

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 69860 / 2013

DATE: 3 FEBRUARY 2015

In the matter between:

ABSA BANK LIMITED

PLAINTIFF

and

GEORGE LODEWYK MEIRING (N.O)

IDENTITY NO: [...]

In his capacity as trustee of the:

DAARDOER TRUST IT 6553 / 1998

1ST DEFENDANT

ANNA MARIA GERTUIDA MEIRING (N.O)

IDENTITY NO: [...]

In her capacity as trustee of the:

DAARDOER TRUST IT 6553 / 1998

2ND DEFENDANT

JUDGMENT

LEBALA AJ:

1.1 This is an application in terms of rule 30A of the uniform rules of court. The applicant is the plaintiff in

the main matter. The respondents are the defendants in the main matter. The parties will be addressed as plaintiff and defendants in this judgment.

1.2 The plaintiff filed a notice to remove the complaint in terms of the uniform rules of court. The nub of the complaint goes to the root of the defendants' plea. In the notice to remove the complaint the plaintiff avers that the defendants' plea fails to comply with rule 18 (6) of the uniform rules of court in that the plea the does not state the following:

(i) when the agreement between the parties was concluded;

(ii) where was the agreement concluded;

(iii) by whom was the agreement concluded;

(iv) whether the agreement is written or oral.

1.3 This notice to remove complaint is dated 14 May 2014. It was served on the defendants' attorneys during 16 May 2014. The defendants did not answer the notice to remove the complaint as envisaged from them by the rules of court. The defendants did nothing at this stage.

1.4 As alluded hereinbefore, the plaintiff subsequently brought an application in terms of rule 30A. It is this rule 30A application which is the subject of dispute before court.

2.

2.1 In its rule 30A application, the plaintiff asked for the following prayers:

2.1.1 that the defendants' plea be struck;

2.1.2 alternatively to prayer 1, that the defendants be ordered to rectify their plea within 10 (ten) days after granting of this order;

2.1.3 Costs of this application.

2.2 The rule 30A application is dated 07 July 2014. The affidavit thereto has been sworn and commissioned on the 08 July 2014. The rule 30A application was served on defendants' attorneys on the 15 July 2014.

2.3 It is worth noting that the defendants instead of removing the complaint, proceeded to file opposing affidavits dated 05 August 2014. These affidavits were served on the plaintiff's attorneys on the selfsame date of 05 August 2014. In their affidavits, the defendants challenge the authority of the deponent to the plaintiff's

affidavit to rule 30A application. The defendants further deny that they have contravened rule 18(6) as alleged by plaintiff. The defendants proceed to provide the details raised in the notice to remove complaint in their affidavits. The defendants also asked that the plaintiff's rule 30A application be dismissed with costs as between attorney and own client.

2.4 The plaintiff filed a replying affidavit in which it avers that the deponent to its papers is the attorney of record who is duly authorised to act on its behalf. The plaintiff further avers that the deponent has in depth knowledge of the pleadings exchanged in this matter as he drafted the papers himself. On this basis, the deponent has the necessary personal knowledge entitling him to depose to the affidavit in support of the rule 30A application. The deponent reiterates the fact that the defendants are in contravention of the provisions of rule 18(6) and whatever detail regarding the agreement being advanced in the opposing affidavit must be made in the pleadings. Accordingly, the defendants should have simply amended their plea so as to bring it in line with the requirements of rule 18(6).

3.

3.1 The plaintiff has filed a practice note and heads of argument. The defendant has not. In its practice note, the plaintiff provides that this matter is set to proceed on an unopposed basis.

3.2 The defendants sent counsel to appear on their behalf before court. On this basis, I allowed the matter to proceed on an opposed basis.

CONTENTIONS

PLAINTIFF'S

4.

4.1 The plaintiff contends that its rule 30A application is not an application on the merits of its claim against the defendants, but one to urge the latter to remove a complaint in their pleadings. Accordingly, the plaintiff needs not prove anything other than non-compliance with the uniform rules of court.

4.2 The plaintiff further contends that the mere fact that the defendants are endeavouring to place evidence before court by way of their opposing affidavit as opposed to filing a proper plea amounts to an irregular step and/or non-compliance with the uniform rules of court.

4.3 The plaintiff contends that a mere fact that the defendants are attempting to cure the defect in the pleadings by setting out detail regarding the alleged agreement between the parties in the opposing affidavit instead of a plea is indicative of their non-compliance with rule 18(6). Accordingly, the defendants still need

to amend their plea so as to cure the formal defect therein. As the pleading stands, it is still an embarrassment to answer to and the defendants cannot attempt to cure the defect by way of reference to their opposing affidavit.

DEFENDANTS' SUBMISSIONS

5.

5.1 At the outset, the defendants abandoned their request for costs on attorney and own client scale.

5.2 The nub of the defendants' submissions is that the plaintiff should not have proceeded in terms of rule 30(A) but in terms of rule 30. According to the defendants, their non-compliance with the provisions of rule 18(6) does not entitle the plaintiff to proceed by way of rule 30A but by way of rule 30. This is so as rule 18(12) is specific that if a party fails to comply with any of the provisions of rule 18, such a pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30. The defendants contend that the plaintiff ought to have proceeded by way of rule 30 and not rule 30A.

5.3 The defendants further contend that rule 30A applies where there is no provision in the rules stating that it should be followed unlike in rule 18 which is specific that noncompliance with the latter rule entitles the opposite party to act in accordance with rule 30.

5.4 The defendants further contend that the plaintiff's rule 30A application should be dismissed with costs. They further contend that there is no prejudice to the plaintiff and as a result prayer 1 of the notice of motion should not be granted. According to the defendants, prayer 2 would be a better legal recourse for the plaintiff.

ANALYSIS

6.

6.1 The concession by the defendants that prayer 2 would be a better legal recourse for the plaintiff is an admission on their part that they have not complied with the uniform rules of court.

6.2 Despite the defendants' counsel spirited and persuasive submissions of drawing a distinction between rule 30A irregular procedure and rule 30 irregular procedure, the defendants still do not comply with the uniform rules of court. It is not in dispute that the defendants are in contravention of rule 18(6). The only dispute is whether the plaintiff's remedy should be found in rule 30A or rule 30?

6.3 It should be borne in mind that the plaintiff's rule 30A application is not an application on the merits of the plaintiff's claim against the defendants. I am persuaded that the plaintiff's rule 30A application is a

procedural step intended to exhort the defendants to remove a complaint in their pleading. I am further persuaded that at this stage, the plaintiff need not prove anything other than non-compliance with the uniform rules of court. I am persuaded by plaintiffs submission that the conduct of the defendants of placing evidence before court by way of their opposing affidavit instead of filing a proper plea on its own amounts to an irregular step and/or non-compliance on the part of the defendants with the uniform rules of court.

6.4 Despite the defendants' brilliant and spirited submissions, I am not persuaded that they should be permitted to hide behind the distinction between the application of rule 30A and rule 30. This is so as the law requires reasonable, not perfect lucidity.

See : R v Timber Co (Pty) Ltd (distinguishable)¹

6.5 Equally important, is the fact that the defendants' counsel brilliant and spirited submissions seek to establish a test that the distinction between rule 30A and rule 30 should be ideal. This can't be so. In S v Dzukuda and Others, S v Tshilo, (distinguishable) Ackermann J said:

***"The test is not whether the procedure is ideal, but whether it is fair"*²**

6.6 Of significance also is the impression created by the defendants that the issues of contention between them and the plaintiff has to be regulated outside the rules of court and only between the parties. This observation is informed by the defendants' supine approach towards the rules of court. It is apposite at this stage to allude that:

"The rules of court, which constitute the procedural machinery of the courts, are intended to expedite the business of the courts"

See: SOS Kinderdorf International v Effie Lentin Architects³ (distinguishable)

The words of Van Winsen AJA in Federated Trust Ltd v Botha are apposite⁴.

"The rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts".

The court went further to say:

" Where one or other of the parties has failed to comply with the requirements of the rules or an order made in terms thereof and prejudice has thereby been caused to his opponent, it should be the court's endeavour to remedy such prejudice in a manner appropriate to the circumstance,

always bearing in mind the object for which the rules were designed. See in this regard the remarks of Schreiner JA in Trans-African Insurance Co Ltd v Maluleka 1956 (2) SA 273 (A) "

See also: Imprefed (Pty) Ltd v National Transport Commission⁵

6.7 It is manifest that the plaintiff has already afforded the defendants an opportunity to remove the cause of complaint. This conduct on the part of the defendants undoubtedly prejudices the plaintiff. The plaintiff needs a remedy to go into the main case to prove its case against the defendants. The defendants cannot be permitted to hide behind the veil of their counsel's brilliant and spirited submissions without complying with the uniform rules of court.

6.8 However, in my view this does not mean that the defendants are not entitled and/or should not be permitted to contest a case presented against them by the plaintiff. This is what informs the order hereinbelow.

7.

7.1 From the foregoing, I make the following order:

7.1.1 the defendants to rectify their plea within 15 (fifteen) days after the granting of this order;

7.1.2 the defendants to pay costs of this application.

[footnote1](#)