

SOUTH AFRICA / JUDGMENT

## JC vd Linde & Venter Projects (Pty) Ltd v Bespoke Kitchens & Designs (Pty) Ltd and Another (38726/20) [2022] ZAGPPHC 287 (10 February 2022) [2022] ZAGPPHC 287

COURT

North Gauteng High Court, Pretoria

BEFORE

Manyathi

CASE / FILE NUMBER

38726/20

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 38726/20

Reportable:NO

OF INTEREST TO OTHER JUDGES:NO

REVISED: YES

In the matter between:

J C vd LINDE & VENTER PROJECTS (PTY) LTD

APPLICANT

and

BESPOKE KITCHENS & DESIGNS (PTY) LTD

FIRST RESPONDENT

ADV A.J.R BOOYSEN

SECOND RESPONDENT

### Judgment

MANYATHI AJ

- [1] This is an application in terms of Rule 30 of the rules of court. The Applicant argues that the First Respondent failed to comply with the requirements of Uniform Rule 53 in the main review application. That the First Respondent delivered the answering affidavit out of prescribed sequence and that a consequence of the delivery of said answering affidavit amounts to an irregularity.
- [2] The Applicants submissions are that the record of the Arbitration as was conducted by the Second Respondent was not dispatched to the Registrar and that led to parties confronting the correctness of the proceedings conducted by the Second

Respondent.

- [3] The First Respondent does concede that the record of the proceedings of the arbitration conducted by Second Respondent were not dispatched to the parties, specifically the Applicant. They argue that there was no need for such a dispatch for the following

**reasons:**

1. That the arbitration was decided on papers, no evidence was led.
  2. That the Applicant was already in possession of the record of proceedings and that therefore there was no need to make the record of the arbitration of proceedings available to the applicant.
  3. That as a result all parties had identical copies of the arbitration record.
- [4] The First Respondent argues that the Rule 30 Application by the Applicant is all delaying tactics. That if it happened that the Applicant placed incomplete or inaccurate record before the court, the Respondent would have brought this to the Applicants attention in an informal manner to correct the defect. That the Rule 30 Application was not necessary in these circumstances. That alternatively the Applicant should have waived the procedural benefits afforded to it in terms of Rule 53 which it did not require. Sub-rule 53(1)(b) requires the party whose decision is being challenged to dispatch records of such proceedings to be corrected or set aside, and this is primarily intended to operate in favour of, and for the benefit of an applicant in review proceedings. The purpose of the record is to enable the parties and the courts full access to the proceeding in order to adjudicate the lawfulness of the decision-making process. It allows the Applicant to interrogate the decision and if necessary, supplement his grounds for review. In such a situation all the parties will have identical copies of the proceedings which will be regarded as correct by the Registrar.
- [5] It is common cause between the parties that Rule 53(1)(b) was not followed. Neither was any application for condonation done. The First Respondent contends that this failure could have been rectified in more informal ways between the parties. Unfortunately only the Applicant had the right to waiver, not the Respondent. In this matter the Applicant did not waive his right.

[6] It is also common cause that Rule 30 deals with procedural aspects, not with the merits of the main application. Civil proceedings have rules that guide the procedures to be followed. The parties to civil litigation are expected to follow the rules. Failure to follow the rules will lead to chaos, to the extent that everyone will do as they please and thereby render the rules of court useless.

[7] The Rules of Court are there for two

**reasons.**

1. To structure the proceedings to be followed by the parties involved in litigation, and
2. To set the timeframes within which these processes should occur.

[8] In the event one of the parties for one or the other reason fails to comply with the rules within the proscribed time periods, and the rule makes provision for the party to seek condonation for this lapse, the court should be approached to request condonation.

[9] It is the applicants procedural right to obtain the copy of the arbitration proceedings. This right was not complied with. Neither did he waive his right to obtain such records. The First Respondent was notified of the irregularity, but failed to remove the irregular procedure.

[10] Having read the papers filed and having heard the submissions made by the parties legal representatives, I am of the view that the following order is appropriate.

**ORDER**

1. That the answering affidavit was filed prematurely and is hereby declared an irregular step and set aside on terms of Rule 30(1) of the Uniform Rules of Court.

P MANYATHI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 10/02/2022.

**APPEARANCES**

For the Applicant:

Adv TP Kruger SC Instructed by:

Johan Nysschens Attorneys

For the First Respondent: Adv C Gordon

Instructed by:Quinn Attorneys Inc

Date of hearing:

12 October 2021

Date of judgment:

10 February 2022

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