

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: **2020/47431**

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

DATE: 18 JUNE 2025

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In the matter between:-

RAMAPUPUTLA MOJABENG LUCY

APPLICANT

and

ESTATE AGENCY AFFAIRS BOARD

1ST RESPONDENT

ESTATE AGENCY FIDELITY FUND

2ND RESPONDENT

RAWSON PROPERTY GROUP (PTY) LTD

3RD RESPONDENT

NAVAL MALATJIE

4TH RESPONDENT

Judgment

RUST, AJ

1. Before me is an opposed application in terms of Rule 30 of the Uniform Rules of Court wherein the applicant seeks an order as follows:
 - 1.1 That the first and second respondents withdraw/remove their notice in terms of Rule 49 of the Uniform Rules of Court as it comprises an irregular step;
 - 1.2 In the event that the first and second respondents fail to comply with paragraph 1 of this order, the respondents' defence will *ipso facto* be struck out on the day of the hearing and the applicant may then approach the registrar for a date for hearing on the default trials roll; and
 - 1.3 That the first and second respondents are directed to pay the costs of this application.
2. Before considering the merits of this application, it is prudent to set out the background relevant to this application.

Background

3. On 18 September 2020, the applicant herein ("*Ms Ramapuputla*", also the plaintiff in the action), issued summons out of this court under the same case number against the Estate Agency Affairs Board (the first defendant in the action and the first respondent in the application at hand, herein referred to as "*the Board*"), the Estate Agency Fidelity Fund (the second defendant in the action and the second respondent in the application at hand, herein referred to as "*the Fund*"), R Woodbridge Trading 4, Pretoria Nort West, Gauteng, trading as Rawson Properties, Pretoria Nort West Franchisee as the third defendant in the action, and Naval Malatjie as the fourth defendant in the action, demanding payment from the first, second, third and fourth defendants "*solely, jointly, alternatively, the one paying the other to be absolved*" of the amount of R 750 000.00 plus interest and costs.

4. In terms of the particulars of claim, Ms Ramapuputla on the 10th of August 2018 entered into an agreement to purchase certain immovable property, in respect of which the fourth defendant in his official capacity as a director and principal estate agent, represented the third defendant. On the instruction and instance of the third defendant, Ms Ramapuputla on the 14th of August 2018 made payment of the purchase price of R 750 000.00 into the bank account of the third defendant. Ms Ramapuputla later established that the property was since transferred to somebody else, and that the purchase price she paid seems to be embezzled by the third and fourth defendants. Ms Ramapuputla therefore claims that she had suffered a loss of R 750 000.00 plus interest and costs.
5. The Board was cited in the particulars of claim as a juristic person established in terms of section 2 of the (now repealed) Estate Agents Affairs Act 112 of 1976. Ms Ramapuputla claims that the Board is liable to reimburse persons who suffer pecuniary loss by reason of theft, committed by an estate agent of any money or property entrusted by or on behalf of such persons to him in his capacity as an estate agent. In paragraph 23 of the particulars of claim, Ms Ramapuputla further required the Board to exercise its discretion to extend any of the time periods within which a claim and proof of such theft must be submitted to the Board.
6. The Fund was cited in the particulars of claim as a juristic person established in accordance with section 13(1)(a) of the Estate Agents Affairs Act, which, read with section 18 of that Act, shall reimburse persons who suffer pecuniary loss by reason of any moneys received by an estate agent and payable by him in respect of a contract of purchase and sale of immovable property or any contract or deed of alienation defined in section 1(1) of the Alienation of Land Act.
7. Ms Ramapuputla claims to have given timeous notice “*to institute legal proceedings*” as required by section 18(3) of the Estate Agents Affairs Act. That subsection (before the repeal of the Act) provided as follows:

“(3) No person shall have any claim against the board in respect of a theft or failure referred to in subsection (1) unless -

(a) the claimant has, within three months after he became aware of such theft or failure or by the exercise of reasonable care should have become aware of such theft or failure, given notice in writing to the board of such claim;

(b) the claimant has, within six months after a written demand was sent to him by the board, furnished to the board such proof as the board may reasonably require:

Provided that if the board is satisfied that, having regard to all the circumstances, a claim was lodged or the proof required by it was furnished as soon as practicable, it may in its discretion extend any of the periods referred to in this subsection.”

8. Having applied for default judgment against the first, second, third and fourth defendants, the attorney of record for Ms Ramapuputla on 17 June 2021 filed a notice in terms of which the plaintiff’s application for default judgment was withdrawn against the Board and the Fund.
9. On 12 October 2021, Ms Ramapuputla sought and was granted default judgment against the third and fourth defendants only, for payment of the amount of R 750 000.00 plus interest and costs on the attorney and own client scale. The default judgment makes no mention whatsoever of the claim against the Board and the Fund.
10. Acknowledging the fact that her claim was delivered to the Board outside of the prescribed time limit in section 18(3) of the Estate Agents Affairs Act, Ms Ramapuputla on 14 June 2023 filed an application to this Court for an order that condonation be granted for the late lodgement of her claim with the Board. In the founding affidavit for the condonation application, Ms Ramapuputla admitted that she delayed the submission of her claim to the Board because of purported settlement discussions with the fourth defendant. It is furthermore stated in that founding affidavit that Ms Ramapuputla *“submitted an internal affidavit in support of request for condonation for the late lodgement of claim”* to the Board, but that the

newly established board of the Property Practitioner Regulatory Authority¹ resolved to refuse condonation for such late submission.

11. Despite the fact that section 18(3) of the repealed Act empowered only the Board (and not the Court) to entertain an application for condonation for the late submission of a claim to the Board, this Court on 14 December 2023 granted the following peculiar order (*“the condonation order”*):

“Having heard counsel for the applicant and having read documents filed on record, it is ordered that:

- 1. Condonation of the applicant’s late lodgement of the claim in terms of section 18(3)(a) of the Estate Agents Affairs Act 112 of 1976.*
- 2. No order as to costs.”*

12. Notably, the application for condonation was neither granted nor dismissed.
13. The Board and the Fund in December 2023 filed a notice of appearance to defend together with their special pleas. Firstly, the Board and the Fund confirmed that the plaintiff’s claim was rejected as the claim was not submitted within the statutory time limit prescribed by section 18(3)(a) of the Act, and that the Board declined to condone the late filing of the claim. Secondly, the Board and the Fund pleaded that the plaintiff failed to exhaust other available remedies, and that section 19(1) of the Act provided that permission must be obtained from the Board prior to commencing legal proceedings, unless a claimant has exhausted all relevant rights of action and other legal remedies available against the estate agent in respect of whom the claim arose and all other persons liable in respect of the loss suffered by such claimant.
14. On 1 February 2024, the Board and the Fund requested this Court to furnish reasons in terms of Rule 49 of the Uniform Rules of Court for the peculiar condonation order granted on 14 December 2023. This request for reasons is what gave rise to the Rule 30 application that is the subject matter of the opposed application at hand.

¹ In terms of the Property Practitioners Act 22 of 2019, commencing on 1 February 2022.

The Rule 30 application

15. The attorney for Ms Ramapuputla on 7 February 2024 gave notice to the Board and the Fund that the notice in terms of Rule 49 allegedly constitutes an irregular step and/or a failure to comply with the rules of the court, that Rule 49 is utilised for application for leave to appeal, that it cannot be utilised against an interlocutory order that is not appealable, and that the step taken by the Board and the Fund will have no practical effect or result on the substance of the matter.
16. On 9 May 2024, the attorney for Ms Ramapuputla brought an application in terms of Rule 30 in which relief is sought to the effect that the first and second respondents withdraw or remove their notice in terms of Rule 49, failing which the applicant be granted leave to return to court on the same papers to request that their defence be struck out, and that the first and second respondents are directed to pay the costs of this application.
17. The Rule 30 application became opposed when the first and second respondents on 6 June 2024 filed their notice of intention to oppose the application in terms of Rule 30, and their answering affidavit on 16 August 2024. They highlighted the fact that, although they were joined in the action proceedings, no judgment was granted against them in the default judgement, and the proceedings were not separated between the parties against which judgment was obtained. The Board and the Fund further submitted the following:
 - 17.1 The correct procedure for the plaintiff would have been to launch an application to review and set aside the ruling of the board of the Property Practitioner Regulatory Authority on her application for condonation, not to launch a fresh application for condonation to this Court, and that they were advised that the purported condonation order of 14 December 2023 is null and void since it is premised on a wrong legal principle. I agree with this submission.

17.2 The Board and the Fund deny that the request for reasons constitute an irregular step as contended by the applicant. The reasons for judgment are requested in order for the Board and the Fund to exercise their rights. The application for irregular step stands to be dismissed as it fails to meet the jurisdictional factors required under Rule 30.

17.3 The main matter is *res judicata*, the court is *functus officio* in regard to the main matter, and it is legally incompetent for the applicant to revive the main matter. While this Court is seized with the opposed application in terms of Rule 30, it is not necessary to deal with this submission herein.

18. In reply, the applicant contends that the request for reasons is an irregular step as it goes against the flow of litigation and is inconsistent with the Uniform Rules of Court. According to the applicant, the condonation order is interlocutory in nature and an appeal against such interlocutory order would result in piece-meal adjudication. It is furthermore submitted that the correct procedural step for the first and second respondents would have been to file a rescission application in terms of Rule 42 against the condonation order, instead of invoking an inquiry in terms of Rule 49. The applicant contends that the filing of the request for reasons is nothing but a further delay in the finalisation of the matter to the prejudice of the applicant. The applicant is furthermore of the view that the main action is not *res judicata* against the first and second respondents, and that the applicant will proceed with the main action against the Board and the Fund.

Analysis

19. Rule 30(1) of the Uniform Rules of Court provides that 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.

20. Although the term ‘irregular’ is not defined in the rule, it can be accepted that the rule applies only to irregularities of form and not to matters of substance.² A ‘step’ as provided for in the Uniform Rules is nothing but a ‘procedural step’ and an ‘irregular step’ is then a procedural step which advances the litigation in disregard of the rules and which cause unfairness and/or inefficiency or, better stated, has a prejudicial effect on the innocent party’s rights in the future conduct of their litigation.³
21. To succeed with an application in terms of Rule 30(1), the applicant must therefore show (i) a procedural step which is taken in the inappropriate use of the rules of court⁴, (ii) which step advances the proceedings one stage nearer completion⁵, and (iii) prejudicially affects the innocent party’s rights in the future conduct of their litigation.
22. It is trite that litigants are ordinarily entitled to reasons for a judicial decision following upon a hearing, and, when a judgment is appealed, written reasons are indispensable. Failure to supply reasons will usually be a grave lapse of duty, a breach of a litigant’s rights, and an impediment to the appeal process.⁶ The respondents’ request for reasons was filed in terms of Rule 49 in order to afford these parties with an opportunity to exercise their rights in respect of the peculiar condonation application, whether by means of an appeal, an application for rescission, or not at all. On receipt of the requested reasons, the respondents will be in a position to select the appropriate manner in which to exercise their rights in respect of the condonation application, for purposes of which the reasons for that order will form the basis of either their application for leave to appeal, or their application for rescission thereof. Such a request for reasons can therefore not be regarded as a procedural step which is taken in the inappropriate use of the rules of court.

² *Singh v Vorkel* 1947 (3) SA 400 (C) 406.

³ See *BMW Financial Services South Africa (Pty) Ltd v Doola* [2025] 2 All SA 107 (GP) at par [14]-[18].

⁴ *Cochrane v City of Johannesburg* 2011 (1) SA 553 (GSJ) at par [31].

⁵ *Cyril Smiedt (Pty) Ltd v Lourens* 1966 (1) SA 150 (O) at 152E.

⁶ *Strategic Liquor Services v Mvumbi NO* 2010 (2) SA 92 (CC) at 96G – 97A.

23. While the concession was made on behalf of Ms Ramapuputla that the step taken by the Board and the Fund will have no practical effect or result on the substance of the matter, the request for reasons for the condonation order does not constitute a step which advances the proceedings one stage nearer completion. The respondents' request for reasons in terms of Rule 49 claims no relief, does not call for adjudication, and does not affect the applicant's rights in the future conduct of her case. Should the Board and the Fund on receipt of the requested reasons elect to exercise their rights by means of an appeal, or an application for rescission, their notice in respect of that elected procedure will advance the process and may have a prejudicial effect on the applicant's rights, to which relief under Rule 30 could be available.
24. The Court has a discretion to set aside an irregular step, which discretion must be exercised judicially on a consideration of all the circumstances and what is fair to all the parties.⁷ Such discretion empowers the Court to overlook an irregularity in procedure that does not cause substantial prejudice to the party complaining of it, because "*technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits*".⁸ However, in order to succeed with the application, the party who applies for the proceedings to be set aside has to suffer prejudice relating to the continuation of the litigation.⁹
25. It is herein not the filing of the notice in terms of Rule 49 that may prejudicially affect the applicant's rights in the future conduct of her litigation. To resort to a substantial application in terms of Rule 30 when a notice in terms of Rule 49 is filed to request reasons for the condonation order, is premature, as the respondents may on receipt of the requested reasons still decide against the exercise of their rights in respect of

⁷ *Minister van Wet en Orde v Jacobs* 1999 (1) SA 944 (O) 958.

⁸ *Mynhardt v Mynhardt* 1986 (1) SA 456 (T); *Rabie v De Wit* [2013] JOL 30203 (WCC) at [13]–[14], [17], [19].

⁹ *Pinro Building & Steel Merchants (Edms) Bpk v Yawa* [2003] 1 All SA 318 (C); *Concrete 2000 (Pty) Ltd v Lorenzo Builders CC t/a Creative Designs and Others* [2014] 2 All SA 81 (KZD) at [36]–[37].

the condonation application. In any event, Ms Ramapuputla failed to tender any reason as to why the notice in terms of Rule 49 would cause her any prejudice in the future conduct of her litigation, while the procedure that may be elected by the respondents to exercise their rights, will provide a mechanism to object thereto, or to oppose any such procedure. In fact, had Ms Ramapuputla not filed the application in terms of Rule 30(1), the litigation between the parties may in the meantime have progressed much further. Any delay in the finalisation of the matter, and any prejudice that Ms Ramapuputla may have suffered, were caused by the Rule 30 application.

26. I accordingly find that the notice in terms of Rule 49 to request reasons for the peculiar condonation order does not constitute an irregular step as contemplated in Rule 30(1). For this reason, the application must fail.
27. Although it may be argued that the Rule 30 application of the applicant constitutes an abuse of court processes and should ordinarily be met with a punitive cost order as a way to discourage the applicant from such conduct in the future, counsel for the respondents conceded that there was nevertheless some fault on the part of the respondents' attorneys, and that costs should therefore be on the ordinary scale as between party and party.

Order:

28. The Rule 30 application is dismissed with costs on Scale A.

Appearances:

For the Applicant:

Mr N.E. Ramapuputla
Ramapuputla Attorneys Inc
Pretoria

For the Respondents:

Mr Mswazi Makhubele

Instructed by:

Mr NU Sefanyetso

Sefanyetso Attorneys

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