

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-009557

- | | |
|-----|-------------------------------------|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED. |

25 March 2025

DATE

SIGNATURE

In the matter between:

OFENTSE MOEKETSI

Plaintiff

And

DIKWENA CHROME PROPRIETARY LIMITED

Defendant

t/a SAMANCOR

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 25 March 2025

J U D G M E N T

CORAM LIEBENBERG AJ:

[1] For avoidance of confusion, I adopt the nomenclature in the pending action between the parties in this judgment in respect of an application in terms of Rule 30 and the counterapplication for condonation for the late filing of a replication, in so far as it may be necessary.

[2] The parties are agreed on the following forensic timeline:

[2.1] In November 2022, the plaintiff issued summons against the defendant for payment of damages, including constitutional damages, pursuant to an alleged unfair labour practice perpetrated by the defendant.

[2.2] The defendant's plea followed during on or about April 2023, pursuant to which the plaintiff took an exception in terms of Rule 23, on the basis that it is vague and embarrassing. The exception was delivered within the 15-day time period allowed for the filing of a replication.

[2.3] The opposed exception came before Gautschi AJ, who dismissed the exception with costs. The judgment, although dated 27 October 2023, was only brought to the attention of the parties on 4 April 2024.

[2.4] On 23 April 2024, the plaintiff file a replication.

[2.5] Contending the replication was out of time, the defendant delivered a notice in terms of Rule 30 and 30A on 2 May 2024.

- [3] The crisp point before me is whether the replication was late virtue of the provisions of Rule 25(1) which calls for a replication to be filed within 15 days after service of the plea. Or whether the replication was due within 15 days of the date of the exception having been dismissed, premised on the provisions of Rule 23(4).
- [4] The defendant argued that the time period for the filing any replication commenced immediately after the date of the filing of the plea. The filing of the exception interrupted this period, which began running again upon dismissal of the exception. Mr Lennox, who appeared for the defendant, argued that this was the “common sense” approach.
- [5] Mr Ramabokela, who appeared for the plaintiff, argued that, by virtue of the provisions of Rule 23 (4), his client was not required to plead over to the defendant’s plea whilst the exception was pending, and that the defendant’s reliance on Rule 25(1) was misplaced. Accordingly, the time period for the filing of the replication commenced running on the day after the exception was dismissed, rendering his client’s replication timeously filed.
- [6] Neither Mr Lennox nor Mr Ramabokela was able to refer to me to any authorities dealing with the issue, and I was unable to find any such authorities.
- [7] In the commentary to Rule 23(1), the authors of *Erasmus: Superior Court Practice* state, without reference to authority, that upon dismissal of an exception to a plea, a plaintiff will have to seek an order granting leave to file a replication. Yet, in respect of Rule 23 (2), which deals with applications to strike out, the same authors comment that, as a general rule, the time periods for delivery of a subsequent pleading would commence to run on the day after an order is made

in respect of such an application to strike out. The distinction is not explained and is unsupported by authorities.

- [8] I am satisfied that an exception is a pleading which must be filed within the period allowed for the filing of the subsequent pleading,¹ and whenever an exception is taken to any pleading, no plea, replication or other pleading over shall be necessary,² and the 15 days allowed for the delivery of a replication does not apply.
- [9] Thus, when the plaintiff's exception to the plea was dismissed, he was entitled to file his replication within 15 days of the judgment on the exception on 4 April 2022, being no later than 24 April 2024.
- [10] Accordingly, the replication was not delivered late and does not amount to an irregular step, as envisaged by the provisions of Rule 30.
- [11] Even if irregularity taints the replication, which in my view it does not, I am satisfied that the interlocutory application cannot succeed. A rigid adherence to the Rules of Court for its own sake more often than not leads to injustice, delay and unnecessary costs being incurred in litigation.³ Whilst litigants and 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.⁴ As such, it is only if an irregular step results in real and substantive prejudice to be suffered, that the offending step can and should be set aside.⁵

¹ Rule 23(1)

² Rule 23(4)

³ *Sasol South Africa Ltd t/a Sasol Chemicals v Penkin* at para 13.

⁴ *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278E – G.

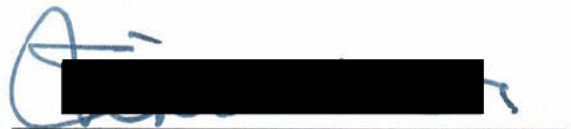
⁵ E.g. *SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw* NO at 333G–334G; *De Klerk v De Klerk* 1986 (4) SA 424 (W); *Consani Engineering (Pty) Ltd v Anton Steinecker Maschinenfabrik*

[12] The defendant's founding affidavit contains mention of any prejudice it may suffer as a result of the impugned replication. Mr Lennox valiantly attempted to convince me that the prejudice his client suffered is based on the delay caused by the irregularity of the replication. I am satisfied that the delay complained of is the result of this interlocutory application rather than the filing of the replication.

[13] Accordingly, there is no basis for the relief the defendant seeks and there is no need for condonation for the filing of the replication.

[14] I thus grant the following order:

1. The application in terms of Rule 30 is dismissed.
2. The counterapplication for condonation is dismissed.
3. The defendant is ordered to pay the costs of the application and the counterapplication, including the costs of counsel on scale A.



SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

GmbH 1991 (1) SA 823 (T); Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen 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.

For the plaintiff: Mr TP Ramabokela (attorney)

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For the defendant: Adv MA Lennox

Instructed by: Beech Veltman Inc (011 285 0011 / melanic@bv-inc.co.za)