

REPUBLIC OF SOUTH AFRICA



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

Case No: 2023/013189

DELETE WHICHEVER IS NOT APPLICABLE

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: YES/NO

13.05.2025

DATE

SIGNATURE

IN THE MATTER BETWEEN:

QUANE MOKOKA

APPLICANT/PLAINTIFF

AND

JP MARKETS (PTY) LTD

1st RESPONDENT/ DEFENDANT

JUSTIN PAULSEN

2nd RESPONDENT/ DEFENDANT

JUDGMENT

SIWENDU J

Introduction

[1] This is an application for an order to strike out a defence in terms of Rule 21(4) of the Uniform Rules. It was enrolled on the opposed motion court during the week of 3 February 2025 but heard on 5 February 2025.

[2] The genesis of the application is that Mr Quane Mokoka (Mr Mokoka), as the plaintiff, instituted an action against the defendants, JP Markets SA (Pty) Ltd (JP Markets) and Mr Justin Paulsen (Mr Paulsen), which is opposed, Mr Mokoka is the applicant, and the defendants are the respondents in the present application.

[2] Mr Mokoka alleges he is the founder of Quane Forex Institute (Pty) Ltd and “a full time technical and fundamental forex trader and a client of the first defendant, JP Markets, a forex brokerage firm. He alleges the banking accounts of JP Markets were frozen in 2020 and his MT4 trading account removed from the JP Markets dashboard in 2020 by Justin Paulsen.

[3] He instituted the action against JP Markets in February 2023, claiming the unpaid KWD 87 536.72 on 22/07/2020 and KWD 1 039.55 on 31/05/2020. He alleges that at the time the exchange rate was 1KWD R54.64 totalling, R 4 840 232.55 (Four million, eight hundred and forty thousand rands, two hundred and thirty two rands, fifty five cents). According to Mr Mokoka, JP Markets made promises to pay his outstanding withdrawal requests of May 2020 and of July 2020 but have failed to do so.

[4] The action between the applicant and the respondent has a protracted history. There have been at list ten (10) Court orders issued in respect of a several opposed interlocutory disputes, pertaining to discovery, security for costs, summary judgment between 13 December 2023 to 5 February 2024, and on issues not immediately apparent from the orders granted.

[5] As an indication of the difficulties in prosecuting the dispute, on:

- i. 13th of December 2023, Mkhabela J granted the following order against the applicant:

“1. The matter is struck from the roll;

2. The Plaintiff is prohibited from setting any matters down in the interlocutory and/or motion court without full and proper compliance with the Rules of the court, and without a formal and proper application before the Court;

3. The costs are reserved.”

- ii. 22 July 2024 Wright J made the following observations and order:

“Having heard Mr Mokoka in person and Ms Adams for the respondents, I have no idea what case it is that am supposed to hear. Both sides make very serious allegations against each other relating to procedure.

In these unfortunate circumstances, have no matter, whatever it is, from the roll.

Costs are reserved.”

[6] However, on 12 August 2024, the applicant successfully obtained an order before Liversage AJ in the following terms:

“That the Respondents be ordered to comply with the Applicant notice in terms Rule 35 (1) (6) (8) (10) Discovery notice served on 1 March 2024 within the period of 5 (FIVE) days. That the Respondents pay costs.”

[7] In at least seven instances, the applications which were served before Mali J, Malungana AJ, Adams J, L. Steyn AJ, Wijnbeek AJ, Senyatsi J and Opperman J were either (a) struck or (b) removed from the roll. In some instances, the applicant was ordered to pay the costs, while in others, costs were reserved.

[8] An order granted against Mr Mokoka by Wijnbeek AJ on 15 April 2024, striking an application from the roll resulted in a complaint to the Judicial Service Commission (JSC) to investigate “the alleged irregularity of Acting Judge.”

[9] It appears that this application was set down in the unopposed motion before Mali J and Malungana AJ but had to be removed from the roll because of

a dispute about whether it was brought regularly and was before the correct forum since it was opposed. When the application was allocated to this Court for hearing, the papers were in disarray and Directives requiring the filing of a Practice Note could not be located. The case the Court was called upon to adjudicate not clear.

[10] The Respondent's attorneys wrote to the office of the Judge President for seeking intervention and assistance to resolve the bundle and proper allocation. The exchange of correspondence raised the ire of Mr Mokoka who levelled accusations against the attorneys for the respondent on several grounds. Given this history of the matter, I directed the parties to compile the relevant application bundle to assist expedite the resolution of the issue.

[11] Mr Mokoka is an unrepresented litigant and appeared in person during the hearing. The first and second respondents were represented by Mr Burnett, acting as the local correspondents' attorneys of record for the respondents. As will be apparent in due course, Mr Mokoka requires proper legal representation to ensure that this matter can proceed expeditiously and efficiently.

In this Court

[12] Mr Mokoka confirmed, he seeks an order to strike out the respondents' defence in terms of Rule 21 (4). Rule 21 in the relevant parts states that:

“(1) Subject to the provisions of subrules (2) to (4) further particulars shall not be requested.

(2) After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him or her to prepare for trial. Such request shall be complied with within 10 days after receipt thereof.

.....

(4) If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery

or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.”

[13] He alleges the respondents failed to provide further particulars for trial in terms of a notice served on them in March 2024, and simultaneously sought an order for payment of the amount claimed in the summons. He alleges further that that the respondent made an undertaking to provide the particulars but failed to do so. The information forming the subject of the further particulars requested appears in Mr Mokoka’s founding affidavit, in support of the Rule 21(4) application wherein he states that:

“3 On the 1" of March 2024 the Applicant notice in terms of Rule 21 (2) notice requesting for further particulars was served on the Respondents, seven (7) months have passed and the Respondents has neglected, refused, and failed to provide the requested further particulars.

4. On 15 March 2024, the Respondents promised to provide the further particulars on 22 March 2024 if the Plaintiff remove several notices from the court online.

.....

9. The Respondents they are depriving Applicant access to the trading history of its trading records and intentionally they also refuse to re-instate the Applicant JP Markets MT4 trading account. They are afraid that doing so will demolish their vexatious defense.

10. The Respondents they have Reset the Applicant JP Markets Dashboard therefore, the Dashboard indicates that there is no trading history for the account and there is no trading account. They do not want the Applicant to get trading History and the withdrawal History because it will demolish their vexatious defense.”

[14] It bears mention that before the set down of the present application, on 12 August 2024, Mr Mokoka successfully obtained an order in terms of Rule 35 before Liversage AJ, compelling the respondents to discover certain documents pertaining his trading account.

[15] The respondents delivered their discovery affidavit dated 6 September 2024, followed by a “supplementary discovery affidavit” on 30 September 2024.

Mr Mokoka's practice note makes several allegations about the adequacy of the discovery and the conduct of the respondents in relation to his trading account.

[16] It appears that on the 3 October 2024, the parties held a Pre-trial Conference, but Mr Herman Bonnet who attended on behalf of the respondents allegedly had no instructions regarding Mr Mokoka's requests for further particulars.

[17] On the 10 October 2024 Mr Mokoka set down this application in terms of Rule 21(4) to strike out the respondent's defense. On the 24 October 2024 the respondents opposed it and filed an answering affidavit. The application had to be removed because heads of argument had not been filed in terms of this court's Practice Directive No.1 of 2024.

[18] The respondent's opposing affidavit, deposed to by Mr Nicholas David Poole (in the capacity as director of JP Markets) claims that the request for particulars was premature and procedurally flawed. Pleadings had not yet closed (*litis contestation* had not been reached) and there was a pending security for costs application before court, and action had been stayed pending determination of that question. The respondents had discovered documents required to enable the applicant to proceed. If Mr Mokoka is dissatisfied, his recourse is in the discovery rules rather than in Rule 21.

[19] Mr Mokoka informed the court that the respondents cannot rely on the discovery affidavit to avoid the request for particulars for trial. To this, the respondents' Counsel submitted that Mr Mokoka's Notice is riddled with irregularities. It refers to Rule 55 of the Magistrates Court Rule which is not applicable to this Court. Furthermore, in April 2024, the Mr Mokoka filed a Notice in terms of Rule 30(1) removing "regular notices" including Rule 21 notice and the Notice to strike out sought to be relied upon. The removal would mean there is no application for the court to adjudicate.

[20] Counsel further submitted that the respondents filed a discovery affidavit followed by ‘supplementary discovery affidavit.’ The documents required by Mr Mokoka in respect of the request for further particulars were made available to him in a schedule annexed to the supplementary discovery affidavit, on the strength of the contents of the Rule 21 notice which had been removed. The correctness of this submission is in doubt. A more compelling reason for filing the discovery affidavit is that Mr Mokoka had a court order compelling discovery. Although I accept that the documents supplied were in the request for further particulars, it is inconceivable that the respondents would purport to comply with a Notice which they with the same breath claim was removed and no longer before the court.

[21] Nevertheless, Mr Mokoka disputed that the notice was removed. I must observe that Mr Mokoka has the penchant to use belligerent language to address disagreements. Referring to the attorneys and counsel as “scandalous,” “libelous”, “deceptive”, obstructive.” He submitted that what was removed was a November and previous Rule 21 Notice and not the notice he relies on.

[22] Despite the court’s directive and request to the parties to arrange the court papers in a manner that would enable it to adjudicate the case, the request was met with more confusion, counter accusations and a lack of cooperation. Mr Mokoka uploaded or removed or re-arranged papers in a manner that interfered with the paginated sequence on Case Lines. This was evident during the hearing as parties struggled to locate the papers, consuming more of the court’s time.

[23] There was a dispute on whether the Rule 21 Notice was removed and if so, which was removed. Reliance was placed on various documents not fully set out in the founding affidavit, with submissions made from the bar to refer to the notice that was removed.

[24] There is no dispute that Mr Mokoka relies on the notice delivered in March 2024 and the accompanying affidavit as the basis on which the court must adjudicate the matter. The Respondents took further steps in respect the matter despite allegations of irregularity. Counsel submitted it was to assist Mr Mokoka.

[25] It is evident from the rule that the request for further particulars must be “strictly necessary” to prepare for trial. As the court held in *Thompson v Barclays Bank DCO*¹ the purpose for a request for particulars is to (a) prevent surprise; (b) that the parties should be told with greater precision what the other party is going to prove in order to enable his opponent to prepare his case to combat counter-allegations; (c) having regard to the above, nevertheless not to tie the other party down and limit his (or her) case unfairly at the trial.

[26] As Erasmus in *Superior Court Practice*² points out, in most cases “it would probably be wholly insufficient for a party seeking relief under rule 21(4) to rely solely upon the other party’s failure to timeously comply with the request for further particulars.” The court’s power and a discretion whether to grant an order striking out a defence where there has been failure to supply further particulars but that “discretion is not limited to cases of contumacy.”

[27] As repeatedly held, the Court has the power to regulate its process and may in the interests of justice depart from its own rules.³ I am minded that Mr Mokoka represents himself and the interests of justice may require that in the exercise of its discretion; the court adopts a benevolent approach to the non-compliance, which it has by entertaining the hearing. At the same time, the rules are made for courts to facilitate the adjudication of cases.

¹ 1965 1 SA 365 (W) 369C–E

² RS 25, 2024, D1 Rule 21-2

³ These principles appear in several decisions (see *PFE International Inc (BVI) and others v Industrial Development Corporation of South Africa Ltd*,

[28] While I accept Mr Mokoka's contention that the purpose of discovery is distinct from the request for further particulars for trial, the affidavit Mr Mokoka relies on is defective in that:

- a. The Notice of Application is irregular and refers to Magistrates Court Rule 55 which does not regulate the proceedings before court.
- b. The substance of the complaint conflates the grievances about the quality and adequacy of the discovery (which appears to have been resolved by the filing of the supplementary discovery affidavit and has its distinct remedy) with the request for further particulars as the reasons for seeking the striking out of the defence.
- c. The further particulars requested for trial are not framed in a manner that directs the questions the respondents must answer, or assist distil the disputed questions or evidence that must be admitted or disputed, necessary to prove or disprove a disputed issue.
- d. In some instances, Mr Mokoka seeks positive steps to be taken by the respondents, which are outside the ambit of the Rule

[29] An order striking out the defence in the present circumstances cannot be granted and would be prejudicial to the respondents. The non-compliance with the requirements of the rule is egregious.

[30] What remains is the question of costs. What stands out is Mr Mokoka's refusal to co-operate with the respondents to file a joint practice note and assist the court alleviate the need to troll through reams of unnecessary material so that his application is heard. The respondents offered assistance which was not taken up. The costs must follow the result.

In the result, I make the following order:

- a. The applicant to strike out the defence is dismissed
- b. The applicant is ordered to pay the respondents' costs on Scale B

NTY SIWENDU
JUDGE OF THE HIGH COURT
JOHANNESBURG

This Judgment is handed down electronically by circulation to the Applicant's Legal Representative and the Respondents by email, publication on Case Lines. The date for the handing down is deemed 13 May 2025

Date of appearance: 05 February 2025

Date Judgment delivered: 13 May 2025

Appearances:

For the Applicant: Quane Mokoka (In person)

For the Respondents: Mr Herman Bonnet

Instructed by Hanekom Attorneys

c/o

Burger Husyer Attorneys