



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: 1109/2023

In the matter between

SIYABONGA SHEZI

APPLICANT

and

SANTAM LIMITED

RESPONDENT

In re:

SIYABONGA SHEZI

PLAINTIFF

and

SANTAM LIMITED

DEFENDANT

Neutral citation:

Coram: Mpama AJ

Heard: 13 FEBRUARY 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h00 on 08 May 2025.

Summary: Application for dismissal of plaintiff's claim – failure to file notice in terms of rule 30A – conduct an irregular step and set aside

ORDER

1. Condonation for late filing by the plaintiff is granted.
2. The rule 30 application is granted. The defendant's application for the dismissal of the plaintiff's claim is declared an irregular step and is set aside.
3. Each party is to pay its own costs for the applications.
4. The defendant is ordered to pay the plaintiff's cost occasioned by the postponement on 7 November 2024 on Scale B as contemplated under R67A of the Uniform Rules of Court.

JUDGMENT

Mpama AJ

[1] To avoid verbosity and for the sake of convenience, I will refer to the parties as they are referred to in the main action. The court is seized with two applications. The first application is brought by the defendant for the dismissal of the plaintiff's claim. The second by the plaintiff in terms of rule 30 of the Uniform Rules of the Court (the Rules) for an order declaring the defendant's dismissal application an irregular step and setting it aside.

[2] The plaintiff and the defendant are embroiled in a legal dispute commenced when the plaintiff instituted action proceedings against the defendant. The cause of action is predicated on a contract of insurance in terms of which the defendant undertook to insure the plaintiff's motor vehicle, a 2021 Mercedes Benz A200, to the value of R644 556.

[3] On 26 February 2022 the plaintiff was involved in an accident and his vehicle suffered damages to the tune of R385 573.16. He lodged a claim which was repudiated by the defendant. This spurred the plaintiff to issue summons against the defendant on

2 March 2023. The defendant filed a notice of intention to defend followed by an exception to the plaintiff's particulars of claim.

[4] The exception was heard on 16 February 2024 and the court, as per Mhlambi J, granted an order (the order) as follows:

'1. The exception is upheld.

2. The plaintiff is granted 20 days to amend his particulars of claim, failing which leave is granted to the defendant to enrol the matter to have the plaintiff's case dismissed.'

[5] Thus, the plaintiff had 20 days from the date of the order to amend his particulars of claim. He had until 15 March 2024 to file his amended particulars of claim. Nevertheless, he filed on 25 March 2024 and sought no condonation for the late filing of his amended particulars of claim.

[6] On 26 March 2024 the defendant forwarded a letter to the plaintiff's attorney, bringing to his attention that the plaintiff failed to comply with the order and the defendant intended to bring an application for the dismissal of the plaintiff's claim. No response was received from the plaintiff.

[7] On 2 May 2024 the defendant served and filed an application for the dismissal of the plaintiff's claim. On 17 May 2024, the plaintiff filed a notice to oppose the application followed by a notice in terms of Rule 30(2)(b) on 18 June 2024. On 22 July 2024 the plaintiff filed an application in terms of Rule 30 coupled with an application for condonation for late filing. He sought an order condoning his late filing and setting aside the defendant's application for dismissal of his claim as an irregular step. The application is opposed by the defendant.

[8] By agreement between the parties the applications were enrolled for hearing simultaneously. Moreover, the defendant sought condonation for late filing of its answering affidavit to the plaintiff's rule 30 application. During hearing, the plaintiff's counsel informed court that she has no instructions to oppose the defendant's application for condonation. I was satisfied that a case has been made and exercising my discretion, granted the order.

[9] Mr John Smit deposed to an affidavit in support of the defendant's application. In his affidavit he averred that the plaintiff failed to comply with the order in that the amended particulars of claim were filed out of time and no condonation for late filing was sought

by the plaintiff. He stated that this was tantamount to non-compliance with the order, the court should ignore the amended particulars of claim and dismiss the plaintiff's claim. Lastly, Mr Smit stated that the defendant successfully excepted the plaintiff's particulars of claim as the plaintiff did not plead compliance with time limits provided in the insurance contract and the amended particulars of claim in its form do not address this shortcoming.

[10] During the hearing, the defendant submitted that the failure to seek condonation from the court for late filing of the amended particulars of claim rendered them *pro non scripto* entitling the defendant to the dismissal of the plaintiff's claim. The defendant, lastly submitted that a letter was forwarded by the defendant to the plaintiff notifying him of his non-compliance with the order but the defendant chose not to respond to the letter and it was not even necessary for the defendant to notify the plaintiff since the order empowered them to approach the court for the dismissal of the claim in the event that there is non-compliance with the order.

[11] The defendant asserted that plaintiff's rule 30 application should be dismissed as it is out of time and the plaintiff has not made a case for condonation for its late filing. It was contended that the plaintiff's explanation for not filing on time was that he did have sufficient funds to instruct his attorney until June 2024, however, the application was further delayed, only to be filed in July 2024 and there was no explanation proffered for this delay.

[12] The plaintiff deposed to an affidavit in support of the rule 30 application. First, he dealt with an application for condonation for late filing of the application. He averred that his failure to file the application on time was occasioned by his financial woes as he was in no position to pay legal fees. He stated that in March 2024, in order to alleviate his position, he successfully applied for a transfer to KwaZulu-Natal in order to be closer to his home. When moving from the Free State, he incurred relocation costs and for a period of about three to four months he was unable to raise funds for his attorney. It was only during the third week of June 2024 that he managed to pay his attorney. This served as the reason why his application was filed out of time. His attorney's confirmatory affidavit is also attached to the application. The plaintiff further averred that the defendant's application was an irregular step in that no notice was forwarded to him in terms of rule 30 or 30A and the letter sent to his attorney did not amount to such notice.

[13] Rule 30 provides:

'IRREGULAR PROCEEDINGS

30(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.

(2) An application 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-

(a) the applicant had not himself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within 10 days;

(c) the application is delivered within fifteen days after the expiry of the second period mentioned in subparagraph (b) of subrule (2).

(3) If at the hearing of such application the court is of the opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.'

[14] An applicant complaining of an irregular step must first notify the defaulting party in terms of rule 30(2)(b) within 10 days of gaining knowledge of such an impropriety or irregular step. If the defaulting party does nothing to cure the complaint, an applicant has 15 days from the expiry of the 10-day period to bring an application in terms of rule 30.

[15] In the case of *Afrocentrics Projects and Services (Pty) Limited t/a Innovative Distribution v State Information Technology Agency (SITA) SOC Limited and Others*¹ the Constitutional Court at para 26 said:

'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.'²

[16] Rule 30A provides:

'Non-compliance with rules:

¹ *Afrocentrics Projects and Services (Pty) Limited t/a Innovative Distribution v State Information Technology Agency (SITA) SOC Limited and Others* [2023] ZACC 2; 2023 (4) BCLR 361 (CC).

²

(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made in a judicial case management process referred to in Rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification to apply for an order -

(a) that such rule, notice or request, order or direction be complied with or

(b) that the claim or defence be struck out.

(2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.'

[17] It is difficult, if not impossible, to divorce the two applications from each other. There is a causal link between the two applications.

[18] The plaintiff served and filed his notice in terms of rule 30(2)(b) on 18 June 2024 and his application on 22 July. They were both filed out of time. He sought condonation for late filing of his notice and application.

[19] The Court may, in terms of rule 27(3) on good cause shown, condone any non-compliance with the Rules. Condonation will be granted by the court if the party seeking condonation shows that there is a sufficient cause for granting of the application.

[20] The Court in determining whether to grant or refuse condonation must consider the following factors: the degree of delay, the explanation offered and the potential prejudice to the other party. In *Grootboom v National Prosecuting Authority*³ the Constitutional Court expressed the position as follows:

'It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause this requires a party to give a full explanation for the non-compliance with the rules of the court or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default.'⁴

[21] The plaintiff explained his reasons for late filing and attached some documents to substantiate his case. His attorney, Mr Mfingwana also confirmed some of the averments made by the plaintiff in so far as reference is made to him. The reasons have not been controverted. However, it is the defendant's contention that if the plaintiff had no finances

³ *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC).

⁴ *Ibid* para 23.

to instruct his attorney until June 2024, there is no explanation for late the filing of the application.

[22] I am of the opinion that the plaintiff's explanation passes muster, the period of delay is reasonable and there is no prejudice to the defendant in condoning the delay. Accordingly, I grant condonation to the plaintiff for the late filing.

[23] I now turn to deal with the applications. On 26 March 2024, the defendant forwarded a letter to the plaintiff's attorney after the filing of the amended particulars of claim on 25 March 2024. The contents of the letter are self-explanatory; the defendant brought to the attention of the plaintiff that there was non-compliance with the order of the court and that it will approach the court for an order dismissing the plaintiff's claim. The plaintiff did not respond to the letter; there was a hiatus. Then the defendant launched an application for the dismissal of the claim on 2 May 2024. It is the defendant's contention that it was not required to serve a notice before applying for the dismissal of the plaintiff's claim.

[25] I do not agree with the defendant's contentions. The defendant is armed with a court order. It is before court to seek an order for the dismissal of the plaintiff's claim on the basis of non-compliance with a court order. In terms of rule 30A the defendant would be and or is entitled to approach the court for this relief. However, as the party alleging non-compliance, it ought to have formally notified the defaulting party (the plaintiff) of such non-compliance. Thereafter, it needed to wait for ten days after delivery of its notice to the defaulting party. The purpose would have been to afford an opportunity to the defaulting party to cure the defect. Should the defaulting party fail to cure the defect or respond to the notice within the period of ten days, as the party alleging non-compliance, it would be entitled to approach the court and seek dismissal of the plaintiff's claim and apply to court for an order. Once the application is made, the court has a discretion to order that the rule, notice, request, order or direction initially ignored be complied with or that the claim or defence of the defaulting party be struck out.

[26] The defendant did not file any notice in terms of rule 30A(1). The letter written to the plaintiff's attorney does not suffice as a proper notice. To apply for the dismissal of the claim without properly notifying the plaintiff of the impugned conduct rendered the defendant's application immature and an irregular step. A proper case has been made for the relief that the plaintiff sought. The defendant's application is a flawed procedure

and amounts to an irregular step.

[27] The plaintiff had filed his amended particulars of claim when the defendant brought its application. The defendant appears to have taken an issue with the fact that no condonation was sought for late filing as well as the substance of the amended particulars of claim. It is not for this court to decide these issues.

[28] It will be amiss not to comment on the conduct displayed by the plaintiff in his dealings with the defendant. At the outset the defendant alleged that the plaintiff ignored the time limits in the insurance contract. The plaintiff is very silent on this issue as it neither disputed nor admitted these allegations. This seems to have been transmitted to these proceedings as there are similar signs of flagrant disregard of time limits by the plaintiff.

[29] The general rule is that a successful party should be awarded costs. It is my considered view that, taking into consideration the plaintiff's conduct in these proceedings, I must deviate from the norm and order each party to pay own costs. Furthermore, the defendant submitted that the plaintiff should pay the costs occasioned by a postponement on 7 November 2024 before Nemavhidi AJ. Common to the parties is that the postponement was occasioned by the defendant's failure to file an application for condonation for the late filing of its answering affidavit to the plaintiff's application. The defendant contended that since the plaintiff did not oppose its application for condonation, he should pay the costs occasioned by the postponement. I do not agree. Nothing precluded the plaintiff from electing not to oppose the application once filed and considered. The defendant should pay the costs occasioned by a postponement on 7 November 2024 before Nemavhidi AJ.

[30] I accordingly make the following order:

1. Condonation for late filing by the plaintiff is granted.
2. The rule 30 application is granted. The defendant's application for the dismissal of the plaintiff's claim is declared an irregular step and is set aside.
3. Each party is to pay its own costs for the applications.
4. The defendant is ordered to pay the plaintiff's cost occasioned by the postponement on 7 November 2024 on Scale B as contemplated under R67A of the Uniform Rules of Court.



MPAMA AJ

Appearances

For the plaintiff:

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Instructed by:

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