

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-014975

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
12 November 2024	
DATE	SIGNATURE

In the matter between:

SOUTH AFRICAN MUNICIPAL WORKERS UNION

First Applicant

and

SEGONYE MAHLOMONYANE

First Respondent

CONSTANCE MBONANI

Second Respondent

ORDER

1. The application is dismissed.
2. The applicant is to deliver its plea within 5 (five) days from date of this order.
3. The applicant is to pay the costs of the application, including the costs of counsel on scale B.

JUDGMENT

LIEBENBERG AJ

- [1] In February 2023, the first and second respondents instituted action against the applicant herein. The action became defended and the applicant delivered an exception against the particulars of claim in its original form.
- [2] On 26 May 2023, the respondents gave notice of their intention to amend the particulars of claim. There was no objection to the proposed amendment, and on 16 August 2023 the amendment was perfected by the delivery of the amended pages. In an email addressed to the respondents' attorneys on 17 August 2023, the applicant's attorneys advised that the amendment was irregular for want of compliance with the required time limits in terms of Rule 28 (5) and requested that a new notice be filed.
- [3] No further steps followed until 10 January 2024 when the respondents attorneys called on the applicant to file its plea, failing which a notice of bar would be served. No sooner had the notice of bar been delivered on 7 February 2024, the applicant served it a notice in terms of Rule 30(2)(b) contending that the notice of bar constituted an irregular step for the following reasons:
- 3.1 As the applicant did not object to the proposed amendment, the amended pages were to be delivered and the amendment effected on 1 June 2023.
- 3.2 Because the amended pages followed only on 16 August 2023, it was defective, resulting in the notice of bar being "impermissible and or improper".
- [4] When the respondents refused to accede to the Rule 30(2)(b) notice, this application was launched on or about 27 February 2024.
- [5] A rigid adherence to the Rules of Court for its own sake more often than not leads to delay and unnecessary costs being incurred in litigation.¹ Whilst litigants and

¹ *Sasol South Africa Ltd t/a Sasol Chemicals v Penkin* at para 13.

their attorneys are not encouraged to adopt a lackadaisical approach to litigation, less-than-perfect procedural steps should not get in the way of a proper ventilation of disputes.² As such, it is only when an irregular steps results in real and substantive prejudice to be suffered, that the offending step can and should be set aside.³

[6] The irregularity complained of by the applicant herein stems from its interpretation of Rule 28 (5), which provides that “[i]f 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).” [own underlining].

[7] In *Sasol South Africa Ltd t/a Sasol Chemicals v Penkin* Pullinger AJ remarked that:

“... as a matter of practice, the respondent's proposed amendment lapsed when he failed to file amended pages. The notice of amendment is thus of no force or effect. In these circumstances, notice of the proposed amendment would be given afresh, and the process prescribed by rule 28 would then follow. I could not find any authority, one way or another, on this issue. But it seems to me that there is no good reason to meddle with long-standing practice.”⁴

[8] Ostensibly the learned Judge was not referred to the decisions in *Becker*⁵ and *Cloud 9 Skylights*.⁶

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

³ E.g. *SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw* NO at 333G–334G; *De Klerk v De Klerk* 1986 (4) SA 424 (W); *Consani Engineering (Pty) Ltd v Anton Steinecker Maschinenfabrik GmbH* 1991 (1) SA 823 (T); *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinussen* 1992 (4) SA 466 (W); *Gardiner v Survey Engineering (Pty) Ltd* 1993 (3) SA 549 (SE) at 551C; *Van den Heever NO v Potgieter* NO 2022 (6) SA 315 (FB) at paras 23 – 26; *Sasol South Africa Ltd t/a Sasol Chemicals v Penkin* above at paras 44 – 50.

⁴ At para 43.

⁵ *Becker v MEC for the Department of Economic Development & Environmental Affairs* 2014 JDR 1298 (ECP).

⁶ *Standard Bank of South Africa Ltd v Cloud 9 Skylights and Patio Systems CC and Others* (1435/2014) [2022] ZAWCHC 89 (25 May 2022).

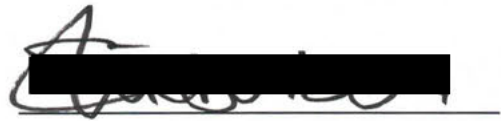
- [9] In *Becker*, Goosen J (as he was then) expressed the view that a litigant's failure to follow through on its intention to amend within the stipulated time periods does not *ipso facto* preclude such party from thereafter filing its amendment, albeit that it may be exposed to an objection that such constitutes an irregular step.⁷
- [10] In *Cloud 9 Skylights*, Rogers J (as he was then), referring to *Becker*, held that the failure to file the amended pages within 10 days, does not result in the amendment being a nullity.⁸
- [11] I am satisfied that a failure to effect a proposed amendment outside the time limits referred to in Rule 28(5) does not render the amendment a nullity, albeit that it may be termed irregular. It is for the complainant to take the steps necessary, including having to prove the prejudice it suffers, to set the irregular steps aside.
- [12] Although the application raised the irregularity of the late filing of the amended pages, it did not follow through thereon with an application in terms of Rule 30(2)(c). It now takes aim at the notice of bar, still complaining about the irregularity of the amended pages. In light of the applicant's failure to seek the setting aside of the filing of the amended pages, the complaint rings hollow.
- [13] Mr Gwebu, who appeared for the applicants, conceded without demur that his client's affidavits are silent on the alleged prejudice it suffers. Thus, even if irregularity taints the amended pages or the notice of bar, the applicant cannot be successful in the relief it seeks. There is no reason for costs not to follow the result. It is however apposite to include an order regulating the further exchange of pleadings.
- [14] It is in the interests of justice, in furtherance of the constitutional dispensation, that the Rules of Court be applied in such a manner as to ensure a fair trial or hearing, and to secure the inexpensive and expeditious completion of litigation.⁹ Point-taking for sake of itself undercuts these injunctions.

⁷ At para 21.

⁸ At para 24.

⁹ *Eke v Parsons* [2015] ZACC 30; 2016 (3) SA 37 (CC); (2015 (11) BCLR 1319 at para 40.

[15] In the result, I grant the order set out above.

A handwritten signature in black ink, which appears to be 'Sarita Lieberberg', is written over a solid black rectangular redaction box.

SARITA LIEBERNBERG
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant: Mr E Gwebu (Attorney)

Instructed by Madlela Gwebu Mashamba Inc.

For the respondents: Adv B Luklele

Instructed by Xabendlini Attorneys

Heard on 11 November 2024

Judgment on 12 November 2024