

SOUTH AFRICA / JUDGMENT

T-Systems (Pty) Ltd v BDM Technology Services (Pty) Ltd and Others; In re BDM Technology Services (Pty) Ltd and Others v T-Systems (Pty) Ltd (2019/39986) [2020] ZAGPJHC 243 (7 October 2020) [2020] ZAGPJHC 243

COURT

South Gauteng High Court, Johannesburg

BEFORE

Siwendu

CASE / FILE NUMBER

2019/39986

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 2019/39986

In

the matter between:

T-SYSTEMS (PTY) LTD

Applicant

and

BDM

TECHNOLOGY SERVICES (PTY) LTD

(IN

LIQUIDATION)

First

Respondent

GERT

LOURENS STEYN DE WET N.O.

Second

Respondent

GORDON

NOKHANDA N.O.

Third

Respondent

In

re: BDM
TECHNOLOGY SERVICES (PTY) LTD
(IN
LIQUIDATION)
First
Plaintiff
GERT
LOURENS STEYN DE WET N.O.
Second
Plaintiff
GORDON
NOKHANDA N.O.
Third
Plaintiff
and
T-SYSTEMS
(PTY) LTD
Defendant

JUDGMENT

SIWENDU J

Introduction

- [1] The applicant launched this interlocutory application in terms of Rule 30(1).[1] The applicant seeks an order to set aside an application for summary judgment as an irregular proceeding under the Rule.
- [2] The applicant, T-Systems (Pty) Ltd, is the defendant in the main action instituted against it by the respondents. The applicant conducts its business in the information communication and technology industry, from premises situated at We Work, the Link, 3rd Floor, 173 Oxford Road, Rosebank, Johannesburg. For convenience, I refer to the applicant as ‘T-Systems’ throughout the

judgment.

- [3] The first respondent is BDM Technology Services (Pty) Ltd, which is a company in liquidation, and the first plaintiff in the main action. BDM Technology Services previously traded as Sechaba Computer Services. Its registered address is at 5 Albany Office Park, Albany Road, Dunkeld West, Johannesburg. I refer to it to as ‘BDM Technology Services’ throughout the judgment.
- [4] The second respondent is Gert Lourens Steyn N.O. and the third respondent is Gordon Nokhanda N.O. Both are insolvency practitioners and joint liquidators of BDM Technology Services, practising as such at 74 Siemert Road, Doornfontein, Johannesburg, and 14th Floor, Marble Towers, Corner Jeppe and Von Wielligh Street, Johannesburg, respectively.

They are the second and third plaintiffs in the main action. For convenience, I refer to the second and third respondents as ‘the liquidators’. BDM Technology Services and the liquidators shall collectively be referred to as ‘the respondents’ in this judgment.

- [5] The summary judgment application served before Crutchfield AJ in March 2020. The court granted an order for the removal of the application, allowing for the disposal of the Rule 30 application first. The court awarded wasted costs against BDM Technology Services and the liquidators.

Background

- [6] BDM Technology Services was wound up by special resolution under s 352(2) of the Companies Act 61 of 1973 (the ‘1973 Companies Act’), registered on 18 December 2018. The voluntary liquidation was subsequently converted to a winding up by court order on 16 April 2019 on account of the fact that BDM Technology Services was unable to pay its debts.[2]
- [7] The court ordered an inquiry into the affairs of BDM Technology Services, in terms of s 417 and s 418 of the 1973 Companies Act. Afterward, the liquidators instituted action proceedings against T-Systems for the payment of R8 979 921.85. The material prayers in the particulars of claim sought an order as follows:
- (a) Disregarding a set-off of 28 June 2018 between the BDM Technology Services and T-Systems in the amount of R8 979 921.85 in terms of s 46 of the Insolvency Act 24 of 1936 (the ‘Insolvency Act’);[3]
 - (b) In the alternative, setting aside the 28 June 2018 set-off between BDM Technology Services and T-Systems in terms of s 30 of the Insolvency Act;[4] and
 - (c) Payment by T-Systems to the plaintiffs (the present respondents) in the amount of R8 979 921.85.
- [8] Before the winding up, BDM Technology Services had acquired certain assets from T-Systems. Both companies subsequently entered into a series of Opportunities Agreements through which BDM Technology Services generated revenues. It utilised 7% of the revenues generated to pay for assets it had acquired from T-Systems. In October 2017, T-Systems and BDM Technology Services agreed to unwind the sale transaction and the series of Opportunities Agreements through a mutual disengagement agreement.
- [9] BDM Technology Services and the liquidators allege that the effect of the unwinding of these agreements was that a substratum of BDM Technology Services ceased to exist, and consequently it had no business to conduct. Its liabilities exceeded its assets. From 10 November 2014 to February 2018, BDM Technology Services had issued invoices to T-Systems for payment (in aggregate) in the sum of R127 593 314.43. The respondents aver that T-Systems paid R118 613 392.58 to BDM Technology Services over that period.

[10] On the basis of s 46 of the Insolvency Act, the liquidators disregarded the set-off. They claim that the set-off was an abandonment of payment by BDM Technology Services and an impermissible disposition under s 46 of the Insolvency Act. The set-off occurred on 28 June 2018. The liquidation followed six months after, that is, within the period set out in s 46. T-Systems defended the action and denied virtually all the allegations in the particulars of claim in a terse, tightly pleaded plea. My reading is that it maintained the converse of what the liquidators alleged.

[11] The plea reflects that T-Systems, rather than BDM Technology Services, issued invoices to BDM Technology Services in the same amount of R127 593 314.43.

The end period over which it claims to have raised the invoices differs from 10 November 2014 to 22 May 2018, rather than

February. Even though T-Systems denied the period over which BDM Technology Services made the payments, it confirmed that it received the sum of R118 613 392.58 from BDM Technology. As far as the amount claimed, T-Systems denied that as at 28 June 2018, it owed BDM Technology Services the amount of R8 979 921.85. Instead, T-Systems pleaded that with the consent of BDM Technology Services, it applied a set-off of the accumulated debt due by T-Systems to BDM Technology Services in the amount of R8 061 232. It claimed BDM Technology Services was indebted to T-Systems for R8 979 922 (the set-off amounts).

[12] In response, BDM Technology Services and the liquidators applied for summary judgment in terms of Rule 32 of the Uniform Rules of Court, claiming the lesser amount of R8 061 232 purportedly admitted by T-Systems, in respect of the set-off.

Irregular Steps under Rule 30 Application

[13] In the Rule 30 application before this Court, T-Systems attacks the application for summary judgment as an irregular step on several grounds, namely:

- (a) That it fails to comply with the provisions of Rule 32(2)(a), (b), and (c) of the Uniform Rules of Court.[5]
- (b) That the affidavit in support of summary judgment relies on evidence contained in additional annexures attached to it in circumstances where the annexures: (i) do not relate to any allegation in the particulars of claim and, as such, introduce new evidence upon which the case for summary judgment is premised; and (ii) constitute impermissible and inadmissible hearsay evidence in terms of the provisions of Rule 32(2)(a),
- (b) and (c).
- (c) That it fails to comply with the requirements of Rule 32(1) in that BDM Technology Services' claim, premised on s 46 of the Insolvency Act, is not one contemplated in Rule 32(1). Instead, it is one for an order disregarding the set-off, alternatively, for an order setting-aside the set-off.

- (d) That it fails to comply with Rule 32(2)(b) in that the deponent to the affidavit in support of summary judgment does not verify the amount claimed in the particulars of claim – the amount of R8 061 232.00 is not the amount claimed in the particulars of claim.
- [14] The objection is about compliance with the requirements of Rule 32. The next complaint is about the contents of the verifying affidavit. T-Systems claims that the affidavit includes added facts to bolster assertions made in the particulars of claim under s 46 of the Insolvency Act. The affidavit also included excerpts of testimony deposed to at the Insolvency Inquiry, which T-Systems claims constitute an impermissible amplification of the cause of action, based on hearsay evidence instead of the identification of the facts upon which it relies.
- [15] To this challenge, BDM Technology Services and the liquidators filed a Notice in terms of Rule 6(5)(d)(iii) and opposed the application on a question of law. The question of procedure and whether it is competent and permissible to raise the objections to a summary judgment application under Rule 30(1), rather than to oppose the summary judgment, is what this Court must determine.
- [16] Mr van Niekerk, who appeared for the BDM Technology Services and the liquidators (the respondents), contended that the proper route open to T-Systems was to oppose the summary judgment application and deliver an affidavit resisting summary judgment in which the T-Systems would raise the perceived deficiencies in limine in terms of Rule 32(3)(b). He argued that the court hearing the summary judgment application could address those points. He submitted that there was no need to resort to Rule 30 and create two parallel and separate processes to deal with the summary judgment application. In the Rule 6(5)(d)(iii) Notice, the respondents claimed that the affidavit in support of summary judgment merely verifies first-hand knowledge of the debt by the person best placed to do so.
- [17] Mr van Niekerk argued further that a claim based on s 46 of the Insolvency Act properly falls within the ambit of Rule 32(1), because the section creates an obligation to pay the amount concerned. The respondents claim a liquidated amount in money, as contemplated in Rule 32(1). A court order to this effect is not necessary. Even if the verifying affidavit includes the additional annexures, the inclusion does not invalidate the application; the Court can ignore the annexures.
- [18] In terms of Rule 32(3)(b) the defendant in a summary judgment application may–
'satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.'

- [19] As I understand from the affidavit and argument by Ms Cirone (counsel for T-Systems) the summary judgment application has been converted into opposed motion proceedings by the introduction of new facts which were not part of the particulars of claim. Despite the provisions of Rule 32(3), which permits T-Systems to file an affidavit, Ms Cirone argues that it is prejudiced in the further conduct of the case. T-Systems will be required to furnish security or file an affidavit to disclose its defence, in circumstances where the respondents have materially and substantively failed to comply with the requirements of Rule 32. They are not entitled to move an application for summary judgment. She claims the only route available to them, insofar as they believe there is merit in what they contend, is to object to the respondents' Rule 30(1) application in terms of Rule 30.
- [20] Ms Cirone urged me to focus only on the allegations in the particulars of claim. Despite this approach, I requested further representations from the parties to better understand s 46 of the Insolvency Act, and the effects of this section on summary judgment applications as a matter of law.
- [21] In the additional submissions, Ms Cirone contends that the prerequisite to the relief sought in the summary judgment application is a declaratory order by a court to find that there was a disposition, a finding that the set-off was not one made in the ordinary course of business thereafter, followed by an order to disregard the set-off. Otherwise, in the absence of a declaration by a court, no debt is created which can form the subject of a summary judgment application.
- [22] In contrast, Mr van Niekerk for the respondents disputes this, on account of a statutory obligation created by the section. He argued that the

declarator is a red-herring and of no moment. In this instance, it is akin to other declarators granted in summary judgment applications.

The claim is for a liquidated amount in money squarely falling within Rule 32.

Applicable Principles

- [23] Rule 30 confers the right of an aggrieved party to apply to a court to set aside an irregular step. The Rule does not prescribe the nature of the irregularities it covers. The courts have accepted over the years that Rule 30 applies to irregularities of form – and not to matters of substance. Erasmus: Superior Court Practice[6] cites the court's decision in SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO,[7] where Flemming J held the object of Rule 30(1) to be as follows:

'I have no doubt that Rule 30 (1) was intended as a procedure whereby a hindrance to the future conducting of the litigation, whether it is created by a non-observance of what the Rules of Court intended or otherwise, is removed.'

- [24] Flemming J further went on to state:

‘A party who takes a procedural step which advances the finalisation of the case may not, unless he is unaware of the irregularity, ask for the setting aside of the relevant irregularity. It may even be correct to infer that the situations which have been regarded as beyond the scope of Rule 30 (1) were instances where the relevant objection could be adequately raised at an appropriate stage whilst the cause of objection constituted no hindrance to the ordinary course of the litigation process.... Even if this generalization needs qualification, the exercise of the Court's discretion has been consistently led by the presence or absence of prejudice in relation to the exercise of a party's procedural right or duty to respond to a communication received, or to the taking of a next step in the sequence of permissible procedures to ripen the matter for proper orderly hearing. Where such prejudice is absent, a decision to set the irregular proceeding aside will not be given. On the contrary, the irregularity may be overlooked....’[8]

[25] Similarly, the court in *De Polo v Dreyer*[9] aptly noted that the framers of the Rules were not concerned about what parties might do either to circumvent the Rule or in the belief that the Rule did not prohibit the particular course of action. The court found it inappropriate to challenge locus standi through Rule 30 and ordered that it would have to be heard by way of a special plea. On the other hand, in *Sasol Industries (Pty) Ltd v Electrical Repair Engineering (Pty) Ltd*, [10] the court proceeded to set aside various complaints on account that the fact that there is a Rule in the Uniform Rules that provides for prejudice and a remedy does not mean the prejudice required in terms of Rule 30 is absent.

[26] This application presents a classic example of the elusive line between a substantive question and that of form. Therefore, the court must consider the appropriateness of the Rule 30 application in the context of the amended Rule 32 process.[11] By requiring a defendant to plead before the application for summary judgment, the amended Rule ensures that an unmeritorious defence is exposed. Similarly, by requiring a plaintiff to file an affidavit in support of summary judgment containing a brief explanation as to why the defence does not raise a triable issue, it ensures that the court will engage the real issues between the parties in an informed debate and bring the litigation to finality.

[27] The amended Rule 32 amplifies the purpose already stated in *Majola v Nitro Securitisation 1 (Pty) Ltd*, [12] where the Supreme Court of Appeal held that:

‘...The purpose of summary judgment is to “enable a plaintiff with a clear case to obtain swift enforcement of a claim against a defendant who has no real defence to that claim”. It is a procedure that is intended “to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights”...’

[28] The amended Rule 32 has not altered the longstanding position to ensure that a deserving plaintiff obtains an expeditious judgment.

[29] Whether the verifying affidavit complies with the requirements of Rule 32(2)(a) and (b), and the concomitant question as to what is permissible in respect of the contents of a verifying affidavit given the amended Rule 32, is subject to debate. What is clear is that the Rule requires more than a formulaic affidavit in support of the application.

[30] In *Absa Bank Limited v Mashinini N.O.*, [13] Davis J held that the amended Rule did not envisage a mini-trial through the production of extensive *facta probantia*. He noted that a bare denial could be refuted or explained by an annexed document to prevent an unsatisfactory position before the amendment.

[31] On the other hand, Wanless AJ in *Absa Bank Limited v Mphahlele N.O and Others* [14] seems to take the opposite view and held:

‘What is apparent to this court, is the need to draw a clear distinction between points of law and the facts as envisaged in subrule (2)(b). A plaintiff is now required to “identify any point of law relied upon and the facts upon which the plaintiff’s claim is based”. These may not necessarily be related to one another. Whether they are or not, what is abundantly clear is that the points of law relied upon by a plaintiff and the facts upon which a plaintiff’s claim is based as contemplated in the subrule, are not related to the defence of the defendant but relate solely to the plaintiff’s cause of action which has to be verified in the same affidavit and in terms of the same subrule.²⁹ As to the “brief explanation as to why the defence as pleaded does not raise any issue for trial”, this must be confined solely thereto. This brief explanation does not open the door to entitle a plaintiff to introduce new evidence as to why, at summary judgment stage, a defendant should not be given leave to defend an action and to attempt to show that a plaintiff has an unanswerable case. This would be contrary to the very nature of summary judgment procedure both in terms of Rule 32 in its original and amended forms.’

[32] In this case, Mr van Niekerk contends the verifying affidavit merely explains why the defence, as pleaded, does not raise a triable

issue. It deals with the defence as maintained in terms of Rule 32(2)(b).

[33] In the context of the amended Rule, whether the respondents can rely on secondary facts or additional facts to show an absence of a triable issue, and the question of what facts they can introduce to legitimately verify the cause of action, is not merely a procedural issue, but a substantive one. Despite Mr van Niekerk’s contention that the Court can discount the prayer for an order disregarding the set-off in terms of s 46, whether BDM Technology Services’ claim falls within the ambit

of Rule 32(1) raises an important question of law, going to the merits of the summary judgment application. The opposing views in the further submissions of the parties fortify this conclusion.

- [34] Proof of prejudice is a prerequisite to success under Rule 30(1). However, the amended Rule has left Rule 32(3)(b) intact. A defendant confronted with a verifying affidavit has an election to either satisfy the court by affidavit that he has a bona fide defence to the action, and disclose fully the nature and grounds of the defence and the material facts relied upon, or to furnish security to avoid summary judgment.
- [35] Rule 32 is not one sided and provides for redress against abuse of the summary judgment procedure or the prejudice it may cause to a party. Rule 32(9) provides that:
- ‘(9) The court may at the hearing of such application make such order as to costs as to it may seem just: Provided that if—
- (a) the plaintiff makes an application under this rule, where the case is not within the terms of subrule (1) or where the plaintiff, in the opinion of the court, knew that the defendant relied on a contention which would entitle such defendant to leave to defend, the court may order that the action be stayed until the plaintiff has paid the defendant’s costs; and may further order that such costs be taxed as between attorney and client; and
 - (b) in any case in which summary judgment was refused and in which the court after trial gives judgment for the plaintiff substantially as prayed, and the court finds that summary judgment should have been granted had the defendant not raised a defence which in its opinion was unreasonable, the court may order the plaintiff’s costs of the action to be taxed as between attorney and client.’
- [36] I agree with the characterisation by Wanless AJ that the Rule 32 procedure is sui generis in nature. When Rule 32 is read as a whole, it caters for the alleviation of any prejudice T-Systems may suffer. In this regard, T- Systems elected to file a plea which lacks a meaningful disclosure of a defence. This, together with the election not to file an affidavit to oppose the summary judgment, is a carefully considered election which lies at T-Systems’ door. It cannot, after that, complain about prejudice.
- [37] Lastly, inherent in the Rule 30 procedure is the requirement to allow the other party to remove, and thereby cure, the cause for complaint. In this case T-Systems effectively seeks to set aside the summary judgment application using Rule 30. The effect would be to dispose of the summary judgment based on so-called ‘form’ complaints, without hearing airing the merits. This outcome distinguishes the finding by the court in Sasol Industries relied upon by T-Systems.
- [38] I disagree that the Rule 30 application is a suitable means of addressing the irregularities complained about. Although dressed up as procedural issues, the objections are substantive in nature. I do not believe the approach is consistent with the purpose of Rule 30. It would undermine the essence of the summary judgment procedure. I would discourage this approach, which delays the resolution of summary judgment applications in real-time.

[39] The application must fail and T-Systems is liable to pay the costs of the interlocutory application. Given what appears to be a tactical approach to avoid summary judgment, I am loath to determine the scale of the costs pending the finalisation of the summary judgment application and representations on costs by both parties

Accordingly, the following order is granted:

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the application.
3. The scale of the costs shall be determined by the court hearing the summary judgment application.

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JUDGE OF THE HIGH COURT

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 7 October 2020.

Date of hearing: 17 August 2020

Additional submissions filed by applicant: 1 September 2020

Additional submissions filed by respondents: 4 September 2020

Date of judgment: 7 October 2020

Appearances:

Counsel for the applicant: Adv. P Cirone

Attorney for the applicant: Bowman Gilfillan Inc

Counsel for the respondents: Adv. SJ van Niekerk

Attorney for the respondents: Rudolf van Niekerk Attorneys

[1] Rule 30: Irregular proceedings

- (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).
- (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.

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- (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.

[2] The winding-up order was granted in terms of s 388 of the 1973 Companies Act, read with Item 9 of Schedule 5 of the Companies Act 71 of 2008.

[3] Section 46 of the Insolvency Act 24 of 1936 provides: 'If two persons have entered into a transaction the result whereof is a set-off, wholly or in part, of debts which they owe one another and the estate of one of them is sequestrated within a period of six months after the taking place of the set-off, or if a person who had a claim against another person (hereinafter in this section referred to as the debtor) has ceded that claim to a third person against whom the debtor had a claim at the time of the cession, with the result that the one

claim has been set-off, wholly or in part, against the other, and within a period of one year after the cession the estate of the debtor is

sequestrated; then the trustee of the sequestrated estate may in either case abide by the set-off or he may, if the set-off was not effected in the ordinary course of business, with the approval of the Master disregard it and call upon the person concerned to pay to the estate the debt which he would owe it but for the set-off, and thereupon that person shall be obliged to pay that debt and may prove his claim against the estate as if no set-off had taken place: Provided that any set-off shall be effective and binding on the trustee of the insolvent estate if it takes place between an exchange or a market participant as defined in section 35A and any other party in accordance with the rules of such an exchange, or if it takes place under an agreement defined in section 35B.'

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[4] Section 30 of the Insolvency Act, headed 'Undue preference to creditors' provides:

- (1) If a debtor made a disposition of his property at a time when his liabilities exceeded his assets, with the intention of preferring one of his creditors above another, and his estate is thereafter sequestrated, the court may set aside the disposition.
- (2) For the purposes of this section and of section twenty-nine a surety for the debtor and a person in a position by law analogous to that of a surety shall be deemed to be a creditor of the debtor concerned.

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- (2) For the purposes of this section and of section twenty-nine a surety for the debtor and a person in a position by law analogous to that of a surety shall be deemed to be a creditor of the debtor concerned.

[5] Rule 32: Summary judgment

- (1) The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only—
 - (a) on a liquid document;
 - (b) for a liquidated amount in money;
 - (c) for delivery of specified movable property; or
 - (d) for ejectment; together with any claim for interest and costs.
- (2) (a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the

facts.

- (b) The plaintiff shall, in the affidavit referred to in subrule (2)(a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.
- (c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 15 days from the date of the delivery thereof.

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- (b) The plaintiff shall, in the affidavit referred to in subrule (2)(a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.
- (c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 15 days from the date of the delivery thereof.
- [6] DE Van Loggerenberg & E Bertelsmann 'Erasmus: Superior Court Practice' (2 ed) Vol 2 (RS 13) at D1-351.
- [7] SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO 1981 (4) SA 329 (O) at 333G–H.
- [8] Ibid at 333H–334B.
- [9] De Polo v Dreyer and Others 1989 (4) SA 1059 (W)
- [10] Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen 1992 (4) SA 466 (W).
- [11] Under the amended Rule, a plaintiff must wait for the defendant to deliver its plea before the plaintiff may initiate summary

judgment

proceedings. The previous Rule permitted the plaintiff to initiate summary judgment proceedings after the defendant had delivered its notice of intention to defend. Rule 32 of the Uniform Rules of Court was amended by GN R842 of 31 May 2019, with effect from 1 July 2019, to bring about this new procedure.

- [12] Majola v Nitro Securitisation 1 (Pty) Ltd 2012 (1) SA 226 (SCA) para 25.
- [13] Unreported judgment of ABSA Bank Limited v Mashinini N.O. and Another (32016/2019; 32014/2019) [2019] ZAGPPHC 978 (22 November 2019) para 3.11.
- [14] Absa Bank Limited v Mphahlele N.O and others (45323/2019, 42121/2019) [2020] ZAGPPHC 257 (26 March 2020); [2020] JOL 47649 (GP) para 33.

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