

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2023/020438
Related Case Number: 2022/26935

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO [REDACTED]

05/09/2025

DATE

SIGNATURE

In the matter between:

NORTHERN WHOLESALE TILES CC

First Applicant

and

UNION TILES BALLITO (PTY) LTD

Respondent

In re:

UNION TILES BALLITO (PTY) LTD

Plaintiff

(Registration Number: 2004/0293007/07)

and

NORTHERN WHOLESALE TILES CC

Defendant

(Registration Number: 2005/010854/23)

JUDGMENT

BRICKHILL AJ:

Introduction

- [1] This is an interlocutory application that arises from the plaintiff initially issuing summons both manually and electronically, with the result that two case numbers were issued to the matter. The applicant seeks an order under Rule 30A directing the respondent to withdraw the matter under case number 26935/2022 and setting aside the respondent's amended particulars of claim as an irregular step.
- [2] The applicant is the defendant, and the respondent the plaintiff, in the underlying action, and I refer to the parties by their designations in the main matter in this judgment. The underlying action concerns a contractual dispute arising from an agreement for the delivery of porcelain moonstone tiles, the merits of which have no bearing on this interlocutory application.
- [3] On 10 October 2022, because the Court Online system was down, the plaintiff issued a combined summons manually under case number 2022/26935 and subsequently created and uploaded the matter on Caselines under that case number. Having done so, the plaintiff then issued the same matter under Caselines under case number 2023/020438.
- [4] On 1 December 2022, the defendant served a notice in terms of Rule 30 and Rule 30A stating that the summons was not issued in terms of paragraph 20 of the Gauteng Division of the High Court's Practice Directive 2 of 2022, which provides:

“In terms of paragraph 2.1 of directive 1 of 2022 (the Court Online pilot directive) with effect from 18 July 2022, all new cases must be initiated on the Court Online portal for issuing and enrolment. No new cases will be issued in person or should be created on Caselines.”
- [5] On 3 February 2023, the defendant launched a Rule 30A application under case number 2022/26935. It also served a notice of exception on the same day.

- [6] On 7 March 2023, the plaintiff addressed a letter to the defendant stating that it had corrected any irregularities, in that:
- a. Following the Rule 30 application, the plaintiff's attorney had uploaded and reissued the summons in accordance with the Practice Directive;
 - b. The matter had been duly instituted on the Court Online portal;
 - c. The defendant's attorney had been invited to the matter on Court Online;
 - d. Accordingly, the cause of complaint had been removed and the defendant should withdraw the Rule 30A application.
- [7] The defendant takes the position that the irregular step has not been rectified because the plaintiff did not withdraw the matter under case number 2022/26935 and tender the wasted costs.

Is there an irregular step?

- [8] The management of matters on the online platforms introduced in this division is governed by several practice directives and protocols.
- [9] Practice Directive 2 of 2022, referring to Directive 1 of 2022 which is the *Court Online Pilot Directive*, provides that "with effect from 18 July 2022, all new cases must be initiated on the Court Online portal for issuing and enrolment" and that "[n]o new cases will be issued in person or should be created on Caselines". This is the default position for the initiation of new matters.
- [10] However, the '*Judge President's Protocol: Emergency Arrangements when Court Online is Inaccessible*' dated 12 September 2022, provides for situations of 'downtime' as follows:

- 4. Downtime for five (5) court days or longer:

...

- 4.2 Once the system has been restored, practitioners are required to upload and re-issue such matters on the Court Online portal and input the manually issued case number under the 'Related Case Number' field when starting the

case. Both the manual and Court Online issued case number must then reflect on all pleadings filed in the matter.

- 4.3 Matters issued manual during such periods of system inaccessibility may not be created on CaseLines and must be filed and proceed on the Court Online platform once accessibility has been restored.”

- [11] At the time of issuing the combined summons in this matter, the Court Online portal was experiencing downtime of five court days or longer. The plaintiff therefore issued the summons manually. After it was restored, the plaintiff uploaded and re-issued the summons on Court Online on 28 February 2023 under case number 2023/020438, with manually issued case number of 2022/26935 reflected as the ‘Related Case Number’.
- [12] On 7 March 2023, the plaintiff advised the defendant that it had taken these steps, invited the defendant to withdraw the Rule 30A application and, in relation to costs, submitted that the costs of the Rule 30A application should be costs in the cause, alternatively tendered the costs of the Rule 30A application incurred by the defendant up to the date of the letter, 7 March 2023.
- [13] The defendant accepted in argument that the plaintiff took the required steps by re-issuing the summons on Court Online and that it is appropriate then to use two case numbers, being the original manually issued case number and the new Court Online case number. However, it complains that the Caselines profile, which the plaintiff ought never to have created, continued to be operative. It also complains that it will have a difficulty recovering wasted costs under the 2022 case number.
- [14] On the papers, the Caselines number was suspended or closed at some point by the time the answering affidavit in the Rule 30A application was delivered on 14 July 2023.
- [15] The defendant contends that the profile opened on Caselines under case number 20222/26935 constitutes a separate matter and therefore an irregular step, which

can be cured only by withdrawing the matter under case number 2022/26935 and tendering the wasted costs.

[16] While the plaintiff ought not to have opened a Caselines profile in relation to the matter, the plaintiff took the steps required of it in terms of issuing the matter manually and then, when Court Online was restored, re-issuing the matter online there, generating the new case number of 2023/020438 and entering the earlier manually issued case number of 2022/26935 under the 'Related Case Number' field.

[17] The Caselines profile that was erroneously generated under the 2022 case number has since been closed or suspended and is no longer operational. This is the factual position against which it must be determined if this court is required to intervene in relation to an irregular step in the proceedings.

[18] As Jafta J for the majority of the Constitutional Court reiterated in *Mukaddam*, the rules of court are tools to facilitate the right of access to courts in section 34 of the Constitution:

“It is important that the rules of courts are used as tools to facilitate access to courts rather than hindering it. Hence rules are made for courts and not that the courts are established for rules. Therefore, the primary function of the rules of courts is the attainment of justice. But sometimes circumstances arise which are not provided for in the rules. The proper course in those circumstances is to approach the court itself for guidance. After all, in terms of section 173 each superior court is the master of its process.”¹

[19] The right of access to courts forms the bedrock underpinning the interpretation of all court rules and the lodestar to guide courts when enforcing their rules.

[20] The suggestion that the existence of the Caselines profile creates a risk of confusion is baseless. Similarly, the concern that the modest (if any) wasted costs that result from the creation of the Caselines profile will not be taxable is

¹ *Mukaddam v Pioneer Foods (Pty) Ltd and Others* [2013] ZACC 23; 2013 (5) SA 89 (CC) para 32.

illusory. This judgment and all process and court orders in the matter moving forward will reflect both case numbers.

[21] As the Appellate Division held in 1956, in *Trans-African Insurance Co Ltd v Maluleka*,

“No doubt parties and their legal advisers should not be encouraged to become slack in the observance of the Rules, which are an important element in the machinery for the administration of justice. But on the other hand 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.”²

[22] In the circumstances, the plaintiff’s initial error of creating a profile on Caselines after manually issuing the summons has been rectified. There is no irregular step that persists, and it is doubtful whether the existence of a separate Caselines profile in any event would have constituted such an irregularity, given that the matter had correctly been re-issued on Court Online with the newly generated 2023 case number and the original, manually generated case 2022 case number reflected as the ‘Related Case Number’. The situation was akin to the pre-digital scenario in which a duplicated hard copy case file is created and has been sitting in the Registrar’s office gathering dust, but is later located and disposed of before the hearing of the merits. Here, the Caselines profile has been closed or suspended and there can no longer be any basis for complaint, if ever there was.

[23] There is no prejudice to the defendant, nor any basis to require of the plaintiff to ‘withdraw’ a Caselines profile that is no longer operative.

Conclusion and costs

[24] The Rule 30A application therefore falls to be dismissed.

[25] The plaintiff seeks costs on an attorney and client scale. It originally sought, in the alternative costs *de bonis propriis* against the defendant’s attorneys, but at the hearing indicated that it did not persist in this regard.

² *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278F-G.

[26] There is merit to the plaintiff's complaint that this application was brought solely for the purpose of delaying the main matter. For that reason, I agree that it is appropriate to make an order putting the defendant to terms to deliver its plea, if any.

[27] However, though the Rule 30A application ought not to have been persisted with, the original error precipitating the notice of irregular step was the plaintiff's mistake in opening a Caselines profile when Court Online was down. In the circumstances, I am not inclined to grant costs on a punitive scale. It suffices to dismiss the application and award costs on the ordinary basis.

Order

[28] Accordingly,

1. The application is dismissed with costs.
2. The applicant (defendant in the main action) is ordered to serve and file its plea to the respondent's (plaintiff's) amended particulars of claim filed on 18 May 2023, if any, within a period of 20 (twenty) days from the date of this order.



J BRICKHILL
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 5 September 2025.

DATE OF HEARING: 4 June 2025

JUDGMENT SUBMITTED FOR DELIVERY: 5 September 2025

APPEARANCES:

For the Applicant: Adv R Andrews, instructed by KWP Attorneys.

For the Respondent: Adv E Fürstenburg, instructed by Castelli Attorneys Inc.