represented.

Background

[2] The respondent (“NWK”), the plaintiff in the main action, issued simple summons against the applicants on 5 May 2021. The cause of action is predicated on a credit facility agreement entered into between NWK and the applicants on or about 3 November 2017 at or near Lichtenburg to finance their farming activities. The applicants as security to cover their obligations

towards NWK in terms of the credit facility, passed covering bonds in favour of NWK over certain immovable properties. The applicants are alleged to be in breach of their obligations towards NWK in terms of the credit facility and are allegedly indebted to NWK in the amounts of R958 984.04 and R902 908.42 respectively.

[3] The applicants delivered a notice of intention to defend the action on 22 June 2021. A hiatus occurred in the litigation based on the exchange of various notices and documents between the parties’ legal representatives, until NWK on 7 December 2022 delivered its declaration. The applicants failed to deliver a plea to the declaration of NWK, and on 23 February 2023, the applicants were placed under bar. The applicants remain under bar, as no application or upliftment of bar has been brought. The default position in law is that the applicants remain ipso facto barred from pleading.

- [4] On 14 April 2023 NWK launched an application for default judgment in which it sought a monetary judgment coupled with an application to declare the immovable properties over which bonds had been secured, specially executable in terms of Rule 46 and 46A. The application was set down for 27 July 2023.
- [5] The application for default judgment was met with four (4) separate Rule 30(2) notices, all served on NWK on 28 June 2023. The four (4) Rule 30(2) notices are very succinct in that each raises only one main complaint based on the application for default judgment launched by NWK. These complaints are essentially that the application for default judgment by NWK constitutes an irregular step because:
- (1) the applicants do not have funds to secure a written plea;
 - (2) a supplementary affidavit accompanying the application for default judgment by NWK constitutes an irregular step because the applicant had allegedly caused with prejudice correspondence to be sent to NWK;
 - (3) the supplementary affidavit accompanying the application for default judgment constitutes an irregular step because the magistrate's court has jurisdiction to preside over the matter; and
 - (4) the supplementary affidavit accompanying the application for default judgment by NWK constitutes an irregular step because NWK allegedly refused to accept a legal tender from the applicant.
- [6] The applicants contrary to the tenets of Rule 30, on the same day as the delivery of its Rule 30(2) notices, being 28 June 2023, issued and delivered a Rule 30(1) application. The prescribed ten (10) day period provided in Rule 30(2)(b) for the removal of the cause of complaint for obvious reasons could not expire because no such indulgence was afforded NWK. Whether or not the complaints constitute irregular steps is the issue which engages this Court in this application.

Rule 30 of the Uniform Rules of Court

- [7] Rule 30 of the Uniform Rules of Court provides as follows:

"IRREGULAR PROCEEDINGS"

30(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

- (2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if –
 - (a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity;

- (b) the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days;
- (c) the application is delivered within fifteen days after the expiry of the second period mentioned in paragraph (b) of subrule (2)."

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

[2023] ZACC 2, the Constitutional Court placed the purport of Rule 30 in context where it said:

"[26] Rule 30(3) contemplates a two-stage process. A court must first satisfy itself that the proceeding or step is irregular or improper. If it is so satisfied, it has the wide power to set the proceeding aside in its entirety or in part, grant leave to amend or make any order as it deems fit. These are, no doubt, wide powers. Following its conclusion that a step or proceeding is irregular or improper, a court however, is required to make an order.

(emphasis added)

[9] The Uniform Rules seek to regulate procedure (form) and not substance. Any complaint raised in terms of Rule 30 therefore speaks to an alleged procedural irregularity in the conduct of the litigation. It therefore follows axiomatically that if a court finds that the procedural steps taken by a party were irregular, a court is vested with wide powers to either set aside the proceeding in its entirety or in part or make any other order the Court may deem fit. The order which will generally follow in applications of this nature, if a court finds a particular step to be irregular, is to afford the party against whom the complaint is raised an opportunity to remove the cause of complaint.

[10] Rule 30 envisages that any irregular step complained of must cause prejudice to the party seeking to set it aside. It is accepted though, that even if a procedural step may be found to be irregular but if presents no prejudice in the further conduct of the case to the party complaining thereof, there would be no need to set it aside. See *Trans-African Insurance Co Limited v Maluleka* 1956

(2) SA 273 (A) at 276F-H.

The first Rule 30(2) notice

[11] The applicants, to date, have not delivered a replying affidavit, notwithstanding the fact that an answering affidavit has been filed by NWK, in which it takes issue with the applicants on the Rule 30 application.

[12] Only the first stage of the two-stage process adumbrated in *Afrocentrics supra* merits consideration. The complaint in the first Rule 30(2) notice speaks to the financial inability of the applicants to secure funds to deliver a written

plea. The financial woes of the applicants to secure funds to deliver a written plea, is no bar to NWK taking the next procedural step in the litigation process. Otherwise stated, the applicant being hamstrung from complying with the Rules in delivering its written plea, and being ipso facto barred from doing so, cannot be construed as implying that NWK is by implication barred from taking the next step in the litigation

process.

- [13] NWK in proceeding with the next step in the litigation process which is an application for default judgment is in accordance with the Rules and does not constitute an irregularity. The first complaint is not a complaint of the kind envisaged by Rule 30(2).

The second Rule 30(2) notice

- [14] The complaint in the second Rule 30(2) notice is inextricably linked to the first notice since it speaks to the supplementary affidavit filed by NWK in support of its application for default judgment in terms of Rule 31(5), Rule 46 and Rule 46A. The applicants complain that this constitutes an irregular step since they have caused correspondence with prejudice to be sent to NWK. The correspondence attached to the second notice alludes to emails exchanged between the parties' legal representatives in respect of the service and filing of the plea and the notice of bar. This correspondence speaks to procedural steps which the applicants failed to take when they failed to file their plea. Nothing turns on this correspondence which is relevant to Rule 30(2).
- [15] Save for relying on the correspondence with prejudice allegedly sent to NWK, the complaint is shrouded in mystery. Nothing in the complaint speaks to NWK being required to withdraw either its supplementary affidavit or the application for default judgment in toto.
- [16] The second Rule 30(2) notice of the applicant is in fact irregular and does not disclose a valid complaint against NWK.

The third Rule 30(2) notice

- [17] The complaint in the third Rule 30(2) notice is similarly inextricably linked to the first notice since it speaks to the supplementary affidavit filed by NWK in support of its application for default judgment in terms of Rule 31(5), Rule 46 and Rule 46A. The essence of the complaint is directed at the jurisdiction of the High Court to entertain the action. The applicants purport to be seized with evidence that will prove that the matter in its entirety should have been brought in the Magistrate's Court.
- [18] This complaint has no basis in law. The bonds registered over the immovable properties in favour of NWK, make it clear at paragraph 14 thereof, that the bond holder at its discretion may institute legal proceedings in the High Court or Magistrates' Court which has jurisdiction. A similar argument has been decisively jettisoned by the Constitutional Court in *Standard Bank of SA Ltd and Others v Thobejane and Others*; *Standard Bank of SA Ltd v Gqirana NO and Another* (38/2019); 47/2019; 999/2019 [2021] ZASCA 92; [2021] 3 All SA 812

(SCA); 2021 (6) SA 403 (SCA) (25 June 2021).

See too: Foize Africa (Pty) Ltd v Foize Beheer BV [2012] ZASCA 123; 2013

(3) SA 91 (SCA) at paragraph 21.

[19] In any event, lack of jurisdiction of the Court is ordinarily raised as a special plea. The proper pleading to raise a special plea is in the plea of the applicants (defendants). As is clear from the first and second Rule 30(2) complaints, no plea has been filed and the applicants are under bar. A complaint based on lack of jurisdiction does not imply that the application for default judgment by NWK constitutes an irregular step. Nothing therefore precluded NWK from taking the next procedural step, which is its application for default judgment.

[20] There is no merit in the third Rule 30(2) notice which itself is procedurally defective.

The fourth Rule 30(2) notice

[21] The complaint in the fourth Rule 30(2) notice can be dismissed outright for its lack of any legal basis. It is similarly inextricably linked to the first and second Rule 30(2) complaints. The complaint is that NWK refuses to accept an alleged legal tender from the applicants.

[22] It is inexplicable on what basis NWK would be required to withdraw its application for default judgment simply because it is not prepared to accept a one-sided tender from the applicants. In any event what the applicants purport to be an irregular step by NWK in this regard is not countenanced by Rule 30(2). The fourth Rule 32 notice of the applicants on the other hand may be construed as being an irregular step and lacks any merit.

Conclusion

[23] In the final analysis, none of the four (4) “complaints” by the applicants constitute irregular steps in the proceedings as envisaged in Rule 30(2). The application, even if the Court hypothetically speaking were to find for the applicants on any of the complaints, is itself irregular in that it fails to afford NWK an opportunity to remove any of the causes of complaint within the ten (10) day period prescribed in Rule 30(2)(b). It is only after the expiry of the ten (10) day period that the applicant would have been entitled to bring this application in terms of Rule 30(1).

[24] The application accordingly stands to be dismissed with costs on an attorney and client scale, which scale of costs have been agreed between the parties in the agreement.

Order

[25] It is accordingly ordered that:

The application is dismissed with costs on an attorney and client scale.

A H PETERSEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Appearances

For the Plaintiff (Respondent): Mr M Wessels Instructed by: Tim du Toit & Co Inc c/o Van Rooyen, Thlapi Wessels 9 Proctor Avenue MAHIKENG For the Defendants (Applicants): In person

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