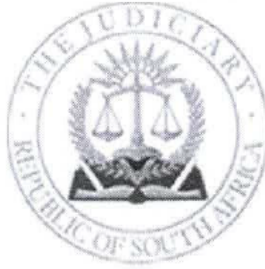


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2023-052870

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO
29/10/24	
DATE	SIGNATURE

In the matter between:

PLANDRUK DIENSTE (PTY) LTD t/a BUSINESSPRINT

Applicant

and

M M METSING TRADING ENTERPRISE (PTY) LTD

Respondent

In re:

M M METSING TRADING ENTERPRISE (PTY) LTD

Plaintiff

and

PLANDRUK DIENSTE (PTY) LTD t/a BUSINESSPRINT

Defendant

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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 29 October 2024.

Summary: Rule 30 application seeking to have unsigned particulars of claim be declared an irregular step. Particulars of claim are an annexure to the combined summons. The signature requirement only applies to a combined summons as opposed to the annexure(s) thereto. Failure to append a signature on the appended particulars of claim does not constitute an irregular step. Particulars of claim as a separate document is not a pleading. A combined summons was signed and does comply with Rule 18(1)(a) of the Uniform Rules. The application to declare unsigned particulars of claim as an irregular step is ill-conceived. Held: (1) The interlocutory application is dismissed. Held: (2) The applicant must pay the costs on a party and party scale B.

JUDGMENT

MOSHOANA, J

Introduction

[1] This is an interlocutory application brought in terms of rule 30(1) of the Uniform Rules of the High Court. The applicant, Plandruk Dienste (Pty) Ltd t/a Businessprint (Plandruk), contends that by failing to append a signature on the particulars of claim annexed to the combined summons issued by the respondent, M M Metsing Trading Enterprise (Pty) Ltd (Metsing) took an irregular step. The present application is opposed by Metsing.

Pertinent background facts to the present application

[2] On 7 June 2023, Metsing caused a combined summons to be issued against Plandruk. Metsing alleges that Plandruk breached a contract between them, as a result of which, it suffered damages to the tune of R20 million. The combined summons instituting the unliquidated claim of damages was signed by the appointed counsel and attorney for Metsing. The combined summons had, as an annexure A, the particulars of claim. The signatures that were appended on the combined summons were not appended on annexure A.

[3] On 12 June 2023, Plandruk entered an appearance to defend the action instituted against it by Metsing. On 22 June 2023, Plandruk caused a notice contemplated in rule 30(2) to be issued. In the said notice, Plandruk contended that the particulars of claim annexed to the combined summons does not comply with the provisions of rule 18(1) of the Uniform Rules since the particulars of claim were not signed by an attorney with a right of appearance in terms of section 23 of the Legal Practice Act 28 of 2014, as well as by an advocate.

[4] Plandruk afforded Metsing ten days to remove the cause for the complaint. Metsing did not heed the opportunity to remove the cause for complaint. This resulted in Plandruk launching the present application on 18 July 2023.

Analysis

[5] The determination of the present application oscillates on the proper interpretation of rule 18(1) of the Uniform Rules. It being the contention of Plandruk that the provisions of the implicated rule had not been complied with. Rule 18(1) provides that 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,¹ has the right of appearance in the High Court, only by such attorney, or if a party sues or defends personally, by that party.

[6] On a proper reading of this sub-rule, it is perspicuous that a combined summons; every other pleading; a summons, as pieces of documents, are differentiated. In other words, every other pleading must exclude the combined summons and summons. Mercifully, the drafters of the rules deemed it appropriate to define what a combined summons means. A combined summons means a summons with particulars of claim annexed thereto in terms of subrule (2) of rule 17. Counsel for Plandruk submitted that a particulars of claim, as a separate document, is a pleading as such like every other pleading, ought to be signed as required by rule 18(1). With considerable regret, this Court disagrees with that submission.

¹ Act 62 of 1995.

[7] Rule 17(2)(a) states that in every case where the claim is not for a debt or liquidated demand the summons shall be in accordance with Form 10, to which summons shall be annexed particulars of the material facts relied upon by the plaintiff in support of the claim, which particulars shall inter alia comply with rule 18. The fact that this rule provides that the particulars shall inter alia (amongst other things) comply with rule 18 does not make the particulars of claim every other pleading on its own. If that were to be the case, then combined summons as defined would lose its meaning. Already, combined summons referred to in rule 18(1) becomes so if annexed to it are particulars of claim.

[8] A combined summons, which becomes so because the particulars of claim are annexed to it, is a pleading on its own. Accepting that to be the case, it is incongruent with the definition of combined summons to still pigeonhole a particulars of claim under "every other pleading". This will imply that when a particulars of claim is annexed to a summons, it is a pleading, and when it is detached from the summons, it is still a pleading. Such an implication amounts to an absurdity. It could not have been the intention of the drafters of the rules to have such incongruent consequences. Where subrule (2) of rule 17 refers to compliance with rule 18, with regard to particulars as part of a combined summons, it must be referring to rules like 18(3) and (4) and any other parts of rule 18 speaking to form and contents. Textually, contextually, and purposively, a combined summons and a particulars of claim is a continuum incapable of being considered separately. A signature on the combined summons is sufficient for all its other annexures.

[9] Rule 18(4) requires every pleading, for the purpose of this judgment, a combined summons as defined constitutes every pleading, shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim with sufficient particularity to enable the opposite party to reply thereto. The phrase "particulars of claim" only emerges in the definition of a combined summons. As a document, its status is that of being an annexure. An annexure is nothing but a supplement or appendix to a written document. Nowhere in rule 18 in its entirety does one find the phrase "particulars of claim". Accordingly, it cannot be correct to refer to an annexure as a pleading, which requires a signature.

[10] In order to buttress the point, rule 20 deals with a declaration. Where a combined summons is involved, a declaration is not required. The reason for that is that on consideration of subrule (2) of rule 20, a declaration takes the shape and form of a particulars of claim. More importantly, subrule (2) does not decree that the declaration must also be signed. This becomes so because it is not a requirement for summons contemplated in rule 17(2)(b) to be signed. That notwithstanding, it is not a requirement that the particulars of claim as a separate annexure must be signed.

[11] Rule 18(12) is very specific and express. It provides that if a party fails to comply with any provisions of the rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30. In order for this subrule to be invoked, a pleading must be involved. It is important to emphasize that the rule contemplates a legal fiction. The pleading becomes irregular once rule 18 is contravened and there is no need for a Court to declare any irregularity. Thus absence of contravention there can be no acting in terms of rule 30. As indicated earlier, a combined summons is a pleading. The requirement is for a combined summons, as defined, to be signed. In *casu*, it is common cause that the combined summons has been signed and there can be no non-compliance contemplated in subrule (12).

[12] In advancing an argument that a particulars of claim is a document that requires a signature apart from the combined summons, counsel for the applicant placed reliance on the decision of *Motswai v Road Accident Fund (Motswai)*,² where the Court stated that: -

*"The requirement of signature of particulars of claim reflects the importance of both the document and the signature. That the signatory must either be an advocate or an attorney with a certain degree of expertise highlights the value to be ascribed to the signature. By appending one's signature to a pleading, an attorney or advocate confirms that he/she has been scrupulous in preparing the pleading."*³

[13] In *Motswai*, an attorney had signed the particulars of claim which contained untruths. The focal point of the judgment on the signature issue was the untruths

² 2013 (3) SA 8 (GSJ).

³ *Id* at para 30.

contained in the signed document. Sadly, the Court in *Motswai* loosely stated the requirement of signature of particulars of claim without specifying which rule contains that requirement. At one point in the self-same paragraph, the Court referenced a pleading. It is unclear to this Court as to whether the Court was referring to the particulars of claim on its own as a pleading or the particulars of claim as an annexure to the combined summons. In my judgment, there is no rule that requires the particulars of claim as a unitary document to be signed. Further, in my judgment, a particulars of claim, as a unitary document, does not constitute a pleading. On application of *stare decisis* principle, if *Motswai* holds that it is a requirement that the particulars of claim must be signed and that on its own it constitutes a pleading, this Court, with considerable regret, begs to differ and does not find *Motswai* to be binding on it. In any event, this Court takes a view that paragraph 30 of the judgment constitutes an *obiter dictum*.

[14] To my mind, the correct legal position is that the requirement of signature only applies to a combined summons. As defined in the rules, a particulars of claim completes a combined summons and it is not, on its own, a pleading. It only becomes an integral part of a pleading by virtue of being annexed to the combined summons. Accordingly, where a combined summons, as it is the case in this application, has been properly signed, there is no additional requirement to sign the annexed particulars of claim. Just to demonstrate the point, it is trite that in motion proceedings, an affidavit serves as a pleading and evidence.⁴ Where a document serves as an annexure to an affidavit, only the affidavit must be signed as opposed to the annexure. To my mind, the same approach applies in an instance where a combined summons is signed, and the document annexed to it is not signed.

[15] Additionally, counsel for Plandruk placed reliance on the decision of *Biologicals and Vaccines Institute of Southern Africa (Pty) Ltd v Guardrisk Insurance Company Limited (Guardrisk)*⁵ to advance the argument that it is a requirement that particulars of claim must be signed. At paragraph 2 of *Guardrisk*, the following statement, which

⁴ *Foize Africa (Pty) Ltd v Foize Beheer Bv and Others* 2013 (3) SA 91 (SCA) at para 30G-H.

⁵ [2023] ZAGPJHC 729.

sadly is unclear whether is part of the *ratio decidendi* of the court or a recordal of the facts of the case, was made: -

"The summons to appear was signed by the Institute's attorney, but *the copy of the particulars of claim issued and served on Guardrisk was not signed at all. This rendered the combined summons an irregular step.* Guardrisk asked the Institute to remove the cause of its complaint, failing which Guardrisk would apply to set the combined summons aside."

[16] With considerable regret, this Court does not share the sentiments that unsigned particulars of claim renders the combined summons an irregular step. It is unclear as to whether the above statement constitutes the *ratio decidendi* of the Court. A reading of the judgment suggests that the focal point of the Court was a condonation application. When the order of the Court is considered, a further confusion arises. The first order suggests that a failure to issue and serve a set of particulars of claim signed in the manner required by Rule 18(1) was condoned. However, at paragraph 8, the Court remarked thus: -

"*The degree of non-compliance in this case is miniscule... What I am asked to condone is, therefore, not the failure of the Institute to ensure that the combined summons was signed, but its failure to send the signed version of the particulars of claim to the Registrar and to Guardrisk.*"

[17] In my judgment, failure to sign the particulars of claim in a situation where the combined summons was signed, is not a non-compliance, miniscule or otherwise. It is not a failure which will require any condonation. Nevertheless, rule 18(12) does not contemplate any form of condonation. All it does is to introduce a legal fiction which entitles the opposing party to act in accordance with rule 30.

[18] In the final analysis, this Court takes a view that there is no non-compliance, which entitled Plandruk to act in accordance with rule 30. On this solitary basis, the application falls to be dismissed.

[19] Even if this Court is wrong in its conclusions that the need to act in accordance with rule 30 has not arisen, one of the key requirements in rule 30 applications is

prejudice to the objecting party.⁶ This being motion proceedings, a party is obliged to make its case in the founding papers. Such that any prejudice suffered or to be suffered ought to be stated in the founding papers. Nowhere in the emaciated and particularly terse founding affidavit does the deponent of Plandruk allege and demonstrate any form of prejudice. During oral argument, counsel for Plandruk, when the issue of prejudice was raised, placed reliance on the decision of *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen (Sasol)*.⁷ In *Sasol*, the Court held that if a pleading does not comply with the subrule of Rule 18 requiring specific particulars to be set out, prejudice has, *prima facie*, been established.

[20] Unfortunately, in *casu*, there is no non-compliance with subrule (4) of Rule 18. It is the only subrule requiring particulars to be set out and specificity to be adhered to. The case of Plandruk is simply that of non-compliance with rule 18(1) on the specific basis that the particulars of claim have not been signed. This being its pleaded case. Failure to sign, unlike failure to set out particulars and specificity being adhered to, cannot be *prima facie* prejudicial. On realising that the shoe is pinching, a veil attempt was made to rely on the prejudice allegedly pleaded in the replying affidavit. The obvious difficulty with this attempt is that a case cannot be made in reply. Applying that elementary principle, Plandruk cannot rely on the prejudice alleged in a reply.

[21] It must then follow that Plandruk has failed to demonstrate prejudice. For that reason alone, a rule 30 order is incapable of being granted, particularly for such technical objections.⁸ Nevertheless, rule 30(3) allows this Court to exercise a discretion to set aside the alleged irregular step or not. In the exercise of its discretion, this Court refuses to set aside the combined summons and Plandruk must plead to the combined summons if it has a defence to the claim.

[22] In summary, this Court is of the opinion that no non-compliance with rule 18(1) has occurred, and as such, acting in terms of rule 30 was inappropriate. If it was

⁶ *Afrisun Mpumalanga (Pty) Ltd v Kunene NO and Others* 1999 (2) SA 599 (T).

⁷ 1992 (4) SA 466 (W) at 470H.

⁸ *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278F-G.

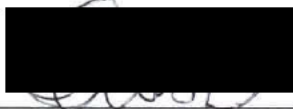
appropriate, Plandruk has failed to demonstrate prejudice. What then remains is the issue of costs.

[23] Metsing's counsel forcefully argued that a punitive costs order is warranted in this case. I disagree. The appropriate order on costs is one of costs on a party and party scale taxable or to be settled on scale B.

[24] For all the above reasons, I make the following order:

Order

1. The application in terms of rule 30(1) is dismissed.
2. The applicant is to pay the costs of this application on a party and party scale taxable or to be settled on scale B.


GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Applicant:

Instructed by:

For the Respondent:

Instructed by:

Mr B C Bester

Prinsloo Bekker Attorneys, Pretoria

Mr N Moropene

Mateta Attorneys, Pretoria

Date of the hearing:

23 October 2024

Date of judgment:

29 October 2024