

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

Case Number: 05845/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
15 September 2025

In the matter between:

DREYER: PAUL	First Applicant
Identity Number 6[...]	
DREYER: ALETIA YVETTE	Second Applicant
Identity Number 6[...]	

and

ALLIED STEELRODE (PROPRIETARY) LIMITED	Respondent
Registration Number 2012/173965/07	

In re – Application for Judgment (Common Law)

ALLIED STEELRODE (PROPRIETARY) LIMITED	Plaintiff
Registration Number 2012/173965/07	

and

<u>DREYER</u> : PAUL	First Defendant
Identity Number 6[...]	

<u>DREYER</u> : ALETIA YVETTE	Second Defendant
Identity Number 6[...]	

Date of Hearing: 4 September 2025
Date of Judgment: 15 September 2025

JUDGMENT

ESTERHUIZEN AJ

This is an application in terms of Rule 30 wherein the applicants seek the setting aside of the respondent's application for 'judgement (common law)' dated 19 August 2024 ("the application").

Introduction

[1] The applicants are the defendants in pending action proceedings under the above case number ("the action"). The respondent in this application is the plaintiff in the action. For the sake of convenience, I refer to the parties as they are in this application.

[2] The following background is common cause:

[2.1] The action was instituted by the respondent on 14 February 2018;

[2.2] The applicants delivered a notice of intention to defend the action on 1 March 2018;

[2.3] The applicants, pursuant to an application for summary judgment by the respondent, delivered an affidavit resisting summary judgment and were granted leave, by consent, to defend the action;

- [2.4] The applicants' plea was delivered on 1 June 2018;
- [2.5] On 10 April 2019, the Court granted a separation of issues in terms of which the separated issues would be determined first, with the remaining issues to stand over for later determination.
- [2.6] The separated issue was ultimately determined in favour of the respondent by the Supreme Court of Appeal on 21 December 2023, with the Constitutional Court declining to hear an appeal thereof on 16 May 2024. Only the separated issue has been determined in favour of the respondent, and not any remaining issues;
- [2.7] The action instituted by the respondent has not been withdrawn neither have the outstanding separated issue been determined.
- [2.8] On 19 August 2024 the respondent delivered an application ('the monetary application') seeking a monetary judgment against the applicants, for the same relief as prayed for in the action and based on the same dispute which forms the subject matter of the action;
- [2.9] On 30 August 2024, the applicants entered their intention to oppose the monetary application and simultaneously therewith, delivered a notice to remove the cause of complaint in terms of Rule 30 ('the rule 30 notice'). In terms of this notice, the respondent was informed that

the application constitutes an irregular step and was provided with an opportunity to remove the irregular step;

[2.10] On 2 September 2024, the respondent served a notice in terms of rule 28(1) of the Uniform Rules. In terms of the latter notice the respondent sought to amend the application by substituting the words of the monetary application which first read “Application for Default Judgement” with the words “Application for Judgement (Common Law). The amendment was effected on 17 September 2024 without any opposition by the respondents;

[2.11] Because the respondent did not remedy and/or remove the irregular step this application was instituted by the applicants.

Discussion

[3] This application concerns the applicants’ rule 30 application in which the applicants are seeking the setting aside of the monetary application instituted by the respondent. The applicants argues that the application is not permitted in terms of the Uniform Rules of Court and therefore it is an irregular step. If removed it will cause the respondents monetary application to be set aside as being an irregular step.

[4] In its monetary application the respondent seeks the following relief:

“BE PLEASED TO TAKE NOTICE THAT the Plaintiff will make application to this Honourable Court for the following relief:

- 1. Payment in the sum of R15 000 000,00 (fifteen million rand);*
- 2. Interest thereon at the rate of 15,5% (fifteen comma five percent from 1 October 2014 to date of final payment, compounded monthly in arrears, both days included;*
- 3. Cost of suit on the scale as between attorney and client;*
- 4. Further and/or alternative relief.”*

[5] This is the same relief being sought in the respondent's action instituted against the applicants. In its rule 30 notice the applicant informed the respondent that their monetary application was an irregular step because, in summary, the respondent's monetary application is not provided for or permitted in the Uniform Rules of Court and because the action has not been withdrawn it stands to be set aside as an irregular step in terms of rule 30.

[6] I deal first with the respondent's argument that the applicants rule 30 application is no more than a dilatory tactic and an attempt to evade their obligations. In this regard the respondents argued that because they are seeking relief *‘at common law to fill a lacuna in the rules of procedure, there are no procedural rules that can be breached in this case’*. Because rule 30 applies only to matters of form, so the respondent argues, some kind of breach of the rules of court must be alleged and because it had not, the applicants rule 30 application should fail.

- [7] In *Participation Bond Nominees (PTY) LTD v Mouton and others* (3) [1978] 2 All SA 302 (W), which dealt with rule 30 pre its amendment but which principle is still relevant¹, stated:

“In my view, the words “any cause” are used in the widest possible sense and refer to any judicial proceeding of whatsoever nature (see Steytler NO v Fitzgerald 1911 AD 295 at 331). I agree with Mr McCall’s submissions on this point. In my view the Rule is wide enough to cover the eventuality that has arisen in this matter and I therefore find against the respondent on the second point as well.”

- [8] In *BMW Financial Services South Africa (Pty) Ltd v Doola* [2025] 2 All SA 107 (GP) the court stated:

“[17] I find my interpretation in line with the court in SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO 1981 (4) SA 329 (O) at 333G–H [also reported at [1981] 2 All SA 268 (O) – Ed] who stated the object of rule 30(1) as follows:

“I have no doubt that rule 30(1) was intended as a procedure whereby a hindrance to the future conducting of the litigation, whether it is created by a non-observance of what the Rules of Court intended or otherwise, is removed.”

[18] I therefore conclude that an “irregular step”, as contemplated in rule 30(1), must be a procedural step which is taken in disregard of the rules, advances the process closer to completion and prejudicially affects the innocent party’s rights in the future conduct of their litigation.”

- [9] The monetary application cannot be described differently than being a procedural step by which the respondent intends to obtain substantive relief and as such falls within the ambit of rule 30 which must be applied in a wide

¹ See Derek Harms, Civil Procedure, Civil Procedure in the Superior Courts, Part B High Court Uniform Rule 30 irregular proceedings. B30.1.

sense. The alleged irregular monetary application has been brought '*in disregard*' of the current rules of court. This is evident from the applicants and the respondent both arguing that the Uniform Rules of Court, as they currently stand, do not make provision for this type of application.

[10] By considering the rule 30 application it is in fact advancing the process to completion. This is so because if successful the monetary judgment will be set aside and the matter can proceed to trial.

[11] The applicant has also set out their reasoning as to why, if the monetary application is allowed to proceed, they would suffer prejudice. The prejudice is dealt with below within the context of the court's inherent powers.

[12] The respondent argued that because the word 'default' had been removed from the wording of its monetary application and replaced with the words 'judgment (common law)' that the applicants rule 30 had no further application because the rule 30 was pursuant to the 'default' reference in the initial title of the monetary application. As is clear from both the applicants' application and the answer thereto the change of the wording is of no consequence when regard is had to the substance of the rule 30 application. I agree with counsel for the applicants that the amendment is thus of no relevance and did not address the substance of the rule 30.

[13] I am satisfied that the applicants rule 30 application does fall within the ambit of the rule and can thus not be said to be an abuse of process.

[14] As the matter falls within the ambit of rule 30, I now return to the question of the court's inherent powers. The reason why the inherent power of the court needs to be considered is evident from the pleadings itself. In this regard the applicants pleaded in their founding affidavit that:

“[14] The intended amendment does not cure the cause of complaint. Whatever title or description the respondent purports to give to the default judgment application is irrelevant. The default judgment application, in its substance, is not a permitted process in terms of South African Law and in all the circumstances constitutes an irregular step.” (Emphases added)

[15] In answer to this the respondent denies these averments on the basis that the applicants '*appear to ignore the inherent jurisdiction of this Honourable Court*'. This answer aligns with the respondent's averments that its monetary application is prefaced on the courts inherent jurisdiction derived from section 173 of the Constitution.² In this regard the respondent in its answering affidavit stated that:

“6. The main application³ is prefaced upon the inherent jurisdiction of this Honourable Court as laid down in the Constitution where it reads as follows :

173 The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own

² This is also confirmed in the answering affidavit in which the respondent argued that:

“4. I depose to this Affidavit in opposition to the relief sought by the Applicants under Rule 30 of the Rules of this Court. The Respondent is of the opinion that this application is defective in that it does not consider the inherent jurisdiction of this Honourable Court. ...” (Emphases added)

³ This is a reference to the monetary application.

process, and to develop the common law, taking into account the interests of justice.

6.1 *It is clear from this section that this Honourable Court enjoys an “inherent power to protect and regulate” its own process, and to “develop the common law taking into account the interests of justice”.*

6.2 *It is the Respondent’s view that this present matter cries out for such judicial intervention, in the interests of justice, so that the Respondent may receive justice without further delay and avoid the expense (and delay) of proceeding to a further trial.* (Emphases added)

[16] This argument is re-stated in the respondent’s heads of argument in which it is argued that currently the Uniform Rules of Court do not provide for the relief being sought in its monetary application. The respondent argued:

“8. *It appears that there is no provision in the Rules of this Honourable Court for the hearing and conclusion of an action when there are no issues in dispute and no further evidence is required. In essence Plaintiff seeks to use motion proceedings in an action. There is thus a lacuna in our procedural law. However, section 173 of the Constitution (Chapter 9 of the Courts and Administration of Justice) provides as follows:..*” (Emphases added)

[17] To describe the court’s inherent power the respondent referred to the judgment of *MC v MJ* (A3076/2016) [2017] ZAGPJHC 279 (28 March 2017) in which it was stated:

“[14] *In ex parte Millsite Investments Co (Pty) Ltd the court per Vieyra J said the following about inherent jurisdiction:*

“... apart from powers specifically conferred by statutory enactments and subject to any deprivation of power by the same source, a Supreme Court can entertain a claim or give any order which at common law it would be entitled so to entertain or give. It is to that reservoir of power that reference is made where in various judgments

courts have spoken of the inherent power of the Supreme Court. The inherent power is not merely one derived from the need to make the court order effective, and to control its own procedure, but to hold the scales of justice where no law provides directly for such a given situation.”

[15] Pollak described it as follows:

“In short, therefore, the position is that unlike, say, the magistrates’ courts or the industrial court, the power of the Supreme Court is not spelled out in a legislative framework and limited by its creating statute: it inherently has all such power as entitles it to entertain to hear ‘all causes arising’ within the area over which it exercises jurisdiction.”

[16] *The Constitution of the Republic of South Africa, 1996 has codified the doctrine of inherent jurisdiction. Section 173 of the Constitution reads ...*

[17] *When one considers the meaning and purpose of ‘inherent jurisdiction’ in light of the above authorities, it can never be conferred upon a court by statute. The Magistrate’s Court and in this instance the Regional Divorce Court, being a creature of statute, does not have inherent jurisdiction. Inherent jurisdiction is exclusively borne by the High Court. Such jurisdiction can never be conferred by statute. It may only be excluded by statute.”*

[18] From this judgment, the respondent argues, this application should be dismissed as the monetary application was instituted *to “hold the scales of justice where no law provides directly for such a given situation.”* This is putting the cart before the horse as the respondent is jumping to the conclusion without following the preceding steps. To reach the conclusion as proposed by the respondent the court must exercise its inherent jurisdiction as provided for in section 173 of the Constitution. This is evident from *MC v MJ supra* which restated the fact that the court’s inherent powers have been codified by section 173 of the Constitution. Therefore, to ascertain whether

the inherent powers have been invoked section 173 must be complied with. The first question is thus whether or not a case has been made which allows the court to invoke its inherent powers and only if it has is the court called upon to consider the interest of justice.

[19] When and under which circumstances the court can invoke its powers provided for in section 173 of the Constitution have formed the subject of various judgments including that of the Constitutional Court. In *Phillips and Others v National Director of Public Prosecutions*' 2006 (1) SA 505 (CC) the Constitutional Court, with regard to the exercise of the section 173 power, made the following statements:

[47] *The Constitution requires that judicial authority must vest in the courts which must be independent and subject only to the Constitution and the law. Therefore, courts derive their power from the Constitution itself. They do not enjoy original jurisdiction conferred by a source other than the Constitution. Moreover, in procedural matters, section 171 makes plain that “[a]ll courts function in terms of national legislation and their rules and procedures must be provided for in national legislation”...*

[48] *... ordinarily the power in s 173 to protect and regulate relates to the process of court and arises when there is a legislative lacuna in the process. The power must be exercised sparingly having taken into account interests of justice in a manner consistent with the Constitution.*

[49] *It may be that the High Court could legitimately claim inherent power of holding the scales of justice where no specific law directly provides for a given situation or where there is a need to supplement an otherwise limited statutory procedure such as the one in s 26 of the Act. This can wait for a decision in the future when such a case presents itself.*

[50] *In the present matter the applicants made no attempt whatsoever to bring their case within the provisions of the Act, which they could have done. The effect of the High*

Court order rescinding the restraint order was to ignore the statutory provisions of an Act of Parliament.

[51] *Whatever the true meaning and ambit of s 173, I do not think that an Act of Parliament can simply be ignored and reliance placed directly on a provision in the Constitution, nor is it permissible to side-step an Act of Parliament by resorting to the common law.*

[52] *I doubt that the inherent jurisdiction of the Court under s 173 is such that it empowers a Judge of the High Court to make orders which negate the unambiguous expression of the legislative will. Moreover, the power that a Court has to use its inherent power is a special and extraordinary power which should be exercised sparingly and only in clear cases. This is not such a case.”⁴ (emphases added)*

[20] Evident from this judgement is that:

[20.1] the power provided for in section 173 must be sparingly exercised and in clear cases only;

⁴ Also see *Krygkor Pensioenfonds v Smith* 1993 (3) SA 459 (A) at 469 where the Supreme Court of Appeal stated:

“Wat duidelik uit hierdie gewysdes blyk, is dat die Hof slegs in uitsonderlike gevalle sy inherente bevoegdheid sal uitoefen om prosedures te volg waarvoor nie in die gewone prosesreg voorsiening gemaak word nie. Die uitsonderlike gevalle word op verskillende maniere omskryf in die beslissings wat hierbo aangehaal is. Vir huidige doeleindes is dit egter genoeg om te sê dat die Hof hierdie bevoegdheid sal uitoefen net waar geregtigheid vereis dat afgewyk word van die gewone prosedure-reëls. En selfs waar 'n afwyking nodig mag wees, sal die Hof natuurlik altyd poog om so naby as moontlik aan die erkende praktyke te bly.”

In *S v. Pennington and Another* 1997 (4) SA 1076 (CC), the Constitutional Court stated, with regard to the power envisaged in section 173, state the following:

[23] *The power is to 'protect and regulate' the process of this Court taking into account 'the interests of justice'. When this power is exercised it should be done in a way which accords with the requirements of the Constitution and as far as possible with the procedure ordinarily followed by this Court in similar cases.”*

[20.2] it can only be exercised in those circumstances which relates to the processes of court;

[20.3] it can only arise when there is a legislative lacuna in the process. This is an important consideration because *'courts function in terms of national legislation and their rules and procedures must be provided for in national legislation'*; and

[20.4] the court can thus not sidestep the existing rules and legislation by simply resorting to the common law.

[21] In *S v Lubisi and Others* 2003 (9) BCLR 1041 (T)⁵ the court set out a helpful summary of the case law regarding the recognition of the Constitution when a court is called upon to invoke its inherent powers and succinctly summarised it as follow:

"Section 173 of the Constitution Act 108 of 1996, enshrines the courts' inherent power to protect and regulate their own process. It reads as follows:

"Inherent power. – The Constitutional Court, Supreme Court of Appeal and High Court have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice."

This power must be read with sections 7 and 8 of the Constitution, establishing the Bill of Rights as the cornerstone of democracy and underlining the fact that the judiciary is bound thereby; as well as section 39(2) which reads as follows:

⁵ Page 1050 -1052.

“When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.”

...

... This obligation was described as follows by Ackermann and Goldstone, JJ in Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening) 2001 (4) SA 938 (CC) at paragraph 33 et seq as follows:

[33] “. . . Section 39(2) of the Constitution provides that when developing the common law, every court must promote the spirit, purport and objects of the Bill of Rights. It follows implicitly that where the common law deviates from the spirit, purport and objects of the Bill of Rights the courts have an obligation to develop it by removing that deviation . . .

[34] . . . under the Constitution there can be no question that the obligation to develop the common law with due regard to the spirit, purport and objects of the Bill of Rights is an obligation which falls on all of our courts including this Court.

[35] In this case the High Court and the SCA were requested to develop the common law, not on a constitutional basis but in the light of the unusual nature of the applicant’s cause of action. The common-law, especially in the field of delictual liability, has constantly required development. Where a court develops the common law, the provisions of section 39(2) of the Constitution oblige it to have regard to the spirit, purport and objects of the Bill of Rights.

[36] In exercising their powers to develop the common-law, Judges should be mindful of the fact that the major engine for law reform should be the Legislature and not the Judiciary . . . The (interim Constitution) brought into operation, at one fell swoop, a completely new and different set of legal norms. In these circumstances the courts must remain vigilant and should not hesitate to ensure that the common law is developed to reflect the spirit, purport and objects of the Bill of Rights. We should add, too, that this duty upon judges arises in respect both of the civil and criminal law, whether or

not the parties in any particular case request the court to develop the common law under section 39(2)."

...Hansen v Regional Magistrate, Cape Town and Another 1999 (2) SACR 430 (C) at 433e–g:

"Section 173 of the Republic of South Africa Constitution Act 108 of 1996 ('final Constitution') has broadened the inherent jurisdiction of the court in that it provides that the Constitutional Court, Supreme Court of Appeal and High Courts have inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice. Section 173 of the Constitution confirms a concept of inherent jurisdiction which promotes the interests of justice within the context of the values of the Constitution. This is a wider concept than that provided for in s 19(1)(a) and s 19(3) of the Supreme Court Act 59 of 1959 which formed the basis of the analysis of the inherent jurisdiction in Sefatsa". (Sefatsa and Others v Attorney-General, Transvaal and Another 1989 (1) SA 821 (A)) (per Davis J.)

Although the powers granted to the court in terms of section 173 of the Constitution still have to be exercised with caution and circumspection, the Constitution has broadened the scope for judicial activism where such appears to be in the interest of justice."

[22] Evident from this judgement is that ;

[22.1] When called upon to develop the common law the court must promote the spirit, purport and objects of the Constitution;

[22.2] the court must be mindful that law reform is for the Legislature and not the Judiciary;

[22.3] when called upon to develop the common law the court must take into consideration the interest of justice; and

[22.4] these powers must be exercised with caution and circumspection.

[23] In *Siemens Telecommunications (Pty) Ltd v Datagenics (Pty) Ltd* 2013 (1) SA 65 (GNP) at 72E-J the Court held:

“Under its constitutional power to regulate its own process, a high court does not have the power to create substantive law. The creation of substantive law is reserved for its inherent power to develop the common law. Section 173 of the Constitution does not enable a court, under the mantle of regulating its own process, to impair the existing substantive rights of a litigant. Under the common law, as I have said, an incola plaintiff company has an unimpaired substantive right to pursue legal proceedings.

A mere reference to the development of the common law in this context would also be of no assistance. Before that exercise can be done, a number of questions must first be asked and answered. The first enquiry would be, whether, given the objectives of s 39(2) of the Constitution (interpretation and development of the common law), the existing common law should be developed beyond existing precedent. If this leads to a negative answer, that would be the end of the enquiry. If it leads to a positive answer, the next enquiry would be how the development should occur, and whether a court should embark on that exercise. The need to develop the common law under s 39(2) could, it has been held, arise in at least two instances. The first would be when a rule of the common law is inconsistent with a constitutional provision. Repugnancy of this kind would compel an adaptation of the common law to resolve the inconsistency. The second possibility arises even when a rule of the common law is not inconsistent with a specific constitutional provision, but may fall short of its merit, report and objects. Then, the common law must be adapted so that it grows in harmony with the 'objective normative value system' found in the Constitution. (Emphases added)

[24] Evident from this judgement is:

- [24.1] that the court cannot make substantive law;
- [24.2] the provisions of section 173 cannot be invoked if the result of doing so would be to impair the existing substantive rights of a litigant;
- [24.3] a mere reference to the development of the common law would be of no assistance.
- [24.4] The court went further to describe a two-stage approach which must be followed in considering whether or not its powers are invoked under section 173 of the Constitution.
- i. The first enquiry a court must have is whether the existing common law must be developed beyond current precedent and if not that it is the end of the enquiry.
 - ii. If the need does arise only then will the court be required to proceed with the second stage of the enquiry. During this second stage it must be considered how the common law is to be developed. For this stage the party seeking the relief must provide the court with the specifics as to the manner in which it must be developed. *In Oosthuizen v RAF* [2011] 4 All SA 71 (SCA) the SCA said:

[16] Save for a general assertion on behalf of the appellant that a grave injustice would result if the high court were not to be compelled to come to his rescue and a general reliance on the expression “ubi jus ibi remedium”, we were not told, nor was the high court, in which specific manner the common law should be developed, nor what aspect thereof required to be developed. It appears that the appellant was ultimately contending that the high court is entitled and indeed, in the present circumstances, compelled to come to the appellant’s assistance by exercising its inherent jurisdiction to regulate its own process.

[17] A court’s inherent power to regulate its own process is not unlimited...

[18]...

[19] Courts have exercised their inherent jurisdiction when justice required them to do so. In this regard, the following dictum by Botha J in *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis and another* should be noted:

“I would sound a word of caution generally in regard to the exercise of the Court’s inherent power to regulate procedure. Obviously, I think, such inherent power will not be exercised as a matter of course. The Rules are there to regulate the practice and procedure of the Court in general terms and strong grounds would have to be advanced, in my view, to persuade the Court to act outside the powers provided for specifically in the Rules. Its inherent power, in other words, is something that will be exercised sparingly. As has been said in the cases quoted earlier, I think that the Court will exercise an inherent jurisdiction whenever justice requires that it should do so. I shall not attempt a definition of the concept of justice in this context. I shall simply say that, as I see the position, the Court will only come to the assistance of an applicant outside the provisions of the Rules when the Court can be satisfied that justice cannot be properly done unless relief is granted to the applicant.” (Own emphases)

- [25] The reason why the specifics are required is because the result of the exercise of the court's inherent power will be that the existing processes will be developed not in a vacuum of this particular factual matrix only, but to be applied generally where the peculiar circumstance, which are the specifics referred to above, are present. The court must be convinced that strong grounds have been advanced to persuade the court to act outside the powers provided for in the Uniform Rules as they currently stand.
- [26] If the respondent fails at the first stage the Rule 30 application must be upheld and likewise even if the respondent is able to pass the first stage of the enquiry but fail in the second stage the Rule 30 application must be upheld. It is only if the respondent succeeds in both stages of the enquiry that the applicants rule 30 application should be dismissed.
- [27] What is evident from the authorities quoted is that when engaging the enquiry, a host of factors must be considered when called upon to invoke the court's inherent powers as provided for in section 173 of the Constitution. It is for the respondent, wanting the court to invoke its inherent powers, to make out its case to do so. Not only in its answering affidavit, as discussed above, but also in its heads of argument the respondent argues that *'whilst the Honourable Court's inherent jurisdiction is guaranteed by Section 173 (of the Constitution), Plaintiff [respondent in this application] does invoke that to bring this litigation to finalisation...'*

[28] In support hereof the respondent alleges there is a lacuna and raises a number of factors in support of its monetary application:

[28.1] Firstly, the respondent relies on '*The delays already incurred*'. The applicants argue, and it is not disputed, that they have not been the cause of any delay in prosecuting the action to finality. If the respondent intended to reference the delays due to the separation and subsequent appeal processes it does not say so but in any event all those processes are provided for in the Uniform Rules of Court. No evidence has been provided to suggest that those processes were delayed in any manner. It is thus not evident on what basis the alleged delays, had there been any, invoke this court's inherent powers to develop the common law. This is further supported by the authorities referred to above in that the court's powers provided for in section 173 must be sparingly exercised and the court cannot ignore the existing Rules and Legislation by simply resorting to the common law. A mere reference that the common law should be developed does not assist the respondent.

[28.2] Secondly, the respondent relies on the averment that: '*The present whereabouts of MRS DREYER the Second Applicant/Defendant and the fact that the Applicants own no immovable property in South Africa*' is support for their argument.

I agree with counsel for the applicants who argued that the applicants' whereabouts is wholly irrelevant to the relief sought in the Rule 30 application. It can also not be said to be an argument in favour of the court having to invoke its inherent powers. To develop the common law in this respect will fall significantly short of the requirement that the court must promote the spirit, purport and objects of the Constitution when exercising its inherent powers. The respondent has in any event not even attempted to make out a case as to how this factor is relevant to the court's inherent powers. There is simply no constitutional imperative averred.

Notwithstanding this, in its reply, the applicants confirmed that as a fact the first applicant resides, and carries on business, in South Africa. He regularly visits the second applicant in the United Kingdom, where she resides. The applicants have a daughter, a son-in-law and a grandchild, who reside in the UK and the decision to settle in the UK was principally motivated by the need to be close to the children.

[28.3] The third factor the respondent relies on is that:

*“A company called SOUTH YORKSHIRE LASER (PTY) LIMITED, Registration Number 2023/860184/07, with its principal and registered office at 216 ALBERT AMON ROAD, MEADOWDALE, GAUTENG appears to have a twin with registered address in Rotherham, United Kingdom. This UK Company is called SOUTH YORKSHIRE LASER (PTY) LIMITED, Registration Number 14388814 *”UK Company”), and is registered and incorporated in the UNITED KINGDOM and*

has a connection to SABLE INTERNATIONAL, an entity which gives emigrants financial advice and assistance with emigration from the Republic of South Africa”.

It is unclear whether either or both of the DRYERS remain in the REPUBLIC OF SOUTH AFRICA ... the principal office of the UK Company was changed on or about 7 October 2024 to 31 ASKHAM WAY, WAVERLEY, ROTHERHAM, ENGLAND, S60 8DG”;

The relationship between that entity, its association with SABLE INTERNATIONAL, and the fact that the Second Applicant’s Confirmatory Affidavit was also deposed to in ROTHERHAM, is, in the eyes of the Respondent, a series of most suspicious coincidences. Accordingly, the Respondent seeks the Honourable Court’s assistance in the exercise of its inherent jurisdiction in the interest of justice, to hear the main application for Judgment against the Applicants notwithstanding this present (and ill-conceived) Rule 30 application.”

The respondent in this application makes out no case as to why this is relevant and supportive of an argument as to why the court should invoke its inherent powers.

The absence of a registered address in South Africa is in no way a ground to invoke the court’s inherent powers. These allegations seem at best to be speculation of a relationship bearing no relevance to this application. It is unrelated to the court’s processes. The latter is relevant because the court’s inherent powers are limited in regulating its own process.

In so far as the respondent argues that this court must hear its monetary application there are various reasons why the court cannot adhere to this request.

- i. The application before me is the applicants' rule 30 application and not the monetary application. The court cannot, even under the auspices of the interest of justice, consider an application not enrolled before it;
- ii. If the applicants succeed with their rule 30 application the monetary application will be set aside and as such this rule 30 application must first be determined;
- iii. On the respondent's own argument, the current Uniform Rules have a lacuna and therefore called upon the court to invoke its inherent power provided for in section 173 of the Constitution to refuse the rule 30 application. Therefore, on its own argument the rule 30 application must first be adjudicated upon.
- iv. It is common cause that the applicants have consciously not filed an answering affidavit to the monetary application but elected to invoke its remedy provided for in terms of rule 30 of the Uniform Rules of Court. Following this the applicants are, in terms of Rule 30(2)(a), restricted from taking further steps until resolution of the Rule 30 application. The applicants in their application expressly state that if unsuccessful they will be required to file an answer to the monetary application. Therefore, to consider only the respondent's affidavit without

the benefit of the applicants answer and any reply will be to refuse the applicants their basic right to *audi alteram partem*.

[28.4] Fourthly the respondent relies on the averment that: *'The inherent jurisdiction of this Honourable Court is to regulate its own process. Given the current state of the trial court rolls and that trial dates are currently being issued for 2027 and onwards, the delay does not serve any party's interest – and certainly not the Respondent's. Indeed, the matter cries out for this kind of intercession to avoid further delays which are tantamount to abuse of the Court process.'*

The respondent's dissatisfaction with the court roll cannot form the basis of the court exercising its inherent powers. The trial roll is an obstacle every litigant in these courts face and the development of the common law will have no impact on that. In essence the respondent wishes to skip the que by introducing a non-existing procedure. To simply ignore the existing procedures is an argument against developing the common law rather than being in favour thereof. What the respondent's seek will have the further result of impairing the applicants existing substantive rights provided for in the current Uniform Rules of Court. The provisions of section 173 cannot be invoked if the result of doing so would be to impair the existing substantive rights of a litigant. The applicants argued that they stand to be prejudiced in that:⁶

⁶ In *Eke v Parsons* 2016 (3) SA 37 (CC) the CC stated:

- They would be obliged to oppose the monetary application where the Uniform Rules do not make provision for them to do so and in circumstances where there are still pending action proceedings;
- By having to file opposing papers in motion proceedings the applicants will forfeit all the procedural entitlements that they would otherwise have on trial;
- The applicants' section 34 constitutionally entrenched rights will be affected.

The respondent's answer to these averments is that it will be prejudiced because there are no remaining triable matters. This allegation has been vehemently denied and for the reasons stated cannot be considered in this application.

[28.5] Fifthly, the respondent relies on the averment: *"that Rule 31(1) (Confession), Rule 31(5) (default judgment in the absence of a plea)*

[28] *This is what this court has said about the inherent power: '(T)he power conferred on the High Courts, Supreme Court of Appeal and this court in s 173 is not an unbounded additional instrument to limit or deny vested or entrenched rights. The power in s 173 vests in the judiciary the authority to uphold, to protect and to fulfil the judicial function of administering justice in a regular, orderly and effective manner. Said otherwise, it is the authority to prevent any possible abuse of process and to allow a court to act effectively within its jurisdiction.'*

or Rule 32 (Summary judgment in the absence of a bona fide defence) cannot avail the Plaintiff in its search for speedy judgment. The present circumstances may however be dealt with on the papers. Following the logic set out in CHRISTIE's correspondence of 24 June 2024, none of the "defences" raised by the Applicants remain alive and further trial proceedings will be a waste of time and money and a gross abuse of the court process."

This averment has already been dealt with in that there is no basis on which this court can make a finding on the monetary application. There is no basis on which the common law can be developed on the assumption that further trial proceedings, instituted by the respondents, may be abused by the opposing party where no such abuse has been pleaded. Notwithstanding this that it was never the parties intention that the remaining issues were to be determined ,nor was it determined, simultaneously with the separated issue. This is evident from the following factors arising from the separation application itself:

- Following the application for the separation of issues the court made the following order:

"1. It is directed that the following issues ("the separated issues") be separated in terms of rule 33(4) of the Uniform Rules:

1.1 Whether the loan that constitutes the plaintiff's cause of action (pleaded in

paragraphs 4, 6 and 7 of the particulars of claim, read with annexure “A” thereto):

1.1.1 is subject to the National Credit Act no. 34 of 2005 (“the NCA”);

1.1.2 was at arm’s length (or not) as contemplated in section 4 of the NCA; and

1.1.3 accordingly, whether the loan constitutes an unlawful agreement as contemplated in section 40(4) of the NCA; and

1.1.4 is for those reasons, void (“the separated issues”).

2. It is directed that the separated issues be determined first, with the remaining issues to stand over for determination in due course, if required.

- Had the court hearing the separation application been of the view that the determination of the separated issue will be dispositive to all the respondents defences the separation would have been superfluous and not been granted. The whole purpose of rule 33(4) is to be utilised when there is more than one triable issue and after careful consideration the court is of the view that the separation will be convenient.⁷

⁷ See *Economic Freedom Fighters and others v Speaker of the National Assembly and others*[2016] 1 All SA 520 (WCC)

“[20].... A court that is asked to make a separation order should not accede to the application unless it is able to form a clear view that it would indeed be convenient for the issues to be separated; cf Denel (Edms) Bpk v Vorster 2004 (4) SA 481 (SCA), at paragraph 3 [also reported at [2004] JOL 12535 (SCA) – Ed], where Nugent JA remarked that:

- In the joint practice note filed in relation to separation application it was noted by the parties that:

“7. Issues

(a) On application by Defendants, a separation of issues was ordered by the Honourable Acting Judge Matshitse in April 2019 as per the attached orders.

6. Nature of relief sought

Separated issue as per Court Order (applicability of National Credit Act).

(c) All other issues, as per the pleadings, stand over until the separated issues have been determined.”

It is evident from aforementioned that the parties acknowledged that there were issues remaining which would stand over for later determination.

- The SCA only considered the separated issue which is evident from its judgment where it confirmed that:

“[14] There are two issues which arise in this appeal. The first concerns whether the order

“even where the issues are discrete, the expeditious disposal of the litigation is often best served by ventilating all the issues at one hearing, particularly where there is more than one issue that might be readily dispositive of the matter. It is only after careful thought has been given to the anticipated course of the litigation as a whole that it will be possible properly to determine whether it is convenient to try an issue separately.” (Emphases added)

granted by the trial court is appealable. The second concerns the application of the NCA [the separated issue]. This latter question relates to whether the transaction was concluded at arm's length and whether it constitutes a credit agreement as defined by the NCA."

- The action is still pending and very much alive. It begs the question, without answering it, why if the respondent is so confident that all the issues have been resolved it does not withdraw the action. The only inference is that the respondent wishes to keep that avenue open if they were to be unsuccessful with the monetary application, which, if anything, does support the argument that the respondent itself still has some reservation whether or not all triable issues have in fact been properly ventilated.

[28.6] Lastly, the respondent relies on the averment that the award of interest "*will not cure the lapse of time, especially if the judgment is hollow due to the movements of the Defendants and the apparent dissipation of their assets.*"

These averments do not justify an argument that because the respondents may not recover the total debt due that a lacuna exists in the current existing processes. This is even more so considering that the delays are partly attributable to the respondent itself. Firstly, the respondent took almost three years to institute the action. Secondly, the applicants in their reply alleged that the respondents had taken no

steps since the finalisation of the appeals on the separated issues, no request to enrol matter and no pre -trial requests have been made. The allegations were again raised in argument and counsel for the respondent's indicated that an application for a trial date has been submitted, but it is not evident when this was done and whether any subsequent steps had been taken if there was a delay in a response to the request.

The respondent wishes to be treated differently to all other litigants who are diligently awaiting their turn on the trial roll while complying with the existing rules and legislation by applying for judgment on motion while an action is still pending.

[29] It is thus clear that none of the factors on its own or combined remotely support an argument that the court should invoke its inherent powers provided for in section 173 of the Constitution.

[30] The respondent has not in any way advanced grounds in which specific manner the common law should be developed, nor what aspect thereof is required to be developed. It appears that the respondent is of the view that the court is entitled and indeed, compelled to come to its assistance by exercising its inherent jurisdiction to regulate its own process but without making out a case for it.

[31] Clear from the authorities is that the court's inherent power to regulate its own process is not unlimited. As such the court must be convinced that strong grounds have been advanced to persuade the Court to act outside the powers provided for in the Uniform Rules as they currently stand and as is evident from the above none let alone strong grounds have been advanced. There is thus no argument supporting the need that the common law must be developed beyond current precedent and as such that it is the end of the enquiry.

[32] Therefore, the applicants application must succeed.

COSTS

[33] There is no reason why the established principle that costs must follow the result should not find application in this instance. I do however agree with the respondent's submissions that costs for two counsel is not justified in this instance . Both parties agreed that scale C is the appropriate scale to be applied.

Therefore, the following order is made :

ORDER

1. The respondent's application for judgment (Common Law) is set aside as an irregular step in terms of the provisions of Rule 30 of the Uniform rules of Court;
2. The respondent shall pay the costs of this application, including the costs of counsel on scale C.

**ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant :

Adv A J Daniels SC
Adv C de Villiers-Golding

For the Respondent

Adv CD Roux