

SOUTH AFRICA / JUDGMENT

Quill Associates (Pty) Limited v Dawid Kruiper Local Municipality (209/2020) [2020] ZANCHC 87 (20 November 2020) [2020] ZANCHC 87

COURT

Northern Cape High Court, Kimberley

BEFORE

O.K.Chwaro

CASE / FILE NUMBER

209/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTHERN

CAPE DIVISION, KIMBERLEY

CASE

NO: 209/2020

Reportable:

YES / NO

Circulate

to Judges: YES / NO

Circulate

to Magistrates: YES / NO

Circulate

to Regional Magistrates: YES / NO

In

the matter between:

QUILL

ASSOCIATES (PTY) LIMITED

Applicant

and

DAWID

KRUIPER LOCAL

MUNICIPALITY

Respondent

Coram:

Chwaro AJ

JUDGMENT

CHWARO AJ:

Introduction

- [1] This is an interlocutory application brought in terms of the provisions of rule 30(1) of the Uniform Rules of Court for the setting aside of an irregularity contained in the plea and conditional counterclaim filed on behalf of the respondent in the main action.
- [2] The applicant contends that the respondent did not comply with the requirements of rule 18(1) of the Uniform Rules of Court in filing its plea and conditional counterclaim in that such pleadings were not signed by either an advocate and an attorney or by an attorney having the right of appearance as provided for in section 4(2) of Act 62 of 1995 read with sections 119 and 25(3) of the Legal Practise Act, No. 28 of 2014.

Background

- [3] The applicant is a service provider in the information technology sphere. It rendered and continues to render these services to the respondent, a local municipality established in terms of the relevant provisions of the Local Government: Municipal Structures Act, No. 117 of 1998.
- [4] On or about 31 January 2020, the applicant caused summons to be issued against the respondent claiming a battery of relief, including that the respondent be directed to remove from its computer system all components of the computer programme known as BIQ and for payment of various amounts.
- [5] The action is defended by the respondent who caused a plea and conditional counterclaim to be served upon the applicant on or about 20 March 2020. The respondent's plea and counterclaim are, on face value, signed by an unidentified person on behalf of counsel, Adv. J.S.Rautenbach, where the words "pp" are also written in manuscript next to the name of counsel. The same person has also signed as an attorney.
- [6] Aggrieved by the manner in which the plea and conditional counterclaim were signed, the applicant issued a notice contemplated in rule 30(2)(b) of the Uniform Rules of Court inviting the respondent to withdraw or rectify the cause of complaint which was captured in the following manner:

"1. Rule 18(1) of the High Court Rules stipulates that a Plea shall be signed by both an advocate and an attorney or, in the case of an attorney who, under Section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), and now repealed and read with Section 119 and 25(3) of Act 28 of 2014, has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party;

2. The Defendant's Plea and Defendant's Conditional Counterclaim is signed by an unidentified person on behalf of ("pp") an advocate. Defendant's Plea and Defendant's Counterclaim does not indicate nor does it contain any particulars that the Plea and Conditional Counterclaim is signed by either an advocate and an attorney who is also admitted under Section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), and now

repealed and read with Section 119 and 25(3) of the Act 28 of with the right of appearance in the Supreme Court; (sic)

3. The Defendant's Plea and Defendant's Conditional Counterclaim does not comply with Rule 18(1) of the High Court Rules and therefore constitutes an irregular step in terms of Rule 30(2)(b) of the High Court Rules."

- [7] In reaction to the notice referred to above, the respondent's attorneys directed a letter dated 8 April 2020 to the applicant's attorneys where the following was, amongst others, stated:

"1. Both the plea and counterclaim were signed by our Mr JD Klinck, who, at the time of signing was and still is an admitted Attorney of our High Court and who at the time had and still has Right of Appearance in the High Court, in terms of the relevant legislation.

2. There is no irregularity a[s] contemplated in Rule 30. Should you proceed with an application in terms of Rule 30(2), it will be opposed. A copy of this letter will be annexed to our client's replying affidavit and the Court will be requested to grant a punitive costs order."(sic)

- [8] The applicant then launched the present application on 4 May 2020. It is opposed by the respondent.

Issue for determination

- [9] This Court is called upon to determine whether the respondent's non-compliance with rule 18(1) regarding the identity of the signatory of the plea and conditional counterclaim as suggested by the applicant in the rule 30(2)(b) notice referred to above amounts to an irregularity deserving the court's sanction as provided for in rule 30(3).

Discussion

- [10] The manner in which pleadings defining the issues between the parties in the High Court are to be drafted and presented is regulated through, amongst others, rule 18(1) of the Uniform Rules of Court. The relevant portion of rule 18(1) dealing with pleadings in general states as follows:

"(1) A combined summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party."

- [11] In terms of rule 18(12), any non-compliance with the provisions of rule 18 amounts to an irregularity which ought to be determined through an application envisaged in rule 30 of the Uniform Rules.
- [12] Rule 30 of the Uniform Rules provides 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 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2).
- (3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.
- (4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.”
- [13] Counsel for the applicant, Mr Wagener SC, submitted that the applicant is prejudiced by the manner in which the respondent’s plea and counterclaim has been signed. He submitted that the signatory to the pleadings ought to be identified as a person who confirms the propriety and correctness of the contents of such pleading.
- [14] He further submitted that the applicant intends to seek a costs de boni propiis order against the legal practitioner who settled the plea for raising a vexatious defence relating to the provisions of the National Credit Act. As the plea and counterclaim stand, the applicant is unable to identify such legal practitioner with certainty.
- [15] It was further submitted on behalf of the applicant that the letter of 8 April 2020, where the signatory to the respondent’s plea and conditional counterclaim was identified as Mr JD Klinck, an attorney with the right of appearance in the High Court, was of no assistance to the respondent as it did not remove the cause of complaint found on the plea and counterclaim as provided for in terms of the rules.

- [16] It was expected of the respondent, so the argument went, to have filed a proper amendment of the plea and counterclaim where either counsel could have signed in his capacity as such or Mr Klinck's identity and capacity to sign same would have been clearly spelt out.
- [17] Counsel for the respondent, Mr Rautenbach, submitted that the fact that the plea was signed by an attorney who was later identified in the latter of 8 April 2020 did not cause any prejudice to the applicant's preparation of its case. He further submitted that the applicant's complaint relating to the contents of the plea, i.e. the fact that there was a vexatious defence raised in the plea relating to non-compliance with the relevant provisions of the NCA, is not covered by rule 18 but is rather a matter of substantive law.
- [18] On a proper consideration of the issues raised in this application, it is my considered view that the only determinative factor that ought to be considered is whether the applicant suffered any marked prejudice as a result of the alleged irregularity occasioned by the signature of Mr Klinck, which appears to have been appended on behalf of an identified advocate on the plea and conditional counterclaim filed on behalf of the respondent.
- [19] The determination of the issue identified above brings to the fore, the true nature and purport of the deliberate and courageous stance taken by the legislature to transform and unify the legal profession by removing all barriers which sought to maintain and uphold exclusionary provisions in the law relating to legal practitioners so as to facilitate equality and access to justice for all.
- [20] A consideration of decided cases dealing with the roles and responsibilities of attorneys to sign pleadings vis a vis those of advocates since the promulgation of the Right of Appearance in Courts Act, No. 62 of 1995 clearly demonstrate the move towards the realisation of the need to remove the unnecessary separation of roles between these legal practitioners and the restrictions based on territorial jurisdictions of High Courts.
- [21] I find it prudent to summarise these cases herein.

21.1. In *Zeda Car Leasing (Pty) Ltd t/a Avis Fleet Services v Pillay and Others*[1] the court held that it was not proper for an attorney, who holds a certificate of right of appearance issued by the then Transvaal

Provincial Division, to sign pleadings as an advocate or an attorney in a different division, in this case the then Natal Provincial

Division or the Durban Local Division. Put otherwise, the right of appearance could only be exercised within the division of the High Court where such an attorney has been enrolled to practice.

21.2. In *ABSA Bank Ltd v Barinor New Business Venture (Pty) Ltd*^[2] the court interpreted the objectives of the Act granting attorneys the right of appearance in the higher courts to include all other divisions and not only restricted to the division where the certificate was issued. It was then held that an attorney who has the right of appearance can exercise such right throughout the Republic.

21.3. In *Liberty Group Ltd v Singh and Another (KZD)*^[3] the court held that an attorney is entitled to sign combined summons and pleadings in his dual capacities, being an attorney per se and as an attorney having the right of appearance. This can only be done where such an attorney is enrolled in that particular division of the High Court.

[22] The significance of the Liberty Group decision is that an attorney who has a right of appearance in the High Court is entitled to sign combined summons and pleadings in his dual role as an attorney and attorney with right of appearance, provided that the pleadings are served and filed in the division of the High Court where such an attorney is enrolled.

[23] In my view, the determination of whether the signatory to the pleadings that are the subject-matter of this application committed an irregularity contemplated in rule 30(3) cannot be fairly and justly undertaken without having due regard to the historical legislative and regulatory prescripts that were applicable then and juxtaposing same with the current reforms aimed at the transformation and unification of the legal profession.

[24] It cannot be gainsaid that the signatory to the respondent's pleadings was and still is an attorney having the right of appearance in the High Court and was thus, as at the time of appending his signature to the said pleadings, entitled and authorised to sign such pleadings on behalf of an advocate and as an attorney in his own right in this division of the High Court. The fact that he did not identify himself as such was, in my view, properly cured by the correspondence that was transmitted to the applicant and dated 8 April 2020.

[25] In the premises, the alleged irregularity complained about by the applicant has no merit and the applicant did not demonstrate to have suffered any prejudice whatsoever on any course of action which it might be advised to undertake in relation to the contents of the plea filed on behalf of the respondent. Resultantly, this application falls to be dismissed.

[26] The determination of costs is a discretionary matter which must be exercised judicially. The general rule is that costs follow the results, unless there are exception circumstances justifying a deviation therefrom. The respondent is successful in its opposition of the application. The applicant must thus pay the costs of the application.

ORDER

[27] The following order is made:

THE APPLICATION IS DISMISSED WITH COSTS.

O.K.CHWARO

ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 13 November 2020

DATE OF JUDGMENT: 20 November 2020

REPRESENTATIONS:

Counsel for the Applicant: ADV S D WAGENER SC

Instructed by:

Van de Wall & Partners Inc.

Kimberley

Counsel for the Respondent: ADV J S RAUTENBACH

Haarhoffs Inc.

[1] 2007

(3) SA 89 (D)

[2] 2011

(6) SA 225 (WCC)

[3] 2012 (5) SA 526 (KZD)

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Prepared on 14 October 2026 · Esheria