



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 14817/2024

In the matter between:

WEITZ VILJOEN AND ASSOCIATES INCORPORATED

PLAINTIFF

and

**RISING DRAGON CONSULTING (PTY) LTD
T/A ANTONIE CONSULTING**

DEFENDANT

Neutral citation: *Weitz Viljoen and Associates Inc v Rising Dragon Consulting (Pty) Ltd* (Case no 14817/2024) [2025] ZAWCHC 286 (14-07-2025)

Coram: **NUKU J**

Heard: 29 April 2025

Delivered: 14 July 2025

Summary: **Practice** – Condonation – late delivery of an application in terms of Rule 30(1) – whether in the interest of justice to grant condonation

Practice - Pleadings – whether delivery of a special plea, plea-over and claim in reconvention prior to the determination of an exception constitutes an irregular step as contemplated in Rule 30.

Practice - Exception to the plaintiff's particulars of claim on the basis that they lack averments necessary to sustain a cause of action - grounds of exception – locus standi – authority of the plaintiff's attorneys to act on plaintiff's behalf – incomplete cause of action – jurisdiction.

ORDER

1. Condonation for the late service of the application in terms of Rule 30(1) is granted;
2. The defendant's special plea, plea-over and claim in reconvention dated 28 August 2024 are set aside as an irregular step;
3. The defendant's exception dated 15 August 2024 is dismissed;
4. The defendant is ordered to pay the costs, on scale A, of both the application in terms of Rule 30(1) as well as the exception.

JUDGMENT

Nuku J

Introduction

[1] This judgment concerns an application that has been brought by the plaintiff in terms of Rule 30(1) (“Rule 30 Application”) as well as an exception to the plaintiff’s particulars of claim that has been taken by the defendant (“Exception”).

[2] In the Rule 30 Application, the plaintiff seeks to set aside pleadings that were delivered by the defendant after it had taken the Exception. These pleadings are a special plea, a plea-over and a claim in reconvention. Plaintiff’s case is that these pleadings constitute an irregular step for two reasons. The first is that these pleadings cannot co-exist with an exception as was confirmed by this Court in ***Spar Group Ltd.***¹ The second relates only to the defendant’s claim in reconvention and it is that the defendant has impermissibly joined additional parties to the action without the leave of the court as required in terms of Rule 10. The Rule 30 Application was delivered out of time and the plaintiff seeks condonation in that regard.

[3] The defendant followed its claim in reconvention with a notice of bar and the plaintiff has not pleaded to the defendant’s claim in reconvention. If the Rule 30 Application fails, the plaintiff will be barred from pleading to the defendant’s claim in reconvention. To cater for such an eventuality, the plaintiff seeks an order uplifting the bar and granting it an extension of time within which to plead to the defendant’s claim in reconvention.

[4] The Rule 30 Application is opposed by the defendant on various grounds including various points *in limine*. On the merits, the defendant relies on two grounds. The first is that taking an exception to plaintiff’s particulars does not prevent a litigant from delivering subsequent pleadings. For this ground, the defendant relies on its interpretation of Rule 23(4). The second is that the defendant is not required to obtain leave of the court before joining additional parties to the proceedings and in any event

¹ Spar Group Ltd v Hard as Nails (Pty) Ltd [2023] ZAWCHC 199.

the defendant may still apply for condonation for its failure if the leave of the court is required.

[5] Three of the points *in limine* that the defendant has raised relates to plaintiff's non-compliance with the provisions of Rule 6(5)(a), 6(5)(b)(i) and (iii). Two of the points *in limine* relate to the late delivery of the Rule 30 Application and the plaintiff's failure to bring a separate application, in terms of Rule 27, for the extension of time. One point *in limine* relates to the lack of proper service and the two remaining points *in limine* relate to a failure by the deponent to the affidavit in support of the Rule 30 application to aver that (a) he has the necessary locus standi, and (b) that this court has the necessary jurisdiction to entertain the Rule 30 Application.

[6] The Exception that the defendant has taken to the plaintiff's particulars of claim is that they lack averments necessary to sustain the action. The defendant has pleaded seven grounds of Exception. Three of these grounds allege the lack of this court's jurisdiction to entertain monetary claims less than R400 000. Three grounds allege plaintiff's failure to plead (a) that it has the necessary locus standi to institute the action, (b) the place where the oral agreement was concluded, and (c) that the whole cause of action arose within this court's jurisdiction. The last ground questions the lack of written authorisation confirming the authority of the plaintiff's attorneys to act on its behalf in these proceedings.

[7] Against what has been outlined above, this court must consider (a) whether to condone the plaintiff's delivery of the Rule 30 Application, (b) whether the Rule 30 Application has any merit, and (c) whether the Exception is good. Before doing so it is necessary to provide a factual background.

Factual Background

[8] On 1 July 2024, the plaintiff has instituted an action against the defendant claiming delivery of a motor vehicle. In the alternative, the plaintiff claimed payment of

certain sums of money all of which are less than R400 000. Plaintiff's claim is based on a verbal lease agreement concluded between the parties on 28 February 2024.

[9] On 2 July 2024, Mr Dale Dean Dreyden (Mr Dreyden) who describes himself as a qualified legal consultant employed by the defendant and its sole director, emailed the plaintiff's attorneys seeking their consent to exchange pleading by email. The plaintiff's attorneys responded in the positive and from thereon, as will appear below, the parties exchanged their pleadings by emails.

[10] On 22 July 2024, Mr Dreyden emailed the defendant's notice of intention to defend to the plaintiff's attorneys. On 15 August 2024, he emailed the defendant's Notice in terms of Rule 41A as well as the Exception to the plaintiff's attorneys. The Exception raises the seven grounds referred to above as the basis for asserting that the plaintiff's particulars of claim lack averments necessary to sustain a cause of action.

[11] On 30 August 2024, Mr Dreyden applied to the Registrar of this Court for the allocation of a date for the hearing of the Exception. On the same date, he emailed the defendant's special plea, plea-over as well as the defendant's claim in reconvention to the plaintiff's attorneys. Still on the same date, the plaintiff's attorneys wrote to Mr Dreyden advising him of the impropriety of delivering further pleadings prior to the determination of the Exception as that constitutes an irregular step as contemplated in Rule 30.

[12] Mr Dreyden's response on 2 September 2024 was to deny that the delivery of further pleadings prior to the determination of the Exception constitutes an irregular step. He implored the plaintiff's attorneys to take the necessary steps to ensure that the plaintiff pleads to the defendant's claim in reconvention. In the same correspondence he further advised that he is taking the necessary steps to have a date allocated for the hearing of the Exception.

[13] On 9 September 2022, Mr Dreyden emailed the plaintiff's attorneys enquiring about their availability to argue the Exception during November 2024. The plaintiff's attorneys responded the same day advising that they would revert regarding their availability. Later the same day, the plaintiff's attorneys emailed the plaintiff's notice in terms of Rule 30 ("Rule 30 Notice") to the defendant.

[14] The Rule 30 Notice alleged that the defendant had taken an irregular step by delivering its special plea, plea-over as well as the claim in reconvention after the defendant had taken the Exception. Additionally, it alleged that the defendant had taken an irregular step by joining parties that were not party to the action without having obtained leave of the court. The defendant was afforded a period of ten days within which to remove the cause of the complaint.

[15] On 23 September 2024, Mr Dreyden emailed the plaintiff's attorneys insisting that the defendant's delivery of further pleadings post the Exception did not constitute an irregular step. He made it clear that the defendant would oppose any application to set aside the special plea, plea-over as well as the claim in reconvention as an irregular step.

[16] On 17 October 2024, Mr Dreyden served the defendant's notice of bar on the plaintiff's attorneys by email. On 18 October 2024, the plaintiff's attorneys emailed the Rule 30 Application that had not been issued at that stage. A properly issued Rule 30 Application was served on the defendant by email on 23 October 2024.

[17] The Defendant opposes the Rule 30 Application on the grounds set out above. The Rule 30 Application came before Slings J who made an order that it be heard with the Exception on 29 April 2025. With that background, I proceed to consider the application for condonation for the late delivery of the Rule 30 Application.

Condonation

[18] The time frames applicable to an application under Rule 30 are set out in subrule (2) which provides that:

‘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 has 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 ten days;

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

[19] At issue in the present matter is the lateness of the delivery of the Rule 30 Application in that it was delivered outside of the fifteen-day period referred to in subrule 30(2)(c). As already mentioned above, the unissued Rule 30 Application was emailed to the defendant on 18 October 2024 and a properly issued one was emailed to the defendant on 23 October 2024. The fifteen-day period within which the Rule 30 Application should have been instituted expired either on 14 or 15 October 2024. Thus, a properly issued Rule 30 Application was delivered, at most, seven days out of time.

[20] The plaintiff’s attorney deposed to an affidavit in support of the application for condonation. The affidavit deals with an explanation for the delay, the degree of lateness, prejudice as well as the plaintiff’s prospects of success.

[21] The essence of the plaintiff’s explanation for the delay in the delivery of the Rule 30 Application is to blame the defendant for the defendant’s failure to confirm receipt of the Rule 30 Application. In this regard, the deponent suggests that between 9

September and 23 September 2024, the plaintiff was uncertain whether the defendant had received the Rule 30 application.

[22] The above explanation, however, does not bear scrutiny because (a) it does not account for the entire period for the delay, and (b) it does not explain the delay after 23 September 2024 when the defendant had made it clear that it intended to oppose any application to set aside the defendant's special plea, plea-over and the claim in reconvention as an irregular step.

[23] The deponent to the affidavit in support of the application for condonation further states that had the period been computed from 23 September 2024, the *dies* would have expired on 29 October 2024 which would have meant that the Rule 30 Application was instituted timeously. This, however, does not make sense because as the deponent should know, the *dies* are computed from the date of the delivery of the Rule 30 Notice until otherwise agreed to between the parties. There was such agreement between the parties in this matter.

[24] The deponent, in a further attempt to explain the reason for the delay, alludes to him misreading subrule 30(2)(c) as prescribing a twenty-day period within which the application should be instituted. How he came to misread the rule is not explained. All in all, the plaintiff's explanation for the delay is far from being satisfactory but that an explanation for the delay is but one of the basket of issues that must be considered when determining whether to grant condonation.

[25] The length of the delay is one of the issues that must be taken into consideration. The delay here was not egregious and at most it was a seven-day delay.

[26] It was submitted on behalf of the plaintiff that the defendant has not suffered any prejudice because of the seven-day delay. To the contrary, the plaintiff would suffer immense prejudice if the condonation application was not granted.

[27] The defendant did not and could not complain of any prejudice because of the seven-day delay because the delay did not have an impact on the further step that the defendant wanted to take, namely the setting down of the Exception. To the contrary, the plaintiff would be prejudiced in that it found itself in an invidious position when the defendant served a notice of bar. Had it pleaded, it would not have been able to pursue the remedy afforded by the rules. Because of its election to seek to pursue the remedy afforded by the rules, it risks being barred from pleading to the defendant's claim in reconvention.

[28] As a matter of interest, Mr Dreyden states in his affidavit that he knew the plaintiff would not be prejudiced by the fact of the defendant's delivery of its special plea, plea-over and claim in reconvention. This, according to him, is because the plaintiff would not be required to plead to the defendant's special plea, plea-over and claim in reconvention by way of replication until such time that the exception had been dealt with. But the defendant has done the exact opposite by delivering the notice of bar and its position is that the plaintiff has been barred. Not only that but that it is not competent for the plaintiff to apply for the upliftment of the bar in the Rule 30 Application. There is, in my view, demonstrable prejudice to the plaintiff and none to the defendant.

[29] As shall become apparent when I deal with the merits of the Rule 30 Application, the plaintiff enjoys good prospects of success. Further, the importance of the issue under consideration transcends the parties' narrow interests as it concerns a proper interpretation of the interplay between Rule 22 and 23. Weighing up the weak explanation for the delay against factors in favour of granting the condonation, I am of the view that it is in the interest of justice to grant condonation for the late delivery of the Rule 30 Application to which I deal with next.

Rule 30 Application

[30] As mentioned above already, the defendant, in addition to resisting the Rule 30 Application on the merits, has raised eight points *in limine*. In my view the starting point should be consideration of these points *in limine*.

[31] Three of the defendant's point *in limine* relate to non-compliance with the provisions of Rule 6(5)(a), 6(5)(b)(i) and (iii) which read:

'(5)(a) Every application other than one brought *ex parte* shall be brought on notice of motion as near as may be in accordance with Form 2(a) of the First Schedule and true copies of the notice, and all annexures thereto, shall be served upon every party to whom notice is to be given.

(b) In a notice of motion, the applicant shall –

- (i) appoint an address within 25 kilometres of the office of the registrar and an electronic mail address, if available to the applicant, at either of which address the applicant will accept notice and service of all documents in such proceedings;
- (ii) ...
- (iii) set forth a day, not less than 10 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether respondent intends to oppose such application, and shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the said respondent of the said notice;'

[32] The complaint by the defendant, in a nutshell, is that the plaintiff has not (a) utilised Form 2(a) of the First Schedule to the Rules when initiating the Rule 30

Application has not been, (b) appointed an address that is within the 25 kilometres of the office of the registrar, and (c) given the defendant 10 days' notice to indicate its intention to oppose the application nor the date by which the application will be heard if the defendant does not file its notice to oppose the application.

[33] The plaintiff's response is that the matters which the defendant complains of do not apply to an application brought under Rule 30(1) because such application is regulated by Rule 6(11) which reads:

'Notwithstanding the aforesaid subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge,'

[34] The Rule 30 Application, so goes the argument, is interlocutory and incidental to the main proceedings. In support of this proposition the plaintiff referred this court to **Graham**² where an interlocutory application was described as '*an incidental application for an order at an intermediate stage in the course of litigation, aimed at settling or giving directions with regard to some preliminary or procedural question that has arisen between the parties.*'

[35] There is no doubt that the Rule 30 Application is an interlocutory application or an application incidental to the main action. In instituting the Rule 30 Application, the plaintiff seeks an order at an intermediate stage in the course of litigation. That order is aimed at a procedural question that has arisen between the parties, the procedural question being whether it is permissible to deliver further pleadings prior to the determination of an exception.

[36] Subrule 6(1) prescribes that '*every application must be brought on notice of motion supported by an affidavit...*' Subrules (2), and (5) then set out the requirements

² Graham v Law Society, Northern Provinces 2016 (1) SA 279 (GP) at 289E-F.

of the notice of motion referred to in subrule (1). All these requirements, however, do not apply to interlocutory applications because all that is required in respect of interlocutory applications is a notice supported by an affidavit. Notice under subrule (11) does not mean notice of motion.³ That being the case, the plaintiff was not required to comply with the provisions of subrules 6(5)(a), 6(5)(b)(i) and (iii). As such there is no merit in any of the defendant's points *in limine* in so far as they allege plaintiff's failure to comply with the provisions of these subrules.

[37] The granting of the condonation has disposed of two of the points *in limine* relating to the late delivery of the Rule 30 Application and the plaintiff's failure to bring a separate application, in terms of Rule 27, for the extension of time. It only needs to be mentioned that there is no requirement that an application for an extension of time or condonation should be brought as a self-standing application. Such a requirement would defeat the very object of the rules, which is to secure an inexpensive and expeditious completion of litigation.⁴

[38] On the defendant's approach, the plaintiff would have had to first bring an application, under Rule 27, for extension of time within which to bring the Rule 30 Application. And only after the finalisation of that application would the plaintiff be able to bring the Rule 30 Application. Needless to say, that such an approach would result in two judges having to consider the merits of the Rule 30 Application because the merits have a limited role to play in the application for extension of time frames under Rule 27.

[39] The next point *in limine* complains of lack of proof of proper service of the Rule 30 Application. This is because, according to Mr Dreyden, the plaintiff's attorneys have not requested his consent to the electronic service of the application.

[40] Mr Dreyden seems to regard the Rule 30 Application as unrelated to the main action in respect of which the parties have agreed to an electronic exchange of

³ Yorkshire Insurance Co Ltd v Reuben 1967 (2) SA 263 (E) at 263E-H.

⁴ Hudson v Hudson 1927 AD 259 at 267

pleadings. Mr Dreyden is mistaken in that regard because there is one matter between the parties under case number 14817/2024. There can be any number of interlocutory applications along the way but the parties' consent to the electronic exchange of pleadings endures until the finalisation of the litigation or until it is withdrawn. And none of the two has happened in this instance. Therefore, the defendant's point *in limine* regarding lack of proof of service is devoid of any merit. This is even more so since Mr Dreyden himself says that '*The applicant delivered this application in its issued form on 23 October 2024, being 7 court days too late.*'

[41] The two remaining points *in limine* relate to a failure by the deponent to the affidavit in support of the Rule 30 Application to aver that (a) he necessary locus standi, and (b) that this court has the necessary jurisdiction to entertain the Rule 30 Application.

[42] The defendant's attack on the standing of the deponent to the affidavit in support of the Rule 30 Application is ill-conceived because it is not the deponent that has brought the Rule 30 Application but the plaintiff. The deponent to the affidavit in support of the Rule 30 Application is nothing more than a witness who places evidence before the court in respect of matters that fall within his personal knowledge. A witness need not have *locus standi* because a witness has no interest in the subject matter of the dispute between the litigants. The defendant's point in limine relating to the *locus standi* of the deponent to the affidavit in support of the Rule 30 Application is bad in law.

[43] The last point in limine relating to this court's jurisdiction is just as bad. The Rule 30 Application is incidental to the main application that has been instituted out of this Court. Axiomatically, it is only this Court that must determine a procedural dispute that has arisen between the parties in relation to litigation pending in this Court. Mr Dreyden appears to suffer from the misconception that a litigant is required to plead legal conclusions. It is not the pleading of legal conclusions that is required but the examination of the pleaded facts as well as the relevant surrounding circumstances which would include, in the present circumstances, the fact that the Rule 30 Application

is subordinate to or accessory to the main action. All the points in limine that have been raised by the defendant have no merit.

[44] Turning to the merits of the Rule 30 Application, the substance of the defendant's defence is that there are no procedural impediments to a litigant delivering a plea after taking an exception to the plaintiff's particulars of claim even if such an exception has not been finally determined. For this proposition, the defendant relies on its interpretation of Rule 23(4) which reads '*Whenever an exception is taken to any pleading, no plea, replication, or other pleading shall be necessary.*' Properly interpreted, according to the applicant, this rule means no more than that a party who has taken an exception has an election on whether or not to deliver after taking an exception.

[45] The plaintiff, for its part, relying on its interpretation of Rule 22(1) contends that the defendant must make a choice between delivering a plea with or without a claim in reconvention and delivering an exception with or without an application to strike out. Once the defendant had made its choice, it was bound thereto until the final determination of the Exception. And that the delivery of the further pleadings whilst the determination was still pending constitute an irregular step that is liable to be set aside as found by this Court in ***Spar Group***.

[46] Rule 22(1) sets out steps to be taken by a defendant after delivery of a notice of intention to defend and reads:

'Where a defendant has delivered notice of intention to defend, he shall within twenty days after service upon him of a declaration or within twenty days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.'

[47] **Spar Group** concerned an application to set aside a notice in terms of Rule 23(1) which had been delivered simultaneously with a special plea and a plea-over. This Court made an order setting aside the notice in terms of Rule 23(1) and as part of the reasoning stated that *'It must be stressed that a notice of exception cannot co-exist simultaneously with a plea, as the delivery of a plea defeats the purpose of the exception⁵.'*

[48] There is, however, a subtle difference between what this Court had to consider in Spar Group and the present matter. In the present matter, the defendant has delivered an exception which is a pleading.⁶ Like a plea, a properly drawn exception concludes with a prayer for relief.⁷ On the other hand, a notice in terms of Rule 23(1) is not a pleading but a precursor to an exception.⁸

[49] The answer to the dispute between the parties must lie in the proper interpretation of the respective rules they rely upon. The principles of interpretation are trite regarding the triad of text, context and purpose.⁹

[50] Textually, the reading of Rule 22(1) favours a construction that a party must choose between delivering a plea or an exception. This much appears from the use of the disjunctive word 'or' that separates the word 'plea' and the words 'exception'. Had the intention been not to hold a litigant to a choice, the words 'and/or' would have been used to convey that.

[51] Read in context, Rule 22(1) deals with pleadings that follow the delivery of the notice of intention to defend or a declaration. The remainder of Rule 22 is then devoted to the requirements for a plea and Rule 23 devoted to the requirements for an exception. That context supports the view that one needs to look at Rule 22(1) for an answer whether the co-existence of an exception and a plea is permissible. Rule 23(4)

⁵ At para [33]

⁶ Haarhoff v Wakefield 1955 (2) SA 425 (E)

⁷ Marais v Steyn & 'n ander 1975 (3) SA 479 (T) at 483A

⁸ Hill NO. and Another v Brown 2022 JDR 0238 (WCC) at para [8]

⁹ Cool Ideas 1186 Hubbard 2014 (4) SA 474 (CC) para 28

does nothing more than make it clear that it is not necessary to deliver a plea after taking an exception.

[52] Having regard to the object of the rules regarding the inexpensive and expeditious finalisation of litigation before courts, to permit the co-existence of an exception and a plea would undermine that object. This is because that would result in duplication where an excipient would be pursuing an exception whilst at the same time progressing the main matter. That would further undermine the purpose that an exception serves, namely the weeding out of hopeless cases. It could hardly make sense to plead to a hopeless case because inevitably, the pleadings would have to be amended after a successful exception and even worse, the plaintiff might be unable to put together a coherent case which would result in the matter dying a natural death. Needless to say, that to proceed with the pleadings in those circumstances would result in parties incurring costs that they need not incur and that could be avoided.

[53] There is also another reason that militates against the permissibility of the co-existence of an exception and a plea, and it is that an exception is a pleading like a plea. There can be no question that two pleas cannot co-exist. This is because they are both pleadings that answer to the plaintiff's claim. Two distinct exceptions can also, for the same reason, not co-exist. The same logic must suggest that an exception cannot co-exist with a plea. The delivery of further pleadings after taking an exception and prior to the determination of the said exception, in my view constitutes an irregular step. The question, therefore, is whether the court should exercise its discretion to set it aside.

[54] The court has a discretion whether or not to set aside an irregular step, and the presence or absence of prejudice is usually decisive.¹⁰ The plaintiff, in my view, will be prejudiced if the defendant's special plea, plea-over and claim in reconvention are not set aside. This is because the plaintiff will be barred from pleading to the defendant's claim in reconvention in circumstances where the claim in reconvention constitutes an irregular step. After all, Mr Dreyden appears to have had a change of heart because

¹⁰ Hard NO and Another v Brown 2022 JDR 0238 (WCC) at [12]

initially his view was that the plaintiff would not be required to plead to the further pleadings. What made him change his mind and deliver the further pleadings, he has not explained. In the result, the Rule 30 Application must succeed. The next issue to consider is the Exception.

Exception

[55] It is convenient to start with the three grounds that allege the lack of this court's jurisdiction to entertain monetary claims that are less than R400 000. The defendant could not refer this court to any authority in support of these grounds. This is unsurprising because there is none. To the contrary, and as correctly submitted on behalf of the plaintiff, the High Court has concurrent jurisdiction in respect of matters that fall within the monetary jurisdiction of the Magistrates Court as held by the Supreme Court of Appeal in **Standard Bank**¹¹ and the Constitutional Court in **SAHRC**.¹² There is this no merit in any of these grounds of exception.

[56] The next ground of ground of objection alleges the plaintiff's failure to plead that it has the necessary locus standi to institute the action against the defendant. The defendant advanced two bases for this ground of exception. The first basis is that the plaintiff has failed to plead that it has a direct and substantial interest in the proceedings. The second basis is that the plaintiff has failed to plead that it has the necessary capacity to litigate.

[57] The plaintiff's response to this ground of exception is that it has pleaded the necessary facts to establish locus standi. These facts include averments that the plaintiff is, at all material times, the owner of the motor vehicle that is the subject matter of these proceedings. These being proceedings being concerned with the return of the

¹¹ Standard Bank of SA Ltd and Others v Thobejane and Others and the Standard Bank of SA Ltd v Gqirana NO and Another 2021 (6) SA 403

¹² South African Human Rights Commission v Standard Bank of South Africa Ltd and Others [2022] ZACC 43 at [35]

said motor vehicle, the argument goes, the plaintiff's direct and substantial interest is self-evident, and it is not necessary for the plaintiff to plead those legal conclusions.

[58] There is merit in the plaintiff's response. Litigants are required to plead facts on the basis of which legal conclusions may be drawn. Pleading legal conclusions without the necessary supporting facts would in fact be deficient because legal conclusions are not facts.

[59] The plaintiff has also pleaded that it is a private company that is registered in terms of the relevant laws of the republic. A company registered in terms of the laws of the republic has, as a matter of law, capacity to sue and be sued unless it is under supervision by a business rescue practitioner or in liquidation. In the citation of the plaintiff in these proceedings, there is no suggestion that it is either under supervision by a business rescue practitioner or in liquidation. This ground of exception is equally without merit.

[60] The next ground of exception alleges that the plaintiff's cause of action is incomplete because of the plaintiff's failure to plead the place where the oral agreement was concluded.

[61] The plaintiff's response to this ground of objection is that it is not a requirement to plead the place where the agreement was concluded in order to establish a cause of action. In this regard the plaintiff referred this court to **Absa Bank Ltd**¹³ where it was stated that *'The rules of court exist in order to ensure fair play and good order in the conduct of litigation. The rules do not lay down the substantive legal requirements for a cause of action, nor in general are they concerned with the substantive law of evidence.'* It was submitted further that compliance with Rule 18(6) could be challenged procedurally in terms of Rule 18(12) but not on the basis that the plaintiff's particulars lack averments which are necessary to sustain a cause of action.

¹³ Absa Bank Ltd v Zalvest Twenty (Pty) Ltd 2014 (2) SA 119 (WCC)

[62] That the plaintiff has not pleaded where the oral agreement was concluded is common cause. To that extent, the plaintiff's pleading is less than perfect. But is this not a minor blemish or unradical embarrassment that can and should be cured by further particulars as was stated in *Living Hands*.¹⁴ The parties to the oral agreement are pleaded together with the persons who represented them during the conclusion of the oral agreement. Incidentally, it is Mr Dreyden who is alleged to have represented the defendant when the oral agreement was concluded.

[63] The cause of action in this matter is not even relevant to the issue of jurisdiction as the parties' pleaded registered addressees are within this court's jurisdiction. The imperfection in the plaintiff's particulars of claim, in my view, is not such as to embarrassment serious enough to prejudice the defendant from pleading. It is a matter that probably falls within Mr Dreyden's knowledge but also it is something that can be cured by further particulars. This ground of exception must also fail.

[64] The next ground of exception is directed at the jurisdiction of this court, asserting that the plaintiff has failed to plead that the whole cause of action arose within this court's jurisdiction. The comment I made above regarding the necessity to plead the place where the oral agreement was concluded applies equally in respect of this ground. Jurisdiction of this court has been established on the basis of the defendant being within the jurisdiction and it is not necessary to plead any additional facts which may also establish jurisdiction. This ground of exception has no merit whatsoever.

[65] The last ground of exception questions the lack of written authorisation confirming the authority of the plaintiff's attorneys to act on its behalf in these proceedings. The short answer thereto is that the lack of written authorisation is not a matter that goes to the cause of action. If the defendant wishes to dispute the authority of the plaintiff's attorneys to represent the plaintiff its recourse lies in Rule 7. In the end none of the grounds of exception have merit. The Exception must, in the result fail. It remains to consider the question of costs.

¹⁴ *Living Hands (Pty) Ltd v Ditz* 2013 (2) SA 368 (GSJ) at para [15]

Costs

[66] The plaintiff has been successful in both the Rule 30 Application and the Exception and the usual rule that the costs should follow the result should, in my view, apply. The plaintiff has, however, sought costs on a punitive scale in respect of the Rule 30 Application and costs on scale C in respect of the Exception.

[67] The plaintiff initially sought the Rule 30 Application costs on scale B. This, however, changed on receipt of the defendant's opposing papers and this is because, according to the deponent to the plaintiff's replying affidavit, *'The in limine defences are unmeritorious. Despite the in limine defences, the respondent has not raised any real factual or legal issue in opposing the application.'*

[68] The defendant's opposition of the Rule 30 Application was not, however, based only on the points *in limine*. Mr Dreyden explained that he had regard to the provisions of Rule 23(4) which he interpreted to mean that a litigant is not prohibited from delivering further pleadings after tanking an exception. The fact that Mr Dreyden's interpretation did not find favour with the court does not and cannot detract from the fact that the defendant raised a legal issue in its opposition of the Rule 30 Application. In my view, costs on an attorney and client scale are not warranted.

[69] The Rule 30 Application and the Exception do not engage difficult questions of law and in my view, costs should be awarded on scale A.

Order

[70] In the result I make the following order:

- 70.1 Condonation for the late service of the application in terms of Rule 30(1) is granted;

- 70.2 The defendant's special plea, plea-over and claim in reconvention dated 28 August 2024 is set aside as an irregular step;
- 70.3 The defendant's exception dated 15 August 2024 is dismissed;
- 70.4 The defendant is ordered to pay the costs, on scale A, of both the application in terms of Rule 30(1) as well as the defendant's exception.

L G NUKU
JUDGE OF THE HIGH COURT

Appearances

For plaintiff:	MM Van Staden
Instructed by:	CK Attorneys, Bloubergstrand
C/O:	Bisset Boehmke McBlain Attorneys, Cape Town
For defendant:	Mr D D Dreyden, in his capacity as the director of the defendant