

SOUTH AFRICA / JUDGMENT

Naledi Local Municipality and Another v Makwati (354/2023) [2025] ZANWHC 28 (14 February 2025) [2025] ZANWHC 28

COURT

North West High Court, Mafikeng

BEFORE

Wessels

CASE / FILE NUMBER

354/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

CASE NUMBER:354/2023

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO
Circulate to Regional
Magistrates: YES/NO

In the matter between: NALEDI
LOCAL MUNICIPALITY
FIRST
APPLICANT
MODISENYANE
THOMSON SEGAPO
SECOND
APPLICANT
and
LESEGO
BAKGOANYANE MAKWATI
RESPONDENT
IN

RE:

LESEGO
BAKGOANYANE MAKWATI
PLAINTIFF
and
NALEDI
LOCAL MUNICIPALITY
FIRST
DEFENDANT
MODISENYANE
THOMSON SEGAPO
SECOND
DEFENDANT
Coram: WESSELS AJ
Date: 14 February 2024
ORDER

i.

The Rule 30(1) application dated 11 May 2023 in relation to the respondent's notice in terms of Rule 30 (2) (b) read with Rule 30 (1) dated 4 April 2023 is dismissed.

ii.

The applicants are ordered to pay the costs of the Rule 30(1) application dated 11 May 2023 on party and party scale B, jointly and severally, the one paying the other to be absolved.

iii.

Respondent's notice of bar dated 18 April 2023 is declared as an irregular step and is struck out.

iv.

The respondent is ordered to pay the costs of the Rule 30(1) application dated 18 May 2023 as well as the wasted costs of the applicants incurred as a result of the notice of bar on party and party scale B.

JUDGMENT

- [1] This judgment emanates from two interlocutory applications brought in terms of the provisions of Rule 30(1) read with Rule 30A(2) of the Uniform Rules of Court. The facts surrounding these applications will be dealt with in more detail below. The main action is an action for damages instituted by the respondent against the first and second applicants jointly and severally predicated on alleged defamation of the respondent by the second applicant.
- [2] The alleged defamatory statement by the second applicant has its origin in municipal land that was bought by the respondent from the first applicant at a reduced price. In a municipal council meeting, the second applicant (who was at that time employed as the municipal manager of the first applicant) allegedly made certain defamatory statements in relation to

the reduced purchase price paid for municipal land by the respondent. This is the cause of upon which the respondent instituted action against the first and second applicant for defamation.

Interlocutory applications

- [3] The returns of service filed indicate that the summons was served on the first applicant on 6 March 2023. Although there is no positive return of service in relation to the second applicant before this Court, both first and second applicants filed a notice of intention to defend on 14 March 2023.
- [4] On 5 April 2023, the applicant filed a notice in terms of Rule 30 (2)
- (b) read with Rule 30A (1) (“the first Rule 30 notice”) levelled against the respondent’s particulars of claim. In this notice, the applicants advanced that the valuator of the first applicant (the valuator of the municipal land) had not been joined or cited either as a co-plaintiff or co-defendant in the proceedings.
- [5] Despite the existence of the first Rule 30 notice, the respondent filed a notice of bar on 18 April 2023. In reaction to the notice of bar, the applicant served a notice in terms of rule 30 (2)
- (b) read with Rule 30A (1) (“the second Rule 30 notice”) notifying the respondent that is notice of bar constitutes an irregular step. The basis for the irregularity complained of in the second Rule 30 notice was that the first rule 30 notice had to be disposed of before the applicants were required to file a plea.
- [6] Having received no reaction from the respondent in terms of any of the Rule 30 notices, the applicants filed two separate applications in terms of Rule 30(1) read with Rule 30A(2). Both these applications have been opposed.
- [7] Following his notice of bar, the respondent applied for a default judgment which was set down for 4 March 2024. Wisely, the respondent did not proceed with the application for default

judgment

pending the finalisation of the Rule 30 applications.

Legal principles

- [8] The applicable portion of Rule 30 reads as follows:

‘(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).'

(emphasis added)

[9] Rule 30A reads as follows:

'(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order —

- (a) that such rule, notice, request, order or direction be complied with; or
 - (b) that the claim or defence be struck out.
- (2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.'

[10] In *Hlophe v Freedom under Law, and Other Matters* [1], the full court of the Gauteng Local Division, Johannesburg made the following apt remarks concerning the purpose of the Rule 30

procedure:

'The Uniform Rules of Court prescribe the manner of presentation of documents that serve the process of court. Sometimes practitioners fail to satisfy these prescripts. Such failures are the subject-matter of rule 30 which deals with irregular proceedings' and what an aggrieved party may do about the irregularities allegedly perpetrated by an adversary.'

The First Rule 30 application

[11] The cause of complaint in the first Rule 30 notice is set out as follows:

'Plaintiff has taken an irregular step in that the valuer of the Municipality's property concerned has not been joined or cited either as a co-plaintiff or co-defendant in the proceedings.'

- [12] Apart from opposing the merits of the application in terms of the provisions of Rule 30 (1) read with Rule 30A (2) that followed the first Rule 30 notice (“the first Rule 30 application”), the respondent raised the point (in limine) that the first Rule 30 notice was served out of time.
- [13] According to the respondent, the summons that was served on 6 March 2023, which signifies the date on which the 10-day period of becoming aware of the irregularity starts to run in terms of Rule 30 (2) (b). The first Rule 30 notice was served outside this 10-day period. At the very best for the applicant, the respondent argues that even if the 10-day period is calculated from the date on which the applicants filed the notice of intention to defend, the first Rule 30 notice had still been served out of time.
- [14] The definitive point of commencement of the 10-day period referred to in Rule 30(2)(b) has been defined in *MEC For Health, The Kwazulu-Natal Province and Others v Medical Information Technology SA (Pty) Ltd*[2]
- ‘The reference to ‘becoming aware of the step’, as the date from which the time period for the service of a rule 30(2)(b) commences to run, does not require that the actual litigant, that is the ‘applicant’ in the rule 30(1) application must have become aware of the irregularity of the step. Becoming aware of the irregularity means after becoming aware that the step that is irregular, had been taken, and not after becoming aware of the irregularity of the step.’
- [15] There is no doubt that the first Rule 30 notice has been filed outside the 10-day period as prescribed in Rule 30 (2) (b) but the applicants did not request condonation for the late filing of the first Rule 30 notice. On this basis, the first Rule 30 notice in itself is irregular.
- [16] The first Rule 30 notice bears the following heading ‘Defendants’ notice in terms of Rule 30 (2) (b) read with Rule 30 A (1)’. If Rule 30 is not applicable, this leaves the applicants with Rule 30A. For this reason, it is necessary to deal with the interplay between Rule 30 and Rule 30 A.
- [17] Rule 30A does not contain a timeframe within which a notice in terms of Rule 30A(1) has to be filed. Although Rule 30 applies in cases of irregular proceedings, it applies exclusively so.

There exists a meaningful difference between Rule 30 and Rule 30A that is more often than not overlooked. Rule 30 provides that the applicant has to notify its opponent within 10 days of becoming aware of the irregular step by means of a notice affording its opponent an opportunity to remove the cause of complaint. This 10-day period, as is found in Rule 30, is not present in Rule 30A.

- [18] The effect is that if the provisions of Rule 30A apply to the first Rule 30 notice, no timeframe is prescribed within which the applicants had to give notice of the cause of the complaint which would cure the irregularity of the late filing of the first Rule 30 notice.
- [19] As already touched on, the applicants allege that the respondent’s

failure to join the municipal valuator constituted an irregular step. Does the applicant's inclusion of Rule 30A (that

contains no time frame for the filing of a notice) in the first Rule 30 notice come to the rescue of the applicants? Put

differently, does Rule 30A apply in case of an irregular step? This question cannot be definitively answered without investigating

the purpose of Rule 30A proceedings.

[20] Both Rule 30 and Rule 30A bear similarities insofar as non-compliance with the Uniform Rules is concerned. Rule 30 is predicated on circumstances 'in which an irregular step has been taken'[3] and Rule 30 A, upon circumstances where a party 'fails to comply with these rules'[4].

[21] Rule 30A applies if compliance with a rule is sought when the relevant rule does not have its own inherent procedure with which compliance can be enforced. The application of Rule 30A is evident from what had been stated in *Absa Bank Ltd v the Farm Klippan*[5] wherein the following was held:

'Rule 30A has an important place in the Rules, in that, as I have stated, it provides a remedy where none exists elsewhere. However, it could not have been intended by the drafters of Rule 30A to jettison the existing and effective remedies provided in the specific remedy Rules. If it was so intended, it would render such remedies nugatory. The remedies in the specific remedy Rules have always been effective and there is no reason to denude them of their efficacy. I, therefore, find that an application may be made in terms of those Rules which provide a specific remedy for failure to comply therewith without the applicant first having to give notice in terms of Rule 30A or to follow the provisions thereof.'

[22] The first Rule 30 notice does not seek to enforce compliance with a specific rule that does not provide a specific remedy for non-compliance. Even if the first Rule 30 notice sought to enforce compliance with some rule, the applicants' cause of complaint as based on "an irregular step" disqualifies the application of Rule 30A. This leaves the applicants' complaint as one in terms of Rule 30(2)(b).

[23] As already found, the first Rule 30 notice was filed late and no condonation had been granted for its late filing. The first Rule 30 notice is therefore not properly before this Court.

[24] Although the merits of the first Rule 30 application were not considered, it should be remarked, although obiter, that the applicants would have been better served had they addressed the issue of non-joinder by way of a special plea. With regard to the applicability of Rule 30 to the objection to proceedings other than that of the Uniform Rules of Court this remark can be concluded by reference to the full court decision in *Cochrane v City of Johannesburg*[6] wherein the following was said:

‘I am, accordingly, of the view that, if rule 30 was intended to serve as a notice of objection in respect of proceedings other than the Uniform Rules of Court, it would be casting the net far too wide and would lead to abuse.’

[25] In conclusion on this point, the late filing of the first Rule 30 cannot be condoned in the absence of a substantive condonation application and the first Rule 30 application stands to be dismissed.

The Second Rule 30 notice

[26] After service of the first Rule 30 notice on 5 April 2023, the respondent’s attorneys addressed a letter to the applicant’s attorneys complaining about the lack of merits in the Rule 30 application. In this letter, the applicants were requested to withdraw the Rule 30 notice and were afforded a period of three days to file their plea. The applicants did not accede to this request.

[27] On 18 April 2024 respondent’s attorneys filed the notice of bar. In reaction thereto, applicants filed the second Rule 30 notice. In the second Rule 30 notice, the applicants averred that the first Rule 30 notice had to be disposed of before the applicants’ plea would become due.

[28] The second Rule 30 notice was followed by an application in terms of Rule 30(1) (“the second Rule 30 application”). In the second Rule 30 application, the applicants request that the notice of bar be declared an irregular step.

[29] The merits of the first Rule 30 notice had not been decided at the time of filing of the notice of bar. Even if the first rule 30 notice was irregular (as it had now been found to be), it still stood until withdrawn or had been adjudicated upon by this Court.

[30] Clearly, the applicants could not file their plea while the first Rule 30 notice had not been adjudicated. Undoubtedly, the filing of a plea is a step that advances the matter closer to completion^[7] and any further step taken by the applicants following the filing of the first Rule 30 notice would have invalidated the first Rule 30 by the operation of the provisions of Rule 30(2)(a).

[31] It would undoubtedly yield unintended and absurd results if the defendant (complaining about a formal defect in a summons) in employing Rule 30, is expected to plead before the cause of complaint levelled against the summons had either been addressed by the plaintiff or ruled upon by this Court.

[32] There can be no question that the notice of bar constitutes an irregular step due to the existence of the first Rule 30 notice at the time of service of the notice of bar. The applicants were well within their rights to address the irregularity, at the time, by means of the second Rule 30 notice.

[33] On this account, the second Rule 30 application stands to be granted.

[34] As part of the relief sought in the second Rule 30 application, the applicants request that the claim of the respondent be struck out in its entirety. Striking out the respondent's claim in Rule

30 proceedings in its entirety is a remedy which should only be applied in rare circumstances as Rule 30 proceedings are aimed at the removal of an irregular step.

[35] Rule 30 (1) allows for the setting aside of the regular step only.

Although this court has the discretion to deviate from the provisions of Rule 30 (1) and order the striking of the claim, there is no compelling reason to do so.

Order

[36] Resultantly the following order is made:

- i. The Rule 30(1) application dated 11 May 2023 in relation to the respondent's notice in terms of Rule 30 (2)
- (b) read with Rule 30 (1) dated 4 April 2023 is dismissed.
- ii. The applicants are ordered to pay the costs of the Rule 30(1) application dated 11 May 2023 on party and party scale B, jointly and severally, the one paying the other to be absolved.
- iii. Respondent's notice of bar dated 18 April 2023 is declared as an irregular step and is struck out.
- iv. The respondent is ordered to pay the costs of the Rule 30(1) application dated 18 May 2023 as well as the wasted costs of the applicants incurred as a result of the notice of bar on party and party scale B.

M WESSELS

ACTING JUDGE OF THE HIGH COURT

Date of judgment reserved : 15 November 2024 Date of judgment : 14 February 2025

APPEARANCES Counsel for Applicants : Adv E Mokutu SC Instructed by : Modiboa Inc Mahikeng
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- [1] In *Hlophe v Freedom under Law, and Other Matters* 2022 (2) SA 523 (GJ) par 11
- [2] *MEC For Health, The Kwazulu-Natal Province and Others v Medical Information Technology SA (Pty) Ltd* (7535/19P) [2022] ZAKZPHC 21 (8 June 2022) par 20
- [3] Uniform Rule 30(1)
- [4] Uniform Rule 30A(1)
- [5] *Absa Bank Ltd v the Farm Klippan* 490 CC 2000 (2) SA 211 (W) at 214H-215B

[6] Cochrane v City of Johannesburg 2011 (1) SA 553 (GSJ) par 31

[7] See Zoutendijk v Zoutendijk 1975 (3) SA 490 (T)

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