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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2017/49814

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

SIGNATURE

DATE: 6 March 2025

In the matter between:

TIISETSO WILLIAM MOKITIMI

APPLICANT

and

**STANDARD BANK OF SOUTH AFRICA
LIMITED**

RESPONDENT

JUDGMENT

NOKO, J

Introduction

[1] The applicant, Tiisetso Willam Mokitimi, instituted proceedings in terms of rule 30 of the Uniform Rules of Court (“the rules”) against the respondent for an order striking out the summons, on the basis of the following reasons: failure to comply with rule 28(7) of the rules; failure to furnish the applicant with statements showing payments effected by the applicant; and imposing an agreement stating that the property in dispute is Erf 5[...] V[...] S[...] E[...] [...] whereas he purchased Erf 5[...] V[...] S[...] W[...] [...].

[2] The respondent opposes the application and raises, *inter alia*, the following contentions: the applicant failed to comply with the provisions of the rules which enjoined him to first deliver a notice calling upon the respondent to remove cause of complaint.

Background

[3] The respondent instituted civil proceedings against the applicant for the cancellation of a loan agreement, judgment for the amount, which was due and subsequently, an order to declare the property executable. The respondent set down the matter for summary judgment which was refused and leave to defend was granted.

[4] The respondent noted that there was an error in the description of the property in the loan agreement which was described as Erf 5[...] V[...] S[...] E[...] [...] instead of Erf 5[...] V[...] S[...] W[...] [...]. The respondent delivered notice of intention to amend which was unsuccessfully opposed by the applicant. The application served before Siwendu J who granted the leave to amend on 24 June 2021. The respondent delivered the amended pages on 7 July 2021.

Submissions

Point in limine

[5] The respondent contends that the applicant failed to comply with the rules as the notice in terms of rule 30 should have been preceded by the notice calling upon the respondent first to remove the cause of complaint. This is in terms of rule 30

(2)(b) which provides that “[a]pplication 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 – (b) the applicant has, within 10 days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within 10 days”. To this end, the respondent contends that the application should be dismissed with costs.

[6] The applicant persisted and read for the record the notice in terms of rule 30 which he contends is compliant with the rules.

[7] I had regard to the notices filed by the applicant in terms of rule 30A and in contrast to rule 30, there is no requirement that the respondent should first be given an opportunity to cure the complaint prior serving the rule 30A notice.¹ To this end, it appears that the point is meritless and bound to be dismissed. In any event the applicant served the rule 30A (1) which relays the intention to approach court to strike out the claim or the defence. The applicant thereafter proceeded with rule 30A (2).

Merits

[8] The applicant contends that the judgment by Siwendu J was delivered on 24 June 2021 which granted the respondent leave to amend its papers. The respondent had a period of 10 days to serve and file amended pages but failed to do so. In his understanding, the respondent should have therefore first asked for condonation for the late filing of the amended pages without which the respondent is not entitled to any audience.

[9] In retort, the respondent correctly stated that rule 1 of the rules defines days to mean court days or business days. It therefore implies that on a proper calculation filing the amended pages on 7 July 2020 was within 10 days having considered court days as defined. Further, that the amended pages were in fact filed before the expiry

¹ In any event the respondent did not serve notice to remove the cause of complaint in relation to failure by the applicant to comply with the rules.

of the required 10 days. To this end, I find that the contention by the applicant is unsustainable.

[10] The applicant further argued that a request was made to the respondent to make available proof of all payments which were made to the respondent to no avail. In retort, the respondent argued that this point is unsustainable because rule 30A is only implicated only where a party can demonstrate that there has been a failure to comply with the rules or court order. The applicant's papers are silent regarding which rule has been breached and the relief sought is therefore incompetent.²

[11] The applicant further contended that there has been changes with regard to the property which he acquired, and the amendment thereof should not be entertained. The respondent contended that this was the issue which was argued before Siwendu J who delivered a judgment thereon. This Court, so the argument continued and correctly so, cannot be required in terms of rule 30A to be a court of appeal or review to reconsider what has already been decided upon by Siwendu J.

[12] The applicant's further argument to support the relief sought in terms of rule 30 related to the argument that the *lis* instituted by the respondent was premature as the matter was before a credit regulator for adjudication. The respondent correctly argued that this point relates more to the merits of the pending litigation and cannot be raised in terms of rule 30 as no reference is made to any rule that has been disregarded.

[13] It appears that the route followed by the applicant was ill-conceived as the arguments³ could not sustain the invocation of rule 30A. Though he was correct in referring to rule 28(7), his argument failed as his calculation of days appears not to be consistent with definitions of days as contemplated in the rules.

[14] In conclusion, the application is unsustainable and falls to be dismissed.

² Rule 35 provides for the discovery and inspection of documents if a party requires such documents in the possession of a party which are needed for trial.

³ His other arguments related to the fact that the subject matter of the *lis* is before Credit Regulator and further having accused the respondent of having engaged in reckless lending which are issues to be left for trial and not be taken up on terms of rule 30A.

Costs

[15] There are no reasons to unsettle the principle that the costs should follow the results.

Order

[16] In the premise, the following order is made:
a. The application is dismissed with costs.

M V NOKO
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, JOHANNESBURG.

Dates

Hearing: 21 November 2024
Judgment: 6 March 2025.

Appearances:

For the Applicant: Mr Mokitimi
Instructed by: In Person.

For the Respondent: Mr Raubenheimer
Instructed by Le Roux Vivier Attorney