



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

CASE NO: 4851/2022

In the matter between:

REDEFINE PROPERTIES LIMITED

Plaintiff

and

MASIQHAME TRADING 224 CC t.a. TNT PROJECTS

First Defendant

THOZAMA NANCY TONGO

Second Defendant

Coram: **JONKER AJ**

Heard: 20 August 2025

Delivered: Electronically on 22 August 2025

JUDGMENT

JONKER AJ:

INTRODUCTION

[1] This is an application by the plaintiff in terms of rule 30 of the Uniform Rules of Court to set aside the amended plea and counterclaim filed by the first and second defendants. The plaintiff's complaint is that the defendants effected amendments which differ materially from those set out in their rule 28 notices, on the strength of which leave to amend had been granted.

[2] The plaintiff contends that the amendments as filed are therefore irregular and prejudicial, and should be set aside.

BACKGROUND

[3] The defendants delivered a notice of amendment in terms of rule 28 on 28 June 2024, seeking to introduce specific amendments to their plea and counterclaim.

[4] The plaintiff objected thereto on 11 July 2024, whereafter the defendants delivered an application in terms of rule 28(4) for leave to amend their plea and counterclaim. The matter was duly set down for hearing. Shortly before the hearing, however, the plaintiff elected not to persist in its opposition to the application.

[5] On 2 December 2024 the Court granted the defendants leave to amend their plea and counterclaim in the terms set out in their notices of amendment.

[6] Instead of effecting the amendments in the precise terms authorised, the defendants filed an amended plea and counterclaim on 13 December 2024 which, in several respects, deviates from both the wording of the notices of amendment and the version that served before the Court when leave to amend was granted.

[7] Upon receipt of the amended pleadings, the plaintiff addressed a letter to the defendants' attorneys on 15 December 2024, alleging that the defendants and their attorneys had acted irregularly and improperly, and demanding that the amended pleadings be withdrawn. The letter elicited no response. On 2 January 2025, the plaintiff accordingly invoked rule 30, contending that the amended pleadings constituted an irregular step.

[8] The defendants opposed the application and on 2 February 2025, before Scher J, an order was taken by agreement, regulating the exchange of affidavits and the filing of heads of argument. The matter was postponed to 20 August 2025 for hearing.

[9] The plaintiff duly filed its heads of argument. The defendants, however, failed to do so notwithstanding the Court's order directing them to file their heads of argument by 5 August 2025.

THE PARTIES SUBMISSIONS

[10] On behalf of the plaintiff it was argued that rule 28 requires strict adherence to the terms of the notice of amendment, and once leave was granted by this Court, the defendants were bound to effect the amendment in accordance with the notice. By introducing language not reflected in the notice, the defendants exceeded the scope of what was permitted.

[11] The defendants contended that the amendment was affected consequent to a court order, and the application is ill-conceived. The defendants do state that, should this Court find that the amended pleadings went beyond what was sought in the notices, the Court should accept the amended pleadings or condone them. Mr Sharuh for the defendants submitted that the differences were either immaterial or clarificatory, and that no prejudice was occasioned to the plaintiff. Importantly, the defendants state it was not made in bad faith, but merely to assist the proper ventilation of all issues between the parties so that justice can prevail. It is submitted that the Court should allow the pleadings to remain, and it will assist in bringing the matter to finalisation.

[12] The defendants request that, insofar as the Court may find that a new cause of action has been introduced, the plaintiff be directed to plead thereto. They submit that no prejudice will be suffered by the plaintiff, contending that the plaintiff may raise a special plea to the counterclaim, which can be determined together with the merits of the matter in due course.

[13] The defendants contend, as a point *in limine*, that the plaintiff should have availed itself to the mechanism provided for in rule 30A of the Uniform Rules of Court and not rule 30. The defendants say that the plaintiff should have predicated its application on rule 30A, due to the fact that the Court order granted the amendment and therefore rule 28, and the steps therein contained, were completed. rule 30 was therefore no longer an option to the plaintiff. Accordingly, the defendants contend that the plaintiff selected the wrong mechanism. The complaint, so it is submitted, is rather one of non-compliance with the Court order, and the plaintiff should have resorted to rule 30A. The defendants accordingly contend that the amended plea and counterclaim do not constitute an irregular step, introduce no new facts as alleged, and cause no prejudice to the plaintiff. They argue that the plaintiff was made aware of their defence and counterclaim in the affidavit resisting summary judgment, and was therefore neither taken by surprise nor without notice of the intention to introduce the new claim by way of amendment. The defendants submit further that the Court should not elevate form over substance, nor interfere with the amendments effected.

LEGAL PRINCIPLES

[14] Rule 28 regulates the amendment of pleadings and documents and provides as follows:

“(1) Any party desiring to amend any pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected.

(3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.

(4) If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.

(5) *If no objection is delivered as contemplated in subrule (4), every party who received notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days of the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7).*

(6) *Unless the court otherwise directs, an amendment authorized by an order of the court may not be effected later than 10 days after such authorization.*

(7) *Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.*

(8) *Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him, and may also take the steps contemplated in rules 23 and 30.*

(9) *A party giving notice of amendment in terms of subrule (1) shall, unless the court otherwise directs, be liable for the costs thereby occasioned to any other party.*

(10) *The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.”*

(My underlining)

[15] It is evident from the foregoing that rule 28 prescribes a step-by-step procedure for the amendment of pleadings and documents. In this regard, the learned authors of Erasmus¹ observe as follows:

“This rule makes provision for the following distinct situations

(a) the amendment of any pleading or document other than a sworn statement filed in connection with any proceedings consequent upon a party

¹ Erasmus: Superior Court Practice commentary (at RS 22, 2023, D1 Rule 28-1)

who intends such pleading or document having given notice of such intention to amend (subrules (1) to (9));

(b) the court, other than in circumstances contemplated in subrules (1) to (9), at any stage before judgment granting leave to amend any pleading or document (subrule (10)).”

[16] Amendments may only be achieved through a notice process initiated by the intention of a party to do so in terms of sub-rules (1) and (2), subject to the objection procedures in sub-rules (3) and (4), or no objection in sub-rule (5), following which the amendment may be effected as contemplated in sub-rules (6) and (7). Sub-rules (9) and (8) are subject to the procedures in sub-rules (1) to (7).

[17] Rule 30 deals with irregular proceedings:

“(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 has not himself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within 10 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 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2).

(3) If at the hearing of such application the court is of 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.

(4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

(5) ...”

[18] It is trite that a party cannot, under the guise of effecting an amendment, introduce material not authorised by either its notice of amendment or subsequent order of court. To do so will amount to an irregular step as envisaged by rule 30.

[19] Rule 30(1) contemplates an irregular step which must be a step which advances the proceedings one stage nearer completion – the subrule does not apply to omissions, but to positive steps.

[20] The rule can only be used if the conditions referred to in rule 30(2) are satisfied. This is of importance to this matter as there are strict provisions applicable, in breach of which, the rule may not be utilised.

[21] Then there is rule 30A, which deals with non-compliance with rules and court orders:

“(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 by a court or 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, 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.”

[22] Rule 30A is another provision that provides a general remedy for non-compliance with *inter alia* the Uniform Rules of Court and court orders. It empowers the innocent party to place the defaulting party on notice that, if the complaint is not rectified within ten days, an application will be made for an order from the court for compliance or striking out of a claim or defence. Rule 30A expressly empowers the

court in such an application to “*make such order thereon as it deems fit*”. In *Farm Klippan*², Epstein AJ stated the following:

“Rule 30A has an important place in the rules, in that, as I stated, it provides a remedy where non exists elsewhere. However, it could not have been intended by the drafters of rule 30A to jettison the existing and effective remedies provided in the specific remedy rules. If it was so intended, it would render such remedies negatory. The remedies in the specific rules have always been effective and there is no reason to denude them of their efficacy.

(My underlining)

THE RULE 30 V RULE 30A, WHICH ONE IS THE CORRECT MECHANISM?

[23] In the present matter, leave to amend was granted by order of Court on 13 December 2024. The order directed the defendants to effect the amendment in the terms proposed in their rule 28(1) notices and as sought in the notice of motion in their application for leave to amend, by delivering their plea and counterclaim in amended form.

[24] The question that arises is which rule finds application in the present circumstances. Although the defendants filed an amendment pursuant to the Court’s order — a positive step in the litigation — the amendment did not mirror the terms of the notice delivered under rule 28(1), nor did it accord with the amendment for which leave had been granted in terms of rule 28(7). It is rule 28(8) which affords a party the right to make consequential adjustments, and further entitles an aggrieved party to invoke rules 23 or 30. This subrule specifically regulates the period following a Court order granting an amendment, and accepts that a litigant may thereafter proceed by way of rule 30.

[25] I am not persuaded by the defendants’ contention that the appropriate mechanism is rule 30A, with the result that the present application is a nullity. Rule

² *Absa Bank v The Farm Klippan* 490 CC 2000 (2) SA 211 (W) at 214 I-J.

30A is aimed at instances of inaction, where a party fails to comply with the rules of court or with a court order. Rule 30, by contrast, addresses irregular steps that have been positively taken, rather than omissions. It is for this reason that the relief contemplated under rule 30 is the setting aside of the specific step complained of.

[26] As was explained in *SA Metropolitan Lewensversekeringsmaatskappy*³, rule 30 is concerned with irregular proceedings already taken, whereas rule 30A provides a remedy in circumstances where a party fails to comply with a rule or with a notice.

[27] In the present matter, the step taken was the filing of the defendants' amended plea and counterclaim. The appropriate mechanism available to the plaintiff in these circumstances is therefore that provided for in rule 30.

APPLICATION TO THE FACTS

[28] A comparison of the defendants' notice of amendment, the Court order granting such amendment, and the amended plea and counterclaim subsequently filed, reveals that certain portions of the amended pleadings extend beyond the scope of the amendment authorised. In the amended plea, additional material appears in paragraphs 2, 3, 13, 14 and 15, which was not contained in the rule 28 notice. Likewise, in the amended counterclaim, further material was inserted in paragraphs 1, 2, 4, 5, 6, 7, 8, 9 and 10–13. Of particular significance is that the amended counterclaim introduces a new claim in the amount of R30 million — a claim not foreshadowed in the notice of amendment, or the affidavit in support of the application for leave to amend that served before the court, at all. The further material included, which falls outside the scope of the rule 28(4) notice, was not placed in dispute by the defendants, either in their answering affidavit or in argument.

[29] The defendants were not entitled to introduce additional amendments beyond those authorised by the Court when leave to amend was granted. Had they wished

³ *SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO 1981 (4) SA 329 (O)* at 333H–334A

to do so, the proper course would have been to deliver a fresh notice of amendment in terms of rule 28.

[30] The plaintiff is prejudiced by being required to plead to an amended pleading that is not properly before the Court and which impermissibly broadens the issues beyond the scope of the authorised amendment. This prejudice is exacerbated by the defendants' attempt to introduce an additional claim, allegedly arising in 2020, which the plaintiff contends has in any event already prescribed.

[31] The defendants' submission that the deviations are immaterial and cause no prejudice to the plaintiff is without merit. This Court is enjoined to enforce compliance with the rules governing amendments. To permit a party to alter its pleadings at will, without proper notice to the opposing party, would undermine the integrity of the procedural framework. Such an approach would invite disorder in litigation, enabling parties to effect substantive changes to their pleadings without objection or the requisite leave of the court.

[32] The plaintiff elected not to persist with its objection to the amendment initially sought by the defendants in their rule 28 notice. The defendants cannot now, under cover of the amendment granted, depart from the wording of that notice and seek to introduce different language and a new cause of action in their counterclaim. The Court's order did not confer upon them an unfettered licence to amend their plea and counterclaim. The step taken was irregular, as it did not reflect the terms of the rule 28(4) notice, which formed the very basis of the amendment procedure. It was on the strength of that notice that the plaintiff elected not to oppose the application to amend. Had the notice disclosed the amendments ultimately introduced in the filed plea and counterclaim, the plaintiff may well have adopted a different course. A litigant is entitled to consider its position with reference to the precise terms of a proposed amendment, and to be deprived of that opportunity is inherently prejudicial. The defendants are confined to the amendments contained in their rule 28 notice; should they wish to introduce amendments of a broader scope, they remain at liberty to do so only by following the procedure prescribed in rule 28.

COSTS

[33] The plaintiff seeks a punitive costs order, with costs to be borne *de bonis propriis* by the defendants' attorneys, jointly and severally with the defendants. The application is premised on the contention that the defendants and their attorneys acted with gross negligence in effecting the amendment in a reckless manner, without alerting the plaintiff at all, and thereafter persisting in a defence that was plainly untenable. The plaintiff further submits that the defendants' attorneys materially departed from the standard of conduct expected of legal practitioners, and that the defendants, as lay clients, would in any event have deferred to their attorneys in the advancement of the instructions given.

[34] The plaintiff contends that the defendants' attorneys acted in a manner that occasioned unnecessary costs. In particular, reliance is placed on the following: (1) the significant discrepancies between the defendants' rule 28 notices and the amended pleading subsequently filed; (2) the failure by defendants' attorneys to respond to the plaintiff's letter of 2 December 2024, which expressly called upon them to withdraw the defective amendments; and (3) the further failure to react to the rule 30(2)(b) notice served by the plaintiff.

[35] It is trite that an order for costs *de bonis propriis* is not lightly granted and, as stated by Fabricius J in *Multi-Links*⁴, is only done in even more exceptional circumstances than ordering costs on a punitive scale:

“[35] It is true that legal representatives sometimes make errors of law, omit to comply fully with the Rules of Court or err in other ways related to the conduct of the proceedings. This is an everyday occurrence. This does not however per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioners, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the

⁴ *Multilinks Telecommunications v Africa Prepaid* 2014 (3) SA 265 (GP) at para 34

conduct of an attorney in any particular context. Examples are, dishonesty, obstruction of the interests of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, and gross incompetent and a lack of care.

[36] Such an order is appropriate only where an attorney's conduct is grossly negligent, vexatious, mala fide, or amounts to a serious dereliction of duty owed both to the court and to the opposing party. In *Stainbank*⁵, Khampepe J confirmed that:

“Conduct seen as unreasonable, wilfully disruptive or negligent may constitute conduct that may attract an order of costs de bonis propriis”.

[37] In the present matter, I am satisfied that the conduct of the defendants' attorneys crosses that threshold. Their persistence in pursuing irregular pleadings, coupled with their failure to heed repeated and reasonable requests from the plaintiff, transcends a mere error of judgment. It reflects a disregard for their obligations under the rules of court and for the proper administration of justice.

[38] The substantial discrepancies between the notices of amendment and the amended pleadings remain wholly unexplained. No justification was advanced as to why the amended versions differ materially from what was originally proposed. Instead, the defendants, and their attorney in argument, adopted the stance that the discrepancies were immaterial, that no prejudice would ensue, and that the plaintiff could simply proceed to plead. Such a dismissive attitude trivialises the rules of court, disregards the duty of litigants to act with candour and transparency, and evinces not only a disregard for the plaintiff's legitimate objections but also for the authority of the Court itself.

[39] The defendants further sought to rely on the fact that reference was made to the counterclaim in the affidavit resisting summary judgment, which purportedly gave notice to the plaintiff. That, however, cannot serve as a justification for so blatant a disregard of the rules of court. The rules exist to ensure the orderly conduct of

⁵ *Steinbank v SA Apartheids Museum at Freedom Park* 2011 (10) BCLR 1058 (cc) at para [52].

litigation, to provide a fair and structured framework within which parties may assert their rights and obligations, and to guarantee equal treatment of all litigants. To treat compliance with the rules as optional, or to assume that a prior affidavit can excuse non-compliance, is unacceptable and incompatible with the due administration of justice.

[40] What is deeply concerning is that the defendants' attorneys did not, at any stage, alert the plaintiff's attorneys to the changes ultimately effected. When confronted, they failed entirely to offer any explanation for this conduct. Such a lack of candour is inconsistent with the professional duties owed by legal practitioners, both to their opponents and to the court, and further aggravates the seriousness of their departure from the standards expected of attorneys.

[41] Such conduct undermines the integrity of the judicial process. While practitioners are not to be penalised for every lapse, conduct characterised by unexplained discrepancies, dismissiveness towards both the plaintiff and the Court, and a blatant disregard of the rules falls squarely within the category warranting judicial censure.

[42] In these circumstances, it would be manifestly unjust for the plaintiff to bear the costs of this application but even more so for the defendants to bear the wasted costs occasioned by the conduct of their attorneys. It would be unfair to mulct the defendants with a cost order when it is the attorneys who failed them in this matter. The interests of justice require that such costs be borne personally by the attorneys. I accordingly order that the defendants' attorneys pay the costs *de bonis propriis*.

CONCLUSION

[43] I am satisfied that the amended plea and counterclaim filed by the defendants constitutes an irregular step within the meaning of rule 30.

[44] In the circumstances, the following order is made:

ORDER

1. The defendants amended plea and counterclaim, filed on 13 December 2024, is set aside in terms of rule 30.
2. The defendants are directed to deliver their amended plea and counterclaim, strictly in accordance with the amendments set out in their rule 28(4) notices dated 28 June 2024, within five (5) days of this order.
3. The defendants attorney are ordered to pay the plaintiff's costs *de bonis propriis*, including counsel fees to be determined on scale A.

E JONKER
ACTING JUDGE OF THE HIGH COURT

Appearances:

For plaintiff: Adv CJ Quinn

For defendants: Mr Sharuh