



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 010734/2023

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

28/03/2025

In the matter between:

MARIANA SMIT

APPLICANT/DEFENDANT

and

THE STANDARD BANK OF SOUTH AFRICA LTD

RESPONDENT/PLAINTIFF

In re:

THE STANDARD BANK OF SOUTH AFRICA LTD

PLAINTIFF

And

MARIANA SMIT

DEFENDANT

JUDGMENT

MOTHA, J:

Introduction

- (1) Before this court is an application in terms of Rule 30 of the Uniform Rules of Court to declare the summary judgment application, dated 7 December 2023, an irregular proceeding. At the heart of this application is the perennial contest between the Practise Directive and the Uniform Rules of Court. To put it crudely, the question is which one of the two occupies the top of the pecking order? On the one hand, the applicant bemoaned the respondent's failure to comply with Subrules 32(2) and (3) when it launched the application for summary judgment. On the other hand, the respondent submitted that it followed section 24 of the Practise Directive.

The parties

- (2) The applicant is Mariana Smit an adult female businesswoman.
- (3) The respondent is The Standard Bank of South Africa Limited, a limited liability company registered and incorporated in terms of the company laws of the Republic of South Africa and a registered credit provider.

Uniform Rule 32

- (4) Subrules 32(2) and (3) of the Uniform Rules of Court read:

"(2)(a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.

(b) The plaintiff shall, in the affidavit referred to in subrule (2)(a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.

(c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary

judgment shall state that the application will be set down for hearing on a stated day not being less than 15 days from the date of the delivery thereof.

(5) The defendant may-

(a)...

(b) **satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard)**, or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a *bona fide* defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor."

Chronology of events

(6) On 2 October 2023, the plaintiff issued a summons against the defendant. Having served the notice to defend on 28 September 2023, the defendant served her plea on 20 November 2023, after the service of a notice of bar on 9 November 2023. On 8 December 2023, the plaintiff brought an application for summary judgment. The notice to remove the cause of complaint was filed, on 14 December 2023. On 23 January 2024, the defendant launched an application in terms of Rule 30, which the respondent opposed. The sources of complaint were the following:

"that in terms of Rule 6(5)(a) and Rule 6(5)(b)(iii) the notice of summary judgment does not set forth a stated date for hearing of the matter and is not in accordance with Form 2(a); and

that in terms of Rule 32(2)(c) the notice of summary judgment does not set forth a stated date for hearing of the matter."

(7) Mention must be made of the fact that the issue of Rule 6(5)(b)(i) of the Uniform Rules of Court was abandoned in paragraph 4.3 of the founding affidavit. Accordingly, no time will be spent on it.

Issues

- (8) The applicant submitted that the respondent's application for summary judgment failed to comply with the provisions of Rule 32(3) in that it read:

"Take Further Notice that to oppose the application or make relevant submissions to the above Honorable Court you are required to:

- a) To set out such opposition or submission in an affidavit;
- b) To serve a copy of the affidavit on the applicant's attorney and file the original with the registrar of the above honorable court within 10(ten) days of service of this notice of application..."

- (9) As already mentioned, the Rule provides that the affidavit shall be delivered five days before the day on which the application is to be heard. Since in summary judgment matters, applicants are not required to deliver replying affidavits, respondents are given more time to compile their affidavits.

- (10) The failure to comply with Rule 32(2)(c) amounted to an irregular step that is susceptible to attack in terms of Rule 30, counsel for the applicant argued.

- (11) Referring to s 24 of the Practice Directive, counsel for the respondent submitted that this section applies to all applications. He placed great reliance on the steps as set out in the 14.2.1. of the Practice Directive. When dealing with what is required to apply for a trial date and enrolment, this section reads: "By uploading the relevant compliance statement for the type of date applied for, 14.2.2. By uploading the generic date application form to all applications."

- (12) The kernel of his submission was that the respondent complied with the Practice Directive. He pointed out that the respondent complied with 5.4 of the Practice Directive which reads: "The following requirements for the allocation of an unopposed motion date have been met: 5.1 The duly served motion

documents (notice of motion and founding affidavit) have been uploaded 5.2 A properly completed notice of set down with a blank space for a date has been uploaded.”

The law

- (13) Seriti JA, in the matter of *National Director of Public Prosecutions (Ex parte Application)*,¹ held:

“The practice directive is subordinate to any relevant statute, the common law and the Uniform rules and it cannot be applied to restrict or undermine any piece of legislation, the Uniform Rules of Court or the common law. Practice directives deal essentially with the daily functioning of the courts and, their purpose is to supplement the rules of court.”²

- (14) Relying on the above-mentioned matter, *National Director of Public Prosecutions*, the court in *Road Accident Fund and Others v Hlatshwayo and Others*³ reiterated:

“The high court has inherent powers to regulate its own processes by virtue of s 173 of the Constitution. In this regard, they, from time to time, promulgate practice directives applicable to their divisions. In *Ex parte National Director of Public Prosecutions*, this Court explained that the practice directives, in essence, deal with the day-to-day functioning of the courts and are geared to supplement the rules. They are, for this reason, not meant to substitute the rules. In case of any conflict, the rules would prevail. However, they have the same force and effect as the rules.”

Discussion

- (15) The respondent did not comply with the requirements of Rule 32(2)(c). The Rule requires the notice of application for summary judgment to state that the application will be set down for a hearing on a stated day not less than 15

¹ [2018] ZASCA 86; 2018 (2) SACR 176 (SCA) (31 May 2018)

² *Supra* 31

³ 724B/2023) [2025] ZASCA 17 (5 March 2025)

days from the delivery thereof. To me, this is to permit the respondent to comply with Rule 32(3)(b), namely, to deliver the affidavit five days before the day on which the application is to be heard. The failure to comply with that is an irregular proceeding in terms of Rule 30. This matter could have been better handled, but egos got in the way. As stated in *Cadac (Pty) Ltd v Weber-Stephen Products Company and Others*⁴- litigation is not a game.

- (16) Dealing with Rule 30, the constitutional court in *Afrocentrics Projects and Services (Pty) Ltd t/a Innovative Distribution v State Information Technology Agency (SITA) SOC Ltd and Others*⁵ said:

"[26] Rule 30(3) contemplates a two-stage process. A court must first satisfy itself that the proceeding or step is irregular or improper. If it is so satisfied, it has the wide power to set the proceeding aside in its entirety or in part, grant leave to amend or make any order as it deems fit. These are, no doubt, wide powers. Following its conclusion that a step or proceeding is irregular or improper, a court, however, is required to make an order."⁶

- (17) I am satisfied that the respondent did not comply with rule 32(2)(c) and that amounted to an irregular proceeding. In the result, the respondent would be afforded 30 days to amend its notice to be in line with the afore-mentioned rule.

Costs

- (18) Litigation is not a place to browbeat one's opponent, with a threat of *costs de bonis propriis*, into submission. To ask for costs *de bonis propriis* in the present circumstances is unwarranted. The award of costs *de bonis propriis* is

⁴ (530/09) [2010] ZASCA 105; [2011] 1 All SA 343 (SCA) ; 2011 (3) SA 570 (SCA) (16 September 2010) at 10

⁵ [2023] ZACC 2; 2023 (4) BCLR 361 (CC) (24 January 2023)

⁶ *Supra*

granted in truly exceptional cases. As long as they act ethically, legal practitioners should be able to fight for their clients without any fear of being saddled with personal costs orders. Finally, it is trite that the award of costs, unless enacted otherwise, is in the discretion of the court.

Order

1. The respondent's application for summary judgment dated 7 December 2023 is declared an irregular proceeding.

2. The respondent is ordered to rectify its application for summary judgment within 30 days from the date of this order.

3. The respondent is to pay costs on party and party scale B.



M.P. MOTHA

JUDGE OF THE HIGH COURT, PRETORIA

Date of hearing: 17 February 2025

Date of judgment: 28 March 2025

APPEARANCES:

For the Plaintiffs:

Adv G. J. Scheepers SC instructed by Louw
Le Roux Inc.

For the defendants:

Adv D. J. Van Heerden instructed by
Hannes Gouws & Partners Inc.