

SOUTH AFRICA / JUDGMENT

Bloem v NWK Limited (749/2021)

[2024] ZANWHC 82 (20 March 2024)

[2024] ZANWHC 82**COURT**

North West High Court, Mafikeng

BEFORE

Petersen

CASE / FILE NUMBER

749/2021

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH****WEST DIVISION, MAHIKENG****CASE****NO: 749/2021**

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In

the Rule 30/30A
application between: SAREL
JOHANNES PETRUS BLOEM
Applicant
[Id
No.: 5[...]]
and
NWK
LIMITED
Respondent
[Registration
Number: 1998/007577/01]
In

re (the main action)
between: NWK
LIMITED
Plaintiff
SAREL
JOHANNES PETRUS BLOEM
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 is an application brought in terms of Rule 30 of the Uniform Rules of Court. The applicant (defendant in the main action) was unrepresented at the hearing of the application. Prior thereto he was legally represented. This application runs parallel with an application brought under case number 750/2021 where the parties and issues, save a further applicant, are the same.

Background

- [2] The respondent ("NWK"), the plaintiff in the main action, issued simple summons against the applicant on 5 May 2021. The cause of action is predicated on a claim for enforcement of an annual summer production financing agreement concluded between the parties on or about 3 November 2017 and at or near Lichtenburg. The salient terms of the agreement

provided that NWK would provide a credit facility to the applicant to finance his farming activities. The applicant as security to cover his obligations towards NWK in terms of the credit facility, passed covering bonds in favour of NWK over certain immovable properties. The applicant is alleged to be in breach of his obligations towards NWK in terms of the credit facility and is allegedly indebted to NWK in the amounts of R 2 700 290.90 and R 978 514.24 respectively.

- [3] The applicant 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, until NWK on 7 December 2022 delivered its declaration. The applicant failed to deliver a plea to the declaration of NWK, and on 23 February 2023, the applicant was placed under bar. The applicant remains under bar, as no application or upliftment of bar has been

brought. The default position in law is that the applicant remains 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 the four (4) separate Rule 30(2) notices which were served on NWK at the same time on 28 June 2023. The four (4) Rule 30(2) notices are very succinct in that each raises only one purported complaint. 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 applicant 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 his Rule 30(1) application. The prescribed ten (10) day period provided in Rule 30(2)(b) for the removal of the cause of complaint had not expired. 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 on the conduct of the litigation. It therefore follows axiomatically that if the Court does find that the procedural steps taken by NWK were irregular, this 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 the 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 applicant, to date, has not delivered a replying affidavit, notwithstanding the fact that an answering affidavit has been filed by NWK, in which it takes issue with the applicant 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) and therefore stands to be dismissed.

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 with its application for default judgment in terms of rule 31(5), rule 46 and rule 46A. The

applicant complains that this constitutes an irregular step because he has caused correspondence with prejudice to be sent to NWK. The correspondent 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 in any event already had to occur, that is the filing of the plea which was not done and the service of the notice of bar. Nothing turns on this correspondence which is remotely relevant to Rule 30(2).

- [15] Save for relying on the correspondence with prejudice allegedly sent to NWK, the complaint of the applicant 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 stands to be dismissed as 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 with 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 applicant purports 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:

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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