



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No. 6061/2022

In the matter between:

THE AUDITOR - GENERAL OF SOUTH AFRICA

APPLICANT

And

THE MUNICIPAL MANANGER OF MOHOKARE

MUNICIPALITY

FIRST RESPONDENT

MOHOKARE MUNICIPALITY

SECOND RESPONDENT

CORAM:

MAJOSI, AJ

HEARD ON:

16 MAY 2024

DELIVERED ON:

08 AUGUST 2024

JUDGMENT

I INTRODUCTION

- [1] The applicant seeks an order in terms of Rule 30 and Rule 30A wherein the respondents' plea in the main action be set aside or alternatively, that its notices in terms of these rules be complied with or that respondents' defence to their claim be struck out. The applicants also seek an order condoning the late filing of this application. The Respondents are opposed to the application.

II BACKGROUND

- [2] The applicant(plaintiff) instituted action proceedings against the respondents on the 5 December 2022 for unpaid auditing fees. An amendment was made to the particulars of claim after the respondents alleged that the applicant's claim is vague and does not disclose a cause of action. After no plea was received, a notice of bar was served on the respondents(defendants). A plea was filed on the 7 of June 2023 wherein they raised exceptions to the amended summons in that it still did not disclose a cause of action.¹ The respondents did not deliver their exception or set the matter down for a hearing after no response was received from the applicant.
- [4] In response thereto, the applicant filed a notice in terms of Rule 30 and Rule 30A on the 22 June 2023 as they deemed the now respondent's plea an irregular step. The respondents were afforded 10 days to remove the irregularity and to comply with the Uniform Rules of Court, failure which, an application would be made within 10 days to have their plea set aside.² They however did not set the matter down for hearing, but, wrote a letter to the respondents on the 31 of October 2023³ informing them that they will afford the respondents a grace period until 3 November 2023 to rectify the irregularity before they (applicant) set the matter down for hearing of the irregular step.⁴

¹ Indexed bundle, p5, Founding affidavit, paragraphs 4 and 5.

² Ibid, paragraphs 6 -7.

³ Indexed bundle, Annexure FA2.

⁴ Founding affidavit, paragraph 8- 10

- [5] The applicants themselves did not, after this “grace period” set down the application in terms of Rule 30 and 30A or hearing either. They opted to file their application in terms of rule 30 and rule 30A on the 11 of January 2024. The application became opposed and the matter was set down for hearing of the application preceded with a condonation application for the late filing thereof.
- [6] The applicants allege that as the respondents did not file an actual exception to their amended particulars of claim and they cannot replicate to a plea wherein an exception has been raised until such time the respondents have complied with rule 22.⁵ Therefore, their plea must be set aside or struck out and at the minimum, they must be ordered to comply with the notice file and an exception with or without an application to strikeout as it constitutes an irregular step.⁶
- [7] The respondents contend that the applicant did not make out a proper case for condonation as the application is 118 days late and the total period of delay is not explained for the court to condone their non - compliance.⁷ They further stated that the applicant’s cause of complaint is devoid of any merit and there is nothing barring them from replicating or amending their particulars of claim as would have been the case in the event of an exception application and the applicant suffers no prejudice.⁸

III DISCUSSION

- [8] Rule 27 states that in the absence of an agreement between the parties, the court, may on application and on good cause shown, condone any non-compliance with the rules in connection with any proceedings and make an order which it deems fit. The party seeking must furnish an explanation of his

⁵ Applicant’s heads of Argument, paragraphs 18-19; Van den Heever NO v Potgieter NO 2022(6) SA 315 (FB).

⁶ Ibid paragraphs 11 -13.

⁷ Respondents Answering Affidavit paragraphs 4 – 12.

⁸ Ibid, paragraphs 26 – 31.

default sufficiently fully to enable the court to understand how it really came about, and to assess his conduct and motives.⁹

[9] 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.

[10] 30A Non-compliance with Rules and Court Orders

- (1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order —
 - (a) that such rule, notice, request, order or direction be complied with; or
 - (b) that the claim or defence be struck out.

⁹ Silber v Ozen Wholesalers (Pty) Ltd 1954 (2) SA 345 (A) at 353A; Ford v Groenewald 1977 (4) SA 224 (T) at 225H.

- (2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.

[11] Rule 23 - Exceptions and applications to strike out states the following:

- (1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that —
- (a) where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and
- (b) the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception.¹⁰

[12] It is so that the respondents alleged in their plea that the amended particulars of claim are not only vague and embarrassing, but, it does not disclose a cause of action and these are pertinently listed as exceptions within their plea. In the same breath, they have also pleaded to the amended particulars of claim and raised further defences. Rule 23 outlines the procedure to be followed when an exception is raised. This specifically includes affording the respondent the opportunity to remove the cause of complaint failure which, the matter ought to be set down for hearing of an exception.

[13] Now instead of doing so, respondents opted to file a plea wherein in they raised the exceptions and in fact, prayed that the court upholds the exception and the applicant's amended particulars of claim be struck out with costs. Although their plea was a correct response to the notice of bar, raising an exception in this manner, in my view, can only be seen as non-compliance with the rules which require them to file a notice, file an actual exception should the applicant not comply and thereafter, set down the matter for a hearing.

¹⁰ My own emphasis.

- [14] The respondents were alerted to this fact on the 22 of June 2023 already but choose to do nothing to rectify this state of affairs. In addition to this, further correspondence took place to remind them that should they not comply, an application for an irregular step would be brought as they failed to comply with the rules. It is also evident from this correspondence that the applicant stalled in bringing this application to avoid the cost of bringing the application. In my view, this constitutes good cause to condone their delay in bringing the application.
- [15] The exceptions raised in the plea cannot be replied to with a plea in replication by the applicants for several reasons. Firstly, they have not been given notice thereof. Secondly, they have not been provided with a time period to further amend their particulars of claim and lastly, they have not been given the opportunity as required by rule 23 to actually reply to the exception. This has all the hallmarks of prejudice that the applicant suffers herein with the respondent's non-compliance with rule 22 and rule 23. Accordingly, I find that the respondents failed to comply with the rules in terms of Rule 30A.
- [16] It is trite that costs follow the result and I am not persuaded to deviate from this established practice. Although both parties initially sought costs on a punitive scale, they later acknowledged that the nature of the proceedings do not warrant such an order. I hereby exercise my discretion and order that costs be awarded to the applicant on a party and party scale.

IV ORDER

[17] Accordingly, I make the following order:

1. The Applicant's late filing of the application in terms of Rule 30 and Rule 30A is condoned.
2. The Respondents are ordered to comply with Applicant's notice in terms of Rule 30 and Rule 30A within 15 days of this order.
3. The Respondents shall pay the costs of this application on a party and party scale.



OR MAJOSI, AJ

On behalf of the Applicant
Instructed by:

Adv. M. Van der Westhuizen
c/o Honey Attorneys
BLOEMFONTEIN

On behalf of the Respondents
Instructed by:

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