

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2023-060430

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES

DATE: 26 November 2025

SIGNATURE OF JUDGE

In the matter between:

K MALAO INCORPORATED

First Applicant

KABELO PHILEMON MALAO

Second Applicant

and

ELDORETTE DE LANGE

First Respondent

STEPHAN GÜLDENPFENNIG

Second Respondent

JUDGMENT

D van den Bogert AJ

- [1] The central issue in this case is whether the late delivery of a declaration constitutes an irregular step.
- [2] The respondents are two practicing advocates and members of the Pretoria Society of Advocates. In their action, which has the same case number as the present rule 30 application, the respondents are the plaintiffs. The applicants in this rule 30 application, are the defendants in the action with this case number.
- [3] This is an application in terms of rule 30 of the Uniform Rules of Court. The applicants claim that the first and second respondents' declaration constitutes an irregular step.
- [4] The respondents, in return, brought a conditional condonation application. The condonation application was brought subject thereto that this court finds that the rule 30 application succeeds.
- [5] I proceed to deal to some extent with the chronological exchange of process in this case. This action was commenced by means of a simple summons, which was issued on 22 June 2023. In the simple summons the first respondent claims R710,415.59 for professional services rendered to the first applicant. She acted as junior advocate with the second respondent, who is a senior advocate. The second respondent claims R1,044,850.00.
- [6] The summons was served on 21 July 2023, and the two applicants entered an appearance to defend on 28 July 2023. Simultaneously (i.e., on the same day), being 28 July 2023, the applicants, as the defendants took exception to the plaintiffs' simple summons.
- [7] On 9 November 2023, the applicants withdrew their exception. On 16 February 2024, the respondents, as the plaintiffs, delivered their declaration.

[8] This was followed by the applicants notice to remove a cause of complaint, which is dated 26 February 2024. I assume for purposes hereof that it was delivered on the same day. The crux of the complaint is that the declaration was not delivered within 15 days after delivery of the notice of intention to defend, as envisaged in rule 20. It should be assumed that this was probably meant to be 15 days after the withdrawal of the exception. Surely, the applicants could not deliver a declaration in the face of a pending exception. Be that as it may, the complaint is that the declaration was not delivered within 15 days as envisaged in rule 20, and that the delivery of the declaration therefore constitutes an irregular step.

[9] This is premised on the wording of rule 20(1) which stipulates that:

"In all actions in which the plaintiff's claim is for a debt or liquidated demand and the defendant has delivered notice of intention to defend, the plaintiff shall, except in the case of a combined summons, within 15 days after his receipt thereof, deliver a declaration."

[10] Relying on the word "shall" in rule 20, the applicants argue that the 15-day period is peremptory and delivery outside the 15-day period constitutes an irregular step, unless accompanied with a condonation application.

[11] The respondents reacted to the irregular step notice with a letter dated 1 March 2024, claiming that the rule 30 notice does not have merit and insisting that the rule 30 notice be withdrawn, alternatively enrolled for adjudication thereof. Consequently, and on 25 March 2024, the present rule 30 application was launched. It is opposed. In addition, several months later the respondents, subject to it being conditional, as referred to above, applied for condonation. This they did only on 30 June 2025. The condonation application is also opposed.

[12] The applicants argued in court that the condonation is not properly before me, because the respondents had not enrolled it by means of a notice of set down. This submission however goes against the spirit of the applicants own answering affidavit in the condonation application where they insist that the two interlocutory applications be heard simultaneously.

[13] It would, in any event, not make any sense to separate the rule 30 application from the condonation application. Logic dictates that these two are inextricably intertwined. Given my findings hereunder, however, the dispute on whether the condonation application is before me or not, becomes irrelevant.

[14] I invited counsel for both parties in court to address me on the impact of the case of **Woolf v Zenex Oil (Pty) Ltd** 1999 (1) SA 652 (W). I expressed my then prima facie view that case could be dispositive of the present application. The issues in that case are almost identical to the issues in the present rule 30 application.

[15] I deal with some of the facts in that case. On 24 September 1997, the Johannesburg High Court, given that an application before it could not be resolved on the papers, ordered that such application be referred to trial on the basis that the notice of motion will stand as the summons. It was further ordered that a declaration be delivered within one month from the date of that order.

[16] The declaration was not delivered within the one-month period. The following year, on 29 May 1998, relying on the failure to deliver the declaration as directed by the court order, the defendant, as applicant, launched an application wherein he sought an order that the action be dismissed with cost. That application was opposed. In its answering affidavit, the respondent reserved the right to advance legal argument on the procedure adopted but also delivered a notice of motion seeking condonation for the late delivery of the declaration. The respondent also delivered its out of time declaration.

[17] The Johannesburg Court found that, by referring the case to trial, the normal rules for the exchange of pleadings apply. The court says the following at page 654:

"Rule 26 provides that a party who fails to deliver 'a replication or subsequent pleading within the time period stated in Rule 25 shall be ipso facto barred'. The Rule proceeds to provide that 'if any party fails to deliver any other pleading within the time laid down in these Rules or within any extended time allowed in terms thereof, any other party may by notice served upon him require him to deliver such pleading within five days of the day upon which the notice is delivered'.

Regard being had to the provisions of Rule 6(5)(g) alluded to above, the order that the declaration was to be filed within one month is a time period 'laid down in these Rules' (Rule 26). Furthermore, the order that the declaration be filed within one month is an 'extended time allowed in terms' of the Rules (Rule 26). On either basis, it is apparent that Rule 26 has to be complied with and a notice of bar has to be served requiring the party in default of delivering a declaration to do so within five days after the date upon which the notice of bar is delivered.

The Rules are designed to facilitate expeditious ventilation of a dispute at as little financial cost as possible. This is achieved by the delivering of a notice of bar followed, in the event of continued inaction, by an application of absolution rather than the delivery of an application in the present matter."

[18] In this case the declaration was delivered in terms of the provisions of the rules, being rule 20, and it was done absent a prior notice of bar. This means that the respondents acted of their own accord by delivering the declaration, which was the natural subsequent step to prosecute their action. All that the rule 30 process, engaged upon by the applicants, achieved, was to delay the inevitable delivery of a plea. Had a plea been delivered, the case would have by now been ripe for trial already.

[19] The Woolf-case above was followed in **Standard Bank of SA Ltd v Van Dyk** 2016 (5) SA 510 (GP) in paragraph 5.

[20] Unless manifestly wrongly decided, I am bound by these decisions. Rule 26 stipulates that only where a replication is not delivered within the time stated in rule 25, a party shall be *ipso facto* barred. In respect of any other pleading, the rule stipulates and I quote:

"If any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may by notice served upon him, require him to deliver such pleading within five days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to in the notice, within the time therein required, or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and ipso facto barred...."

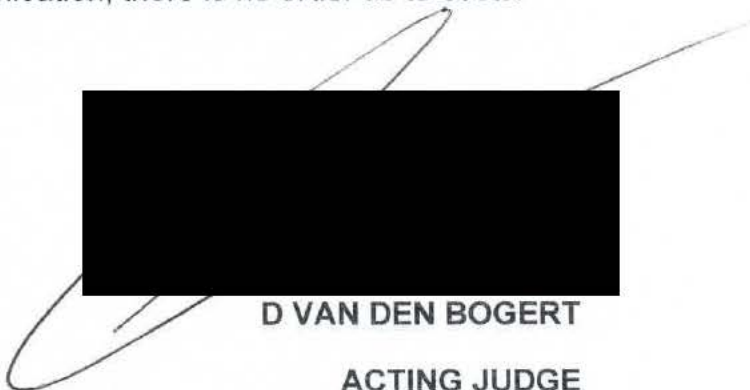
- [21] The rule is apparent. Where a party fails to comply with seemingly peremptory directives in the rules (i.e., even where the word “shall” is utilised) the other party must first deliver a notice of bar, failing which the non-complying party is not barred from pleading.
- [22] As an example, rule 22 also requires that where a defendant has delivered a notice of intention to defend, he shall within 20 days after the delivery of such notice, deliver a plea. It is therefore peremptory for a defendant to deliver a plea within 20 days after he has delivered a notice of intention to defend. If he fails to do so, he is however not automatically barred to do so because the plaintiff must first deliver a notice of bar.
- [23] Not being under the constraint of a bar, a party may deliver its subsequent pleading, except for a replication, at any time prior to being barred, and no condonation is required, or no extension of time application as envisaged in rule 27 is necessary.
- [24] Accordingly, the applicants cannot succeed with their rule 30 application and it must be refused.
- [25] Both parties sought punitive cost orders against each other, premised on complaints of *mala fides* and complaints of dilatory tactics. I am not inclined to grant a punitive cost order. The parties hold differing views on the interpretation of the rules. Because of their divergent views, they approached this court to adjudicate upon the correct interpretation of the rules.
- [26] Where parties have differing views, and seek the court’s adjudication upon their dispute, it can never be regarded as *mala fide*. It is not vexatious. It is an everyday occurrence that parties differ either in law, or in procedure, or on the facts of a case and approach a court to resolve that dispute. That constitutes *bona fide* conduct. I therefore refuse to consider granting a punitive cost order.
- [27] I asked counsel for the respondents this. Should I find in the respondents’ favour on the issue of the rule 30 application, whether the respondents would still be justified in seeking a costs order for their condonation application. This I asked, bearing in mind that the condonation application, considering the legal position

is wholly unnecessary. It does not justify a cost order. The fact that the respondents were over cautious in bringing a condonation application, does not justify that the applicants must pay for the respondents over cautiousness. This the respondents conceded.

[28] In the premises, and in respect of the condonation application, there shall be no order as to cost. In respect of the rule 30 application, the applicants must bear the costs.

[29] I issue the following order:

- (1) The applicants' rule 30 application is refused.
- (2) The applicants shall pay the cost of the rule 30 application, such cost to include the cost of counsel on scale C.
- (3) In respect of the condonation application, there is no order as to costs.



D VAN DEN BOGERT
ACTING JUDGE
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 26 November 2025.

Appearances

Counsel for applicants: Adv A Masombuka

Instructed by: K Malao Incorporated
Ref.: K Malao

Counsel for respondents: P Oosthuizen

Instructed by: Tingtinger Incorporated
Ref: GUL1/0002/LB

Date of Hearing: 24 November 2025

Date of Judgment: 26 November 2025