



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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE:	YES/NO
(2) OF INTEREST TO OTHER JUDGE:	YES/NO
(3) REVISED:	YES/NO

DATE	SIGNATURE

CASE NUMBER: 2021-39269

In the matter between:

BMW FINANCIAL SERVICES SOUTH AFRICA (PTY) LTD Applicant

And

RIYADH DOOLA Respondent

Heard: 30 OCTOBER 2024

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date and time for hand-down is deemed to be 10h00 on 20 JANUARY 2025.

Summary: Meaning of the words ‘irregular step’ in rule 30(1) considered – ‘Irregular step’ is a procedural step which is taken in disregard of the rules, advances the process closer to completion and prejudicially affects the innocent party’s rights in the future conduct of their litigation. – Notice in terms of rule 28(1) does not constitute an irregular step as contemplated by rule 30(1).

JUDGMENT

LE GRANGE, AJ:

Introduction

- [1] Before me is an application in term of Uniform Rule 30 to declare a notice of intention to amend an exception (given in terms of rule 28(1)) to be an irregular step and to set it aside.
- [2] The respondent’s objection herein is clear: ‘[T]he service of a *notice* in terms of rule 28 cannot constitute an irregular step.’ [Emphasis added.]
- [3] Up for adjudication then before this Court is the question whether a *notice* in terms of rule 28(1) can be regarded as an irregular step as contemplated in rule 30(1).

The rules

- [4] The above rules provide, in relevant part, as follows:

‘28 Amendments to pleadings and documents

- (1) Any party desiring to amend any pleading or document other than a sworn statement, filed in connection with any proceedings, *shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.*
- (2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected.
- (3) *An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.*
- (4) *If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.*
- (5) If no objection is delivered as contemplated in subrule (4), every party who received notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days of the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7).
- ...
- (8) Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him, *and may also take the steps contemplated in rules 23 and 30.*’ [Emphasis added.]

and

‘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.’

Objection to notice in terms of rule 28(1) by way of rule 30

- [5] It is stated in *Erasmus Superior Court Practice* at RS 20, 2022, D1-353, with respective reference to *Shell SA Marketing (Edms) Bpk v JG Wasserman h/a Wasserman Transport* 2009 (5) SA 212 (O) and *Hill NO v Brown* (unreported, WC C case no 3069/20 dated 3 July 2020) that:

‘Rule 30 has found application where, for example –

...

- (n) a notice of intention to amend a plea [under rule 28(1)] so as to introduce a claim in reconvention was delivered without the procedure in rule 24(1) having been followed.

...

- (p) a notice under rule 23(1)(a) that particulars of claim were vague and embarrassing and delivered out of time.’

- [6] It is indeed correct that the objection to the rule 28(1) *notice* came before the Court in *Shell* by way of a rule 30 application and that the Court in that matter granted the application. However, it does not seem, especially considering the contents of par 32 of that judgement, that the question which is up for adjudication in this Court was presented to or considered by that Court.

- [7] Albeit a different rule, a similar process of objection was followed in *Hill* where the plaintiff (under rule 30) sought the setting aside of a *notice* in terms of rule 21(1)(a). The Court ultimately found that the delivery of the rule 23(1)(a) *notice* was found to be an irregular step and ordered that it be set aside. Just like the *Shell* matter, it does not seem that the question, which is up for adjudication before this Court, was raised in the *Hill* matter.

- [8] Be that as it may, what is relevant in *Hill* is that the Court considered the nature and character of a ‘notice’ in terms of rule 23(1)(a) and found at par 6 of the judgement that:

‘A defendant’s notice in terms of rule 23(1)(a) affording the plaintiff an opportunity to remove an alleged cause of complaint is simply that, a notice. It claims no relief. It does not call for adjudication. If the plaintiff removes the alleged cause of complaint, the notice has served its purpose and receives no further attention in the case. If the plaintiff does not remove the alleged cause of complaint but the defendant decides not to follow up his notice with an exception, the notice likewise receives no further attention. If the plaintiff fails to remove the alleged cause of complaint and the defendant files an exception, it is the exception, not the preceding notice, that the court adjudicates.’

- [9] Similar hereto, a notice of intention to amend in terms of rule 28(1) is but a notice of an intention to amend and only affords the other party, in terms of subrule (2) an opportunity to either abide or to object. It claims no relief, does not call for adjudication, and does not affect the other party rights in the future conduct of its case. If the disgruntled party objects to this notice (by means of subrules (3) and (4)) the party who wish to amendment ‘may’ (after having considered the grounds of objection) either abandon the intention or proceed and seek leave from the Court to grant the amendment. It is, therefore, not the notice but the filing of the amendment itself (in terms of subrule (5)) that affects a party’s rights.

Irregular step and Further step

- [10] This brings me to the following relevant question, i.e. what is meant by the term ‘irregular step’, as provided for but undefined in rule 30(1). In search for the answer, it is important differentiate between the terms ‘irregular step’ (in rule 30(1)) and ‘further step’ (in rule 30(2)(a)) but at the same time consider their interrelationship.

- [11] In *Pettersen v Burnside* 1940 NPD 403 at 406, the court held that a ‘further step’ in the proceedings (as now contemplated in rule 30(2)(a)) is ‘some act which advances the proceedings one stage nearer completion’.
- [12] The Court in *Jowell v Bramwell-Jones and Others*¹ held that rule 30(2)(a) must be interpreted in the context of the purpose which it serves and accordingly found the *dicta* in *Pettersen* to be insufficient. The Court then formulated a ‘further step’ (as contemplated in rule 30(2)(a)) as ‘one which advances the proceedings one stage nearer completion and which, objectively viewed, manifest an intention to pursue the cause despite the irregularity.’
- [13] I agree with this formulation and how the Court came to its conclusion. I am of the similar view that the words ‘irregular step’ must be interpreted in the context of the purpose which it serves, to which I will revert.
- [14] In *Cyril Smiedt (Pty) Ltd v Lourens* 1966 (1) SA 150 (0) at 152E the court considered what is meant by ‘irregularity’ in the rule and concluded as follows:
- ‘Relevante, maar onbeedigde, verklarings kan nie deurgehaal word onder Reel 6 (15) nie en die byvoeging van 'n onbeedigde stuk tot 'n eedsverklaring is nie 'n onreelmatigeverrigting ingevolge Reel 30 nie. *Dit is myns insiens duidelik dat die onreelmatigheid deur die Reel beoog 'n stap in die prosedure moet wees wat die verwikkeling van 'n geding op een of ander stadium in sy geheel raak.*’ [Emphasis added.]
- [15] I find this *dicta* in *Smiedt* insufficient for the following reasons: A ‘step’ as provided for in the Uniform Rules is nothing but a ‘procedural step’ and an ‘irregular step’ is then a procedural step which is in conflict to, or in disregard of, a rule(s). Considering further the purpose of rule 30, which is for a party to seek remedial action or failing court intervention when a party disregard the rules – the latter which in itself has as purpose to ensure that litigation is

¹ 1998(1) SA 836 WLD at 904 B-H.

conducted fairly and efficiently – it follows naturally that rule 30 is aimed at instances where the step taken advances the litigation in disregard of the rules and which cause unfairness and/or inefficiency or better stated, has a prejudicial effect on the innocent party's rights in the future conduct of their litigation.

[16] I thus agree with *Smiedt* that the step must have an ultimate effect on litigation but, considering the purpose of rule 30 within the rules, this effect must further be prejudicial to the innocent party's rights in the future conduct of their litigation, failing which rule 30 should not be invoked as it will amount to an abuse of the rule with the only effect to cause unnecessary applications and delays.

[17] I find my interpretation in line with the Court in *SA Metropolitan Lewensversekeringsmaatskappy v Louw NO 1981 (4) SA 329(O)* at 333G-H who stated the object of rule 30(1) 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.'

[18] I therefore conclude that an 'irregular step', as contemplated in rule 30(1), must be a procedural step which is taken in disregard of the rules, advances the process closer to completion and prejudicially affects the innocent party's rights in the future conduct of their litigation.

Notice in terms of rule 28(1)

[19] A notice in terms of rule 28(1) neither advances the process nor could have any prejudicial effect on the innocent party's rights in the future conduct of their litigation. As stated above, it is the amendment itself which advances the

process and may have a prejudicial effect on the innocent party's rights to which relief under rule 30 could be available in terms of rule 28(8). To resort to a substantial application in terms of rule 30 when a notice is filed would simply be premature as the party who intend on amending its pleadings may well decide against it and abandon the amendment which would leave the application nugatory.

[20] Regarding prejudice, the plaintiff further failed to tender any reason as to why the notice of an intended amendment to the exception would cause it prejudice. I submit that no such prejudice can exist in the instance as we are dealing with a notice only; and the future conduct of the litigation is not prejudicially effected as the rule itself provide a mechanism to object if it does.

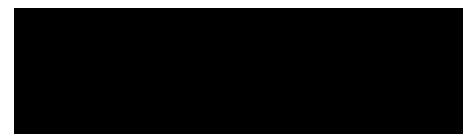
[21] I accordingly find that the notice of intention to amend, filed in terms of rule 28(1), does not constitute an irregular step as contemplated in subrule 30(1).

[22] For this reason, the application must fail.

Order

[23] In the result the following order is made:-

1. The application is dismissed.
2. The applicant shall pay the costs of the application.



A J LE GRANGE

ACTING JUDGE

APPEARANCES:

COUNSEL FOR APPLICANTS: S F Fisher-Klein instructed by Velile Tinto
& Associates Inc.

COUNSEL FOR RESPONDENT: R Andrew instructed by Combrink Nel &
Ballack Inc t/a NBI Attorneys.