



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 2381/2022

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: NO</u>
(3)	<u>REVISED.</u>
 	
Date: 11 November 2025	Signature:

In the matter between:

DEWALD MYBURG

APPLICANT

and

DISCOVERY LIFE LIMITED

RESPONDENT

JUDGMENT

MOGALE-MAKINTA, AJ

INTRODUCTION

[1] This is an unopposed application for leave to appeal the judgment and order of this court dated 28 August 2024.

[2] The court made the following order:

2.1. The defendant's application in terms of Rule 30 is dismissed.

2.2. The plaintiff is granted leave to amend its particulars of claims as set out in the plaintiff's notice of intention to amend dated 07th February 2023.

2.3. The plaintiff is directed to file its amended pages within 10 (ten) days of the date of this order.

2.4. The defendant must file a plea within 15 (fifteen) days of receipt of the plaintiff's amended pages. If the defendant fails to file his plea within this stipulated period, the defendant shall be ipso facto barred from doing so.

2.5. The defendant is ordered to pay the costs of the Rule 30 application, condonation application, and upliftment of the bar on scale C.

2.6. The plaintiff is ordered to pay the costs for leave to amend on scale B.

[3] The application for leave to appeal was filed on 16 September 2024. This application is brought in terms of section 17(1)(a) and (ii)¹, to wit, that the appeal would have a reasonable prospect of success and/or there are some compelling reasons why the appeal should be heard.

[4] The applicant contends that this court erred in finding that:

[4.1] The defendant's application in terms of Rule 30 should be dismissed after having found that the summons was defective. The court ought to have found that the summons was, in fact, an irregular step as determined in paragraph 25 of the judgment, that

"It is evident that the combined summons is defective, and this matter cannot proceed with defective pleadings. The pleadings must be cured for the matter to progress. The plaintiff tried to cure the irregularity through correspondence, which the defendant rejected."

[4.2.] The summons failed to comply with Rule 18(1) due to its irregularities and should have been set aside.

[4.3] An irregularity in the summons could not have been remedied through correspondence, since correspondence does not alter pleadings.

[4.4] There is no other evidence that indicates the prejudice suffered due to the alleged irregularity was found, except for the defendant relying on the provisions of Rule 18(12). Instead, the court should have found that if the pleadings do not comply with the provisions of Rule 18(1) this requires specific particulars to be set out therein, and the

¹ Superior Courts Act 10 of 2013.

prejudice required for setting aside the pleadings in terms of Rule 30 has been established *prima facie*.

[4.5] The summons, which does not comply with Rule 18(1), is amendable in terms of Rule 28 without determining if the defendant will not suffer any prejudice due to the amendment. The court should have found that Rule 18 (1) sets out formal requirements for pleadings, while Rule 23 and Rule 18(4) deal with material requirements for pleadings. While the Court correctly found in para 23 that: "It is trite law that pleadings that do not comply with Rule 18(1) of the Uniform Rules of Court may be condoned or set aside", the court erred in not finding that the noncompliance with Rule 18(1) can only be cured by condonation and not by amendment.

[4.6] The alleged irregularity concerning an unidentified person who signed the combined summons was properly cured by correspondence, which was transmitted to the applicant on 7 February 2023. Instead, the court ought to have found that the unidentifiable signature affixed to the combined summons was irregular and that the irregularity of the combined summons should be set aside in the absence of condonation. The court should have further found that an irregular combined summons cannot be amended and cured by way of correspondence.

[4.7] The alleged irregularity in the defendant's complaint has no merit. The defendant failed to demonstrate that they had suffered any prejudice if the irregularity was not cured. Instead, the court should have found that if a party fails to comply with any of the provisions of Rule 18, such a pleading in terms of the rule is an irregular step, and the opposing party (the Respondent) shall be entitled to act in accordance with Rule 30 in setting the irregular step aside.

[4.8] In paragraph [35], it is mentioned that *"I'm afraid I have to disagree with the defendant's submission that the combined summons is defective and cannot be cured by correspondence or amendment."* The court had already stated in para [25] "It is evident that the combined summons is defective...". Further, the court should have found that a defect cannot be cured by correspondence, nor can a defect of a pleading not complying with Rule 18(1) be cured by an amendment in terms of Rule 28.

[4.9] The defendant did not file a written notice to remove the irregularity, for which reason the defendant sought condonation. Instead, the court should have found that the defendant did, in fact, file the written notice to remove the irregularity, but in an abundance of caution, sought condonation for late filing thereof.

[5] The applicant appeared in person, as he could no longer afford the services of a legal representative, and requested the court to grant him an opportunity to present his case. He did not provide a reason for his failure to file a plea as ordered by the court. It was also explained to him that the order is not final, and he still has the opportunity to file his plea for the matter to proceed.

[6] The application is opposed on the basis that an appeal against the judgment would enjoy no prospects of success on the following grounds:

[6.1] The court order is not final and is not appealable.

[6.2] The court order may only be appealed against in special, limited circumstances. The defendant has failed to make out a case why the appeal court should interfere with the exercise of the court a quo's discretion.

[6.3] There is no chance of another court coming to a different conclusion.

[7] The respondent further argued that procedural orders such as the dismissal of an exception on the ground that the particulars of claims do not disclose a cause of action, the dismissal of an exception on the ground that the particulars of claims are vague and embarrassing, procedural orders such as an order to supply further particulars, referral to oral evidence, and an order granting a plaintiff leave to amend the particulars of claim, such orders are not appealable.

[8] I concur with the respondent's submission that the orders issued by the court are interlocutory in nature, as they are procedural rulings. They are not subject to appeal, unless an interlocutory order exerts a final and definitive impact on the proceedings.

[9] In *TWK Agricultural Holdings (Pty) v Hoogveld Boerderybeleggings (Pty) Ltd and Others*², SCA interrogated the notion of appealability and interest of justice. The court affirmed that the doctrine of finality must be the central principle of consideration when deciding whether a matter is appealable.

² [2003] ZASCA 63; 2003 (5) SA 163 (SCA)

[10] For an order to be appealable, it must possess the following factors:

[8.1] It must be final in effect and not susceptible to alteration.

[8.2] It must be definitive of the rights of the parties.

[8.3] It must have the effect of disposing of at least a substantial portion of the relief claimed in the proceedings.³

[11] The application for leave to appeal is regulated by s 17(1)(a) (i) and (ii) of the Act, which states that:

(1) leave to appeal may only be given where the judge or judges concerned think that-

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there are some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.

[12] The courts have consistently applied the test on whether leave to appeal should be granted or not. The liberal approach to granting leave to appeal by courts is discouraged, as it is inconsistent with Section 17 of the Act. The Supreme Court of Appeal in *Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another* stated the following regarding the trial court's liberal approach to granting leave to appeal.

³ *Zweni v The Minister of Law and Order of the Republic of SA* 1993(1) SA 523 (A) at 532J-533B.

"It is important to mention my dissatisfaction with the court a quo's granting of leave to appeal to this court. The test is whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or a mere possibility of success."

[13] Consequently, the applicant cannot appeal procedural orders; they are not appealable. The order granting the applicant leave to amend the particulars of claims is not appealable⁴. The order dismissing an application in terms of Rule 30 is not appealable⁵.

[14] The applicant was allowed to submit a plea within fifteen (15) days of receiving the plaintiff's amended particulars of claim; however, he failed to comply with the court's directive. It is my view that the application for leave to appeal and the applicant's failure to file the plea constitute a deliberate strategy by the plaintiff to circumvent justice.

[15] In the circumstances, the leave to appeal has no reasonable prospect of success; thus, the application should be dismissed.

⁴ *Webber Wentzel v Batstone* 1994 (4) SA 334 (T).

⁵ *National Empowerment Fund v Zilwa* (2019) ZAGPJHC 112.

[16] Based on the findings above, the court makes the following order:

- a. The application for leave to appeal is dismissed with costs on scale C



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MOGALE-MAKINTA,

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

Electronically submitted.

Delivered: This Judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the parties/their legal representatives by email and uploading to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 11 November 2025

Date of hearing: The matter was heard in an open court. The matter may be determined accordingly. The matter was set down for a court date on 27 October 2025.

Date of Judgment: 11 November 2025

Appearances:

For the Applicant:

Mr Dewald Myburgh

Instructed by

In person

For the Respondent

Advocate L M Spiller

Instructed by

Keith Sutcliffe & Associates INC