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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO.: 076217/2023

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED: YES

DATE: 21/11/2025

SIGNATURE

In the matter between:-

MANTURA SALOME HLONGWANE

First Plaintiff

MALATJIE BEAUTY SEKELE

Second Plaintiff

BEAUTY THLAPE

Third Plaintiff

SOUTH AFRICAN NATIONAL CIVIC ORGANISATION	Fourth Plaintiff
CONCERNED RESIDENTS OF MAMELODI EXT 4	Fifth Plaintiff
AND 128 OTHERS	

V

THE NATIONAL HOUSING FINANCE CORPORATION SOC LTD	First Defendant
NU-WAY HOUSING DEVELOPMENTS (PTY) LTD	Second Defendant
HLANO FINANCIAL SERVICES (PTY) LTD	Third Defendant
PIERRE ANDRE BRUYNS	Fourth Defendant
SONJA BRUYNS	Fifth Defendant
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Sixth Defendant
MEC FOR THE DEPARMTNE OF HUMAN SETTLEMENTS (GAUTENG PROVINCE)	Seventh Defendant
BANKIEN COUNCIL	Eighth Defendant
SHERIFF CULLINAN	Ninth Defendant
DEEDS REGISTRY	Tenth Defendant
PUBLIC PROTECTOR OF SOUTH AFRICA	Eleventh Defendant
DEEDS REGISTRY	Twelfth Defendant

Heard on: 09 September 2025

Delivered: 21 November 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 21 November 2025.

Summary:

1. The institution of legal proceedings before seeking certification of class action relief constitutes an irregular step. Accordingly, the pleadings can be set aside.
2. Certification is a preliminary matter that should be resolved before a class action may be instituted. It is the interest of justice that there is a proper adjudication of the matter.
3. Courts have an inherent power to regulate their own processes in terms of Section 173 of the constitution.
4. The interest of justice is an all-encompassing factor that should be considered. The courts the **Children's Resource matter** and **Mukaddam** enunciated the principles when considering class action matters.

ORDER

It is ordered:-

Claim A

1. The Rule 30 Application is granted.
2. The summons and particulars of claim is hereby set aside
3. The respondents shall pay the costs of the application in terms of both Claims A and B on Scale B.

JUDGMENT

KOOVERJIE J

THE RULE 30 APPLICATIONS

- [1] The applicant, Hlano Financial Services Pty Ltd instituted a Rule 30 application against the respondents on the premises that they should have instituted a class action. Hence the issuing of the summons was an irregular step. Accordingly, the applicant seeks to set aside the main action proceedings instituted by the respondents.
- [2] The applicant further claims for costs in terms of the second Rule 30 that was issued. When the respondents were informed that the service of the notice of bar on the applicant constituted an irregular step, they subsequently withdrew same. The applicant thus proceeds only with a costs order against them. The applicant

herein is the third defendant in the main action proceedings. The fourth and fifth respondents will be referred to as the respondents.

THE LOCUS STANDI OF THE FIRST RESPONDENT

- [3] I have observed that only the first respondent, Ms Hlongwane filed answering papers in this Rule 30 application and does so in her own capacity. She, nevertheless, proceeded to address the issues raised against the fourth and fifth respondents, namely the residents of Mamelodi Ext 4. She does not allege in what capacity she was entitled to respond on behalf of the fourth and fifth respondents. Although this point was not raised by the applicant, the uncertainty in respect of the manner in which the respondents are cited in the main matter herein constitute the core dispute between the parties.

THE ISSUES FOR DETERMINATION

- [4] The main issue for determination is whether the Rule 30 application should succeed on the grounds that the respondent had taken an irregular step by instituting the action proceedings prior to having the matter certified as a class action. If the Rule 30 is granted the next enquiry would be whether the summons and particulars of claim should be set aside.

BACKGROUND

- [5] Upon receipt of the summons and particulars of claim, the applicant filed a Rule 7 notice. The purpose was to ascertain that when the fourth and fifth plaintiffs (who

constituted 128 individuals and collectively referred to as the fifth plaintiff) had given Ramapuputla Attorneys the power of attorney, did they do so as individual litigants or through representative authorized on their behalf.

[6] In response to the Rule 7 notice, the respondents provided two mandates and power of attorney that reflected “The affected and concerned community of Mamelodi” had appointed Joseph Kgathle of SANCO to represent them and in turn Mr Kgathle gave Ramapuputla Attorneys, the power of attorney to act for the fourth and fifth plaintiffs. In the other mandate and power of attorney the Lawyers for the Human Rights were given the power of attorney to act on behalf of them as well.

[7] The applicant contended that on the reading of two mandates and power of attorney, the matter should properly be a class-action. This was clearly not an instance where individual litigants instituted the action proceedings. Moreover, no individual powers of attorney were disclosed. This resulted in the Rule 30 notice being served on the respondents’ attorney of record.

[8] Since no response was received from the respondents, a second notice was served, allowing the respondents 10 (ten) days to remove the cause of complaint. Their failure to do has resulted in the proceedings now before me.

[9] It was denied that Mr Kgathle was authorized in a representative capacity. They persist in their argument that the litigants have joined these proceedings in their individual capacities.

[10] Notably from the answering papers, it was alleged that Mr Kgathle was not acting in a representative capacity. The following was alleged:

“29 *It is submitted that although the chairperson of SANCO, Joseph Kgathle, is a general representative of the residents of Mamelodi, He is not a representative of the plaintiffs in the main action.*

30 *It is submitted that SANCO has always acted in the interests of the residents of Mamelodi however they are not acting in their representative capacity in any way in the main action.*

31 *The 4th respondents thus has locus standi to institute the action as they are a civic organisation consisting of residents of Mamelodi that aims to ensure that the residents of Mamelodi (some of who form part of its members) attain their unencumbered title deeds.*

32 *The signed special power of attorney on behalf of SANCO was given with authority by the residents of Mamelodi who formed part of the organisations members.*

33 *It is submitted that the 4th respondents are not precluded from instituting legal proceedings on behalf of its members and to defend residents legal interests.*

34 *It is further submitted that representation in a class action is a request in isolation and inference cannot be made that it is a class action solely*

because there is representation (although that is not the case in this instance)

Then at paragraph 52 they appreciate what constitutes a class action:

“52 It is trite law that the general definition of a class action is an action instituted by a representative on behalf of a class of person in respect of who. the relief claimed involves substantially similar in respect of all members of the class.”

They continue at paragraph 53:

“53 It is submitted that all the plaintiffs individually requested legal representation with regards to the matter. As such all the plaintiffs signed a power of attorney and a list of their identities was attached to the particulars of claim”.

54 As such the plaintiffs do not have a representative but are ordinarily joined as co-plaintiffs as they are entitled to in terms of Rule 10(1) and (2) of the Uniform Rules of Court.

55 On or around May 2023 all the plaintiffs consulted with the attorneys of record individually seeking legal representation and advice.

[11] Accordingly they seek relief as all affected persons in the main cause of action. They individually hold the defendants accountable for the alleged unlawful conduct on their respective parts. The nub of their claim is that their rights have

been violated in terms of the Disestablishment of the South African Housing Trust Limited Act 26 of 2002.

[12] In their particulars of claim various allegations are levelled against all or certain of the defendants, inter alia, that:

12.1 there was a violation of the Disestablishment of the South African Housing Trust Limited Act 26 of 2002;

12.2 there was failure to transfer the defendants' properties;

12.3 there was failure to register mortgage bonds and collect cancellation costs;

12.4 the defendants failed to consider that the plaintiffs are beneficiaries of low cost housing schemes subsidized by government in terms of which the plaintiffs automatically qualified and were granted subsidies in terms of the Housing Act 107 of 1997;

12.5 the first, third, sixth, seventh, eighth and eleventh defendants failed to assist the plaintiffs following the conclusion of an agreement between the National Department of Housing with the Association of Mortgage Lenders.

12.6. the seventh defendant unlawfully failed to comply with its mandate to ensure the plaintiff's right to housing was protected.

12.7 the second defendant unlawfully sold and transferred the plaintiffs properties to Pierre and Sonja which transfers were bold *ab initio* for illegality.

12.8 The Public Protector failed to investigate the alleged illegal conduct of the defendants.

[13] To appreciate the context in which Mr Kgathle's name is mentioned, it is necessary to consider the wording of the mandates and power of attorney. The first mandate and power of attorney reads:

*"I, the undersigned, Joseph Kgathle ("Kgathle"), identity number 7[...], in his capacity as Chairperson (SANCO) ... duly authorized by THE AFFECTED AND CONCERNED COMMUNITY OF MAMELODI do hereby nominate and appoint Nakape Edwin Ramapuputla (hereinafter referred to as "**the attorney**") of Ramapuputla Attorneys Incorporated, situated at Office No.: 5[...], 5th Floor, B[...]
Building, Lynnwood Bridge, Pretoria, with the power of substitution and/or their nominees with power of substitution to be our attorney of record with the power of substitution to act on my/our behalf in legal proceedings arising between the member of the Executive Council for Human Settlements and/or Department for Human Settlement (Gauteng Province), Association of Mortgage Lenders, Banking Council (any other financial institution involved), Sheriff Cullinan/Mamelodi, Hlano Financial Services (Pty) Ltd, National Finance Housing Corporation (Pty) Ltd (formally South African Housing Trust), Tshwane Local*

Municipality, Nu-Way Housing Developments (Pty) Limited and any unknown parties.

This mandate includes, but is not limited to eviction applications, declarators, interdicts arising as a result of the failure of the Gauteng Department of Human Settlements to perform in terms of The Process Agreement which incorporated chapter 7 of the National Housing Code 2000, the Illegal Transfer of Properties in the name of the National Finance Housing Corporation (formerly South African Housing Trust), the illegal sale by public auction by Nu-Way (sic) or any other company, failure by Khayelethu/Hlano to register and/or cancel mortgage bonds, failure by Khayelethu/Hlano to transfer the properties in the name of the occupants, and any other cause of action.”

[14] The wording in the second mandate and power of attorney’s was similar. Therein again Mr Kgathle as chairperson of SANCO was authorized by the Affected and Concerned Community of Mamelodi to nominate Lawyers for Human Rights on their behalf.

[15] On just a plain reading of the said mandates and power of attorney, the only plausible conclusion I arrive at is that Mr Kgathle was authorized to represent them. No contrary evidence has been furnished to illustrate that the residents signed separate and individual powers of attorney. The wording is clear - Mr Kgathle was authorized to represent a class of persons namely the “affected residents of Mamelodi”. The fact that a list of the members had been attached to the pleadings is inconclusive.

[16] In fact the respondents appreciated that the court has to regulate its own processes provided that it is in the interest of justice and the applicants cannot merely force the respondents to institute a class-action.

LEGAL PRINCIPLES IN RELATION TO CLASS ACTION

[17] In **Children's Resources Centre Trust Matter**¹ the definition of the concept of a class action (as defined by Professor Mulheron) was referred to. At paragraph 16 the court stated:

"[16]

*'A class action is a legal procedure which enables the claims (or parts of the claims) of a number of persons against the same defendant to be determined in the one suit. In a class action, one or more persons ("representative plaintiff) may sue on his or her own behalf and of a number of other persons ("the class") who have a claim to a remedy for the same or similar alleged wrong to that alleged by the representative plaintiff, and who have claims that share questions of law or fact in common with those of the representative plaintiff ("common issues"). Only the representative plaintiff is a party to the action. The class members are not usually identified as individual parties but are merely described. The class members are bound by the outcome of the litigation on the common issues, whether favourable or adverse to the class, although they do not, for the most part, take any active part in that litigation.'*²

[18] In developing the common law class actions may be brought, not only in terms of section 38(c) of the Constitution in relation to the infringement or potential infringement of a right guaranteed in the Bill of Rights. Our courts have acknowledged that class actions are a particularly appropriate way in which to

¹ Children's Resource Centre Trust and Others v Pioneer Foods (Pty) Ltd and Others 2003 (3) 213 SCA para 16 and 19

² See Vlok and other v Georgiou and others 2019 ZAGPPHC953 (Tolmay Judgment) para 39

vindicate some types of constitutional rights, but they are equally useful in the context of mass personal-injury cases or consumer litigation.

[19] Certain factors that may assist courts in determining if a matter should be classified as a class action have been listed by our courts³. It however cautioned that the overriding test always is whether it is in the interest of justice to grant certification of a class action. The factors may include but are not limited to the following:

- i. the class is identifiable by an objective criteria in that the proposed class shall be defined with sufficient precision that a particular individual's membership of the class can be objectively determined;
- ii. the cause of action raises a triable issue and the person applying for certification of a class-action must satisfy the court, firstly, that there is a case that is legally tenable, secondly a *prima facie* case exist on the evidence;
- iii. there are sufficient issues of fact or law that are common to all members of the class;
- iv. the relief sought or damages claimed flow from the cause of action and must be ascertainable and capable of determination;
- v. the class action must be the most appropriate means of allocating damages to the members of the class.

³ Children's Resource Centre Trust and Others v Pioneer Foods (Pty) Ltd and Others 2003 (3) 213 SCA para 26

- vi. In the event that damages is awarded then the appropriate mechanisms must exist to ensure that damages, if awarded, are allocated to members of a class in a particular manner.

[20] In ***Mukaddam***⁴ the Constitutional Court clarified the proposition that such factors must be determined in the “interest of justice”. The factors must not be treated as conditions precedent or considered to be jurisdictional facts which are cast in stone for an application for certification to succeed. A rigid application is undesirable. The absence of one or other requirement must not oblige a court to refuse certification where the interest of justice demands otherwise.

[21] At paragraph [42] in ***Mukaddam***, the court highlighted that a court has inherent powers to regulate its own processes on matters of procedure provided that it is in the interest of justice:

“42. Section 173 makes plain that each of the superior courts has an inherent power to protect and regulate its own process and to develop the common law on matters of procedure, consistently with the interests of justice. The language of the section suggests that each court is responsible and controls the process through which cases are presented to it for adjudication. The reason for this is that a court before which a case is brought is better placed to regulate and manage the procedure to be followed in each case so as to achieve a just outcome. For a proper adjudication to take place, it is not unusual for the facts of a particular case

⁴ *Mukaddam v Pioneer Foods (Pty) Ltd and Others* 2013 (5) SA 89 (CC) paragraphs 36 to 40

to require a procedure different from the one normally followed. When this happens it is the court in which the case is instituted that decides whether a specific procedure should be permitted. The determination to certify a class action is not different to exercising the power to allow one procedure instead of the other.”

[22] Hence where a class of persons are represented it is necessary for the procedural steps to be put in place. In particular, the court has to first satisfy that a class exist and approve of the representative litigants. The party seeking to represent the class must first apply to court for the authority to do so. Certification is a preliminary matter requiring resolution before class-action may be instituted. In the absence of certification, a representative has no right to proceed unlike litigation brought in a person's own interest⁵. The certification allows the court to control the procedural aspects of the proceedings and prescribe appropriate rules and procedures to enable litigants to pursue their claims. Ultimately the court is required to adopt a robust approach and ensure that process is put in place to develop the common law and the interest of justice.

[23] Rule 10 is envisaged in situations where any number of persons each of whom has a claim, whether jointly, jointly and severally, and separately join as plaintiffs in one action against one or more defendants. In such a case each plaintiff institutes the proceedings on his/her own stead.

[24] This is different to class actions, which makes provision for one or more plaintiffs to represent a larger group of similarly affected individuals in an action. In other words, a representative is nominated to represent the class of individuals.

⁵ Vlok and Others Georgiou and Others [2017] ZAGPPHC412 at paragraph 15 (Murphy Judgment)

[25] It is of utmost importance that the matter is properly before the court so that the disputes can be appropriately and effectively adjudicated. There looms a danger when all members of the class may not be known to the class representative. In such an instance, it has always been advised that adequate notice be given to all potential members of the class so that they become aware that the outcome of the class action as they would be bound by the outcome of the proceedings.

FINDINGS

[26] In determining whether a case for a class action has been made out, on the facts together with the “interest of justice” factor. I am of the view that the litigation is demonstrative of a class action in that:

26.1. The residents of Mamelodi Ext 4 constitutes a class with common interest. They belong to an identifiable class of persons.

26.2. The averments in the particulars of claim illustrate that the affected residents face common issues and have pleaded same. Their right of relief ultimately must depend on the determination of issues of fact, of law or both, that is common to them all, which binds them as a class together. It is appropriate to deal with their combined interest in a class action, as opposed to separate actions. As long as the sufficient points of commonality in relation to the facts and law that bind the members of the class together, a class action is appropriate.⁶

[27] The standard to be applied in assessing whether a proposed claim action reflects a cause of action raising a triable issue is whether the cause of action is legally tenable and whether the respondents have put forth a *prima facie* case. There are clearly live disputes between the parties. At this stage, I am however not required to ascertain if there are triable issues. Ultimately the court considering the

⁶ Children’s Resource Centre para 26-27

certification application will be able to assess the cause of action and ultimately determine whether there exists a triable issue.⁷

[28] The interest of justice standard for certification is a flexible test. The court in **Mukaddam** echoed that the interest of justice is the all-encompassing standard to be met when certifying a class. There must be an appropriate balance struck between allowing class action to enhance the right of access to justice and the improper use of mechanism to promote the members interest. The determining factor is whether it is in the interest of justice to certify a class action.

[29] In the circumstances of this matter I find that it would be the interest of justice for the matter to be certified as a class action. It would be to the advantage of both the court and the litigants that the matter be adjudicated, in a fair and structured manner and in anticipation of a just outcome.

CONCLUSION

[30] Consequently the applicant succeeds in its Rule 30 relief as the initiation of the action proceedings constituted an irregular step. Rule 30 makes provision for a court to set aside the proceedings. Rule 30(3) permits a court to set aside a proceeding if it considers it to be irregular or improper and make any order it deems appropriate in the circumstances. Every court is entitled to ensure that proceedings are dealt with appropriately, in a just and fair manner thereby ensuring that all the affected parties are appropriately advised and represented.

[31] The respondents were forewarned again in the second Rule 30 notice that the certification process has to precede the institution of action proceedings. In the premises the applicant succeeds with the Rule 30 application.

[32] Proceedings instituted prior to certification process being finalized are considered to be irregular. Both the **Children's Resource Centre** and **Mukaddam** matters

⁷ Children's Resource Centre para 39

made it clear that certification is required before proceedings can be instituted.⁸ In upholding this proposition in law, I find the summons and particulars of claim should be set aside.

COUNTER APPLICATION

- [33] The counter application is irregular under the circumstances. A Rule 30 application was instituted. It is envisaged that no further steps can be taken by any other party until the irregular step is addressed. Moreover, the counter application required the disclosure of certain documents. It does not address the cause of complaints set out in the Rule 30 application.

COSTS

- [34] The applicant sought punitive costs against the respondents on the basis that despite them been repeatedly advised of the irregular step, failed to address the irregularity. Punitive costs are granted in exceptional circumstances when there is gross negligence or *mala fides*. I am of the view that such costs are not warranted in these circumstances. Such costs are granted in exceptional circumstances when there is inter alia gross irregularity vexatious and *mala fides*. This is not the case here. As the respondents are ordered to pay the cost on party and party scale C.

H. KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

⁸ of Children's Resource Centre

Appearances:

Counsel for the applicants: Adv. R Adams

Instructed by: MAP Attorneys

Counsel for the respondents: Mr. NE Ramapuputla

Instructed by: Ramapuputla Attorneys Inc

Date heard: 09 September 2025

Date of Judgment: 21 November 2025