



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

JUDGMENT

Appeal Case no: A177/2025

Case Number: *a quo* RCC/BELL/976/2025

In the matter between:

LESLIE VAN DER LINDE

APPELLANT

And

BEN GROOT t/a GVS LAW

FIRST RESPONDENT

DEON SCHEEPERS

SECOND RESPONDENT

Neutral citation: *Leslie Van der Linde v Ben Groot t/a GVS Law and Deon Scheepers* (Appeal Case no A177/2025) [2025] ZAWCHC ...
(1 December 2025)

Coram: **LEKULENI J & PATHER S AJ**

Heard: 17 October 2025

Delivered: 1 December 2025

Summary: Civil Proceedings – Rule 60A of the Magistrate’s Court Rules - Appellant’s summons set aside as an irregular step. Court a quo not affording Appellant leave to amend his summons in terms of Rule 60A(3) of the Magistrates’ Court Rules - Court a quo misdirected itself - Appeal upheld – Appellant granted leave to amend his summons.

ORDER

1. The Appeal is upheld;
2. The judgment and order of the magistrate in the Court *a quo* is set aside and replaced as follows:
3. The Appellant’s particulars of claim are declared to be an irregular step, in that it is vague and embarrassing, and it does not detail sufficient particularity;
4. The Appellant is given 15 court days from the date of this order within which to amend his particulars of claim and to subsequently serve the relevant amended pages on the Respondents in terms of the Magistrates Court Rules;
5. In the event that the Appellant fails to amend his particulars of claim within the time period set out above, the Respondents shall be entitled to institute an application to have the Appellant’s action dismissed;
6. The costs of the Rule 60(2) application shall be costs in the cause.

7. The Respondents are ordered to pay for all of the Appellant's disbursements incurred in the prosecution and hearing of the appeal, such costs to be taxed or agreed.

JUDGMENT

PATHER AJ: (LEKHULENI J Concurring)

Introduction

[1] This is an appeal against the whole judgment and order of the Magistrate's Court, Belville handed down on 01 April 2025, pursuant to an action instituted by the Appellant, on 10 October 2024 against the Respondents. The court a quo set aside the Appellant's summons as an irregular step in terms of Rule 60A of the Magistrates' Court Rules. In setting aside the summons as an irregular step, the Court a quo did not provide the Appellant leave to amend his summons, as provided in Rule 60A(3) of the Magistrates Court Rules. Instead, the Court a quo set aside the summon as an irregular step and ordered the Appellant to pay the costs of the application. The Appellant seeks a reversal of that order in these appeal proceedings.

The Background Facts

[2] The cause of action in this matter arose as a result of the Second Respondent instituting action against the Appellant, who was at the time a businessman trading under the name Leslie Van Der Linde t/a Van Der Linde Auto Repairs for unpaid rental. The action against the Appellant was instituted in 2015, in the Belville Magistrate's Court, and the First Respondent was instructed as the Attorney of Record for the Second Respondent.

[3] The Appellant had alleged that the action that was instituted against him in 2015 was brought on a false set of facts, as the landlord with whom the lease was entered into, had sold the property and had no interest in the rental claim. In that action, the Landlord was cited as Vukile Property Fund (the previous owner). The Appellant stated that he did not owe any money to the Landlord as alleged or at all.

[4] The 2015 action went through its normal exchange of pleadings and was set down for trial on 17 May 2016. The Appellant had at the time engaged both an attorney and counsel, and he assumed that they were dealing with the matter on his behalf. However, he subsequently discovered that on 17 May 2016, his team withdrew, and unbeknownst to him, a default judgment was entered against him in the amount of R42 632.86. What followed was various execution proceedings against the Appellant, who was unable to settle the amount claimed. Subsequent thereto, the Appellant closed his business, his premises were re-let, and he took up employment at a local college.

[5] Thereafter, in August 2016, the Appellant was served with a Notice in terms of Section 65 of the Magistrates' Court Act to appear in Court on 6 September 2016. It was only upon receiving this notification that he became aware of the

judgment that had been entered against him in May 2016. The Appellant was unsuccessful in contacting his erstwhile representatives.

[6] What then followed can only be described as an unfortunate series of hardship, which highlights the injustices that sometimes occur when parties are unrepresented and when the rules of court are not properly interpreted. The Appellant asserted that he entered into a payment plan with the first Respondent, even though he did not owe the money, and that this led to further proceedings being brought by the Second Respondent through the First Respondent. Despite the payment arrangements, execution proceedings were instituted which resulted in an attachment and removal of the Appellant's property. The Appellant had no option but to seek assistance to rescind the judgment. The Appellant did not have funds to secure an attorney to appear for the application and he had to represent himself. The rescission application was unsuccessful, and this then led to numerous further attachments of the Appellant's assets including motor vehicles, furniture, and other items.

[7] Appellant then sought assistance through a firm of attorneys who negotiated a settlement agreement with the First Respondent, and who also advised the Appellant to take the order refusing his rescission application on appeal. The agreement with the First Respondent set out the terms of the settlement in respect of payment of the judgment debt however, it was also agreed that upon the finalisation of the appeal, if the Appellant was successful, then the First Respondent would be liable to repay R40 000 to the Appellant (amount was being held in the First Respondent's Trust Account).

[8] The Appeal was set down in the High Court for 12 October 2018, and the First Respondent delivered a Notice to Abide. The outcome of the Appeal was in favour of the Appellant who was given leave to defend the action. Despite sending the order to the First Respondent, there was no response nor repayment of the R40 000 that was held as security pending the outcome of the Appeal. The action instituted through the First Respondent in 2016 was withdrawn in 2020 but despite this, there was no return of the payment made by the Appellant to the First Respondent. Legal Practice Council (“LPC”) complaints were all not successful, and the Appellant was still in the same position.

[9] Subsequent thereto, the Appellant instituted action against the First and Second Respondents on 18 October 2023. The summons was served on the First Respondent by the Appellant, and it was emailed to the Second Respondent. The First Respondent filed an Appearance to Defend for both Respondents and simultaneously delivered a notice in terms of Rule 60A (2) of the Magistrates Court Rules.

[10] Rule 60A deals with irregular steps and affords the aggrieved party the opportunity to request that the offending pleading be cured so as to allow the Respondent to plead to the action. The Respondents gave Notice to the Appellant of the irregular summons and requested the Appellant to remove the cause of complaint. The Appellant opposed that Notice and unfortunately, the defects remained. The Respondents served its Notice in terms of Rule 60A, a day late and asked that this delay be condoned. The Respondents further sought the relief that the service of the summons by the Appellant as opposed to the Sheriff was irregular and that the summons ought to be set aside. Prior to the ventilation of the Rule 60A proceedings, the Appellant had also served a Notice of Bar on the

Respondents and this the Respondents sought to be declared irregular. On 12 September 2024, the Magistrate who dealt with the Rule 60A application found that the Appellant had not complied with the Rules and set aside the summons as an irregular step.

[11] The Court did not in its order afford the Appellant an opportunity to cure the defective pleading or service. The Appellant believed that the summons was set aside and that the action was over and had to start all over again. The Magistrate ought to have declared the summons and or particulars of claim an irregular step and gave the Appellant a period of time to amend his papers, and in the event that the amendments were not effected, then the Respondent could have instituted an application to dismiss the action.

[12] After the first summons was set aside; the Appellant instituted another action against the Respondents on 4 October 2024 under case number RCC/BELL 976/24. The Respondents entered an Appearance to Defend and delivered another Rule 60A notice, which seems to be a stock standard approach. Among others, the Respondent averred that in his summons the Appellant did not cite his occupation; and that the Appellant's particulars of claim failed to comply with Rule 6(3) and 6(4) of the Magistrate Rules in that each paragraph does not contain a distinct averment, and also does not contain a concise statement of the material facts upon which the plaintiff relies for his claim.

[13] The Appellant opposed the Rule 60A application. The matter subsequently appeared before the same Magistrate who dealt with the previous Rule 60A application in which he had found in favour of the Respondents. In setting aside

the summons for the second time as an irregular step, the Magistrate stated that the Magistrate's Court cannot condone non-compliance with the Rules, yet it is the same Court that condoned the Respondents' late delivery of the replying affidavit in the earlier application. After hearing the matter, and again stock standard, the learned Magistrate set aside the summons and ordered costs against the Appellant. Again, the Magistrate did not afford the Appellant an opportunity to amend his summons in terms of Rule 60A(3) of the Magistrate Court Rules.

Discussion

[14] This Court is tasked to consider the appeal against the judgment of the Magistrates in relation to an action instituted by the Appellant, in October 2024 (second action). The Appeal deals with the application of Rule 60A, in regard to irregular proceedings and the power of the Magistrate's Court to deal with such applications, the effect of the order, and whether an order that the pleadings are irregular automatically has the effect of setting aside the action in toto.

[15] I must emphasise that the second action was initiated because the learned Magistrate previously set aside the first summons, deeming it an irregular step. The second action was based on claims which the Appellant states were wrongfully instituted against him by the Respondents. These claims had the effect of a judgment being entered against the Appellant, resulting in execution proceedings against the Appellant's assets for payment of the judgment debt. In addition, the Appellant claimed for costs for the rescission of the judgment as well as setting aside of the warrant of execution, together with a claim for damages.

[16] As previously stated, the Respondents in the second action instituted a Rule 60A application. Like in the first action hereto, the learned Magistrate failed to apply the rules correctly in that matter and it appears that history has repeated itself in the present matter, much to the disadvantage of the Appellant who has suffered an injustice. For the second time the Magistrate set aside the Appellant's summons and failed to grant the Appellant leave to amend the summons.

[17] As alluded to above, the learned Magistrate permitted the First Respondent to submit the Rule 60A application outside of the designated timeframe in the first action. The same Magistrate condoned the late delivery of the Rule 60A Notice, despite Rule 60 (5) and (6), requiring that an application for condonation should have been brought. The learned Magistrate did not have the power to condone the late delivery of the application without a substantive application for condonation. The Magistrate exceeded his authority to facilitate the Respondent. This underscores the unfairness of the Magistrate's decision to disregard the summons and particulars of claim and not condone the Appellant's non-compliance with the Rules especially bearing in mind that the Appellant was in person. The Magistrate simply granted an order as set out in the Respondents' notice of application. The Notice did not provide for the Appellant to be granted permission to amend his particulars.

[18] For completeness, Rule 60A of the Magistrates Court Rules provides as follows:

‘(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 or herself 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 or her opponent an opportunity of removing the cause of complaint within 10 days; and

(c) the application is delivered within 15 days after the expiry of the second period mentioned in subrule (2)(b).

(3) If at the hearing of an application in terms of subrule (1) 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 it deems fit.

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

[19] The Appellant's summons was properly signed by the Appellant and issued by the Registrar, and it was not a nullity. From a plain reading of subrule 60A(3) it is patently clear that a Magistrate has a wide discretion to condone or set aside an irregular step. (*Rabie v De Wit* 2013 (5) SA 219 (WCC) para 15). In *Santam Insurance Co Ltd v Manqele* 1975 (1) SA 607 (D) at 608, the court dealt with a case where an exception to the plaintiff's combined summons had previously been successfully taken. In upholding the exception, the particulars of claim had been struck out. The plaintiff was granted leave to deliver amended particulars of claim. The court stated as follows at 609A-B:

'In my opinion the effect of the judgment upon exception was that the respondent was not obliged to commence his action *de novo*; the summons as such remained as a summons commencing action. However the Court struck out the particulars of claim set out in it and the respondent was granted leave to file amended particulars within 14 days. It is clear that the particulars of claim in a combined summons must be regarded as a pleading

(see Rule 18). *As a result the Court's order accordingly gave the respondent the right to file a pleading substantially in the form of a declaration within 14 days.*' (our emphasis)

[20] In my view and considering the wide discretion bestowed to the Magistrate in terms of Rule 60A(3), the Magistrate ought to have declared the summons and or particulars of claim an irregular step and thereafter gave the Appellant a period of time to amend his papers. If the amendments were not effected, then the Respondent could have instituted an application to set aside the action. At this point, it is unclear whether the learned Magistrate understood the applicability of Rule 60A. This uncertainty arises from the fact that, in the first application, the Magistrate set aside the Appellant's summons without giving the Appellant a chance to amend it. Similarly, in the second application, the same Magistrate again set aside the Appellant's summons and failed to allow the Appellant leave to amend the summons.

[21] This created some difficulty, as the Appellant believed that the summons had been set aside and that the matter was finalised on that basis. However, this was erroneous as the non-compliant pleading did not amount to an invalidation of the action. The order of the court *a quo* misled the Appellant into believing that the action was dismissed. As foreshadowed above, the effect of the order made upon the setting aside of the summons was to leave a summons in existence which was virtually an empty husk. The court had to give the Appellant leave to fill the husk with amended particulars within a specified period. For greater certainty, after setting aside the summons, the Magistrate should have granted the Appellant time to amend his summons in terms of Rule 55A of the Rules of Court.

[22] Whilst this Court must accept that a lay litigant such as the Appellant would not ordinarily have known the Rules relating to the amendment of his pleadings

after the Rule 60A application, this Court must find that the same leniency given to an experienced lawyer such as the First Respondent should have been given the Appellant as well. Had the order been dealt with correctly, it would have avoided what can only be described a miscarriage of justice.

[23] The Appellant was highly critical of the Magistrate and seemed to suggest impropriety on his part. This Court lacks the necessary information to address these allegations; however, the Court has had regard to the transcript provided and it seems that the learned Magistrate had initially believed that the matter before him was a recusal application. Perhaps, considering the previous incorrect order and the fact that the same Magistrate had heard the previous application, he should have recused himself. In circumstances, where the Magistrate did not recuse himself, it would be incumbent upon him to deal with the matter fairly, and properly. Regrettably, he did not, and the Appellant's criticisms of the Magistrate and his conduct is reasonable considering the circumstances and the severe prejudice that the Appellant has had to endure.

[24] A final aspect requires comment. Section 34 of the Constitution guarantees the right of access to court and states that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. In *Sasol South Africa v Penkin*, (06609/2020) [2023] ZAGPJHC 329 (14 April 2023) para 6, it was held that the right to have access to the court 'is an embodiment of an ancient common law principle that a person has a right to a proper and fair hearing, which has, at its core, the right to a litigant to tell his or her side'. Evidently, courts have a duty when adjudicating cases where lay litigants are

representing themselves to approach those cases in line with this constitutional ideal. (*Quentin Pedlar v Santam Limited* Case No: 010346/22 para 24).

[25] Importantly, in *Xinwa and Others v Volkswagen of South Africa (Pty) Ltd* 2003 (4) SA 390 (CC), the Constitutional Court held that ‘pleadings prepared by laypersons must be construed generously and in the light most favourable to the litigant. The court stressed that lay litigants should not be held to the same standard of accuracy, skill and precision in the presentation of their case required of lawyers. In construing such pleadings, regard must be had to the purpose of the pleading as gathered not only from the content of the pleadings but also from the context in which the pleading is prepared. Notably, the court stated that form must give way to substance.

[26] It must be stressed that Courts should take consideration and offer a greater degree of application of the law when dealing with lay litigants. The primary objective of any court is to uphold justice and ensure that all parties are treated equally. This must not be confused to mean that a lay litigant must be assisted in regard to substance of their matter or for that matter, that a lay litigant must have the Court assist them in their matter. What this means is that the court can aide a lay litigant in regard to rules of court and offer an explanation of the rules. This cannot be construed to be prejudicial to the party being represented or the opposing party. For a Magistrate not to apply the rules correctly and subsequently not explain the rules to a lay litigant is tantamount to a miscarriage of justice. The Constitution demands that all persons have access to justice and that the administration of justice be conducted impartially.

[27] The effect of the Magistrate's Order was overreaching in that it punitively punished an unrepresented litigant, thereby delaying the finalisation of the matter and requiring the Appellant to prosecute an appeal at great stress, costs and delay.

[28] I am of the firm view that the Magistrate erred in not taking cognisance of Rule 60A (3) which allows any litigant an opportunity to rectify defective or irregular pleadings.

[29] This was raised with the First Respondent, who represented himself as an attorney with appearance rights in the High Court. The First Respondent conceded that Rule 60A (3) was applicable and that it could have and should have been applied. In these circumstances, it stands to reason that the correct approach to have been adopted by the learned Magistrate was to have declared the Appellant's particulars to be irregular for non-compliance with the rules, and to have made additional orders directing the Appellant to amend his particulars within a prescribed period. If this happened and the Appellant did not comply with the order, then it was for the First Respondent to have instituted an application to dismiss the Appellant's action for failure to comply with the order in terms of Rule 60A application.

[30] The learned Magistrate's approach in both applications was draconian, unfair, and resulted in substantial prejudice and hardship to the Appellant. The order of the Magistrate in terms of Rule 60A in the first application and in the second application did not provide the Appellant a period of time to cure the defective pleading. It only stated that summons is set aside. These issues could

have and should have been avoided. In my view, Magistrates should be mindful of the consequence and effects of orders they make.

[31] This Court accepts that the Rules of Court must be adhered to and respected, however, such Rules must be administered in the interests of justice and fairness. To have closed the door on the Appellant does not equate to either fairness or justice. In *Federated Trust Ltd v Botha* 1978 (3) SA 645 (A) at 654D, Van Winsen AJA, stated that the court does not encourage formalism in the application of the Rules. The Court noted that the Rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts.

[32] Meanwhile, in *Msimango v Peters* (2021/A3026) [2022] ZAGPJHC 418, the Appeal Court in its judgment highlighted the conduct of the learned Magistrate and stated that practitioners would do well not to overlook Rule 1 which is *the 'purpose and application of Rules'*. It provides as follows:

‘[a] The purpose of these rules is to promote access to the courts and to ensure that the right to have dispute that can be resolved by the application of law by a fair public hearing before a court is given effect to.

[b] These rules are to be applied so as to facilitate the expeditious handling of disputes and minimisation of costs involved.’

[33] As explained above, the Appellant informed the Court that he was unaware that he could have amended the particulars of claim subsequent to receiving the order. He reasonably believed that the action was *dismissed*. This is exactly what he believed in regard to the first action, when the Rule 60A Notice by the respondent was upheld by the same Magistrate. He further submitted that if he had

been informed, he would have amended his pleadings to comply with the court's rules. The Court accepts this submission from the Appellant.

[34] It is my firm view that the learned Magistrate failed to exercise his discretion judicially and that the order granted in the court *a quo* is incorrect and ought to be varied.

Order

[35] Consequently, given all these considerations, I propose that the following order be granted:

35.1 The Appeal is upheld;

35.2 The judgment of the magistrate in the Court *a quo* is set aside and replaced as follows:

35.3 The Appellant's particulars of claim are declared to be an irregular step, in that it is vague and embarrassing, and it does not detail sufficient particularity;

35.4 The Appellant is given 15 court days from the date of this order within which to amend his particulars of claim and to subsequently serve the relevant amended pages on the Respondents in terms of the Magistrates Court Rules;

35.5 In the event that the Appellant fails to amend his particulars of claim within the time period set out above, the Respondents shall be entitled to institute an application to have the Appellant's action dismissed;

35.6 The costs of the Rule 60A(2) application shall be costs in the cause.

35.7 The Respondents are ordered to pay for all of the Appellant's disbursements incurred in the prosecution and hearing of the appeal, such costs to be taxed or agreed.

PATHER AJ
ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered

LEKHULENI J
JUDGE OF THE HIGH COURT

Appearances

For Appellant: Mr Leslie Van Der Linde (In person)

For the Respondents: Ben Groot Attorneys Inc.
Mr D B Groot