



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 629/2024

In the matter between:

THOMAS EDWARD TSOEU

APPLICANT

and

CHIEF MOLAPO JERRY MOPELI

FIRST RESPONDENT

PRECIOUS LIVES CHRISTIAN SCHOOL

SECOND RESPONDENT

Neutral citation: *Tsoeu v Mopeli and Another* (629/2024) [2026] ZAFSHC 27 (26 January 2026)

Coram: DANISO J

Heard: 14 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 26 January 2026

Summary: Uniform Rules of Court (rules) – rule 30A – application to strike out rescission application for alleged non-compliance with rule 6(5)(a), 6(5)(b)(iii) and 31(2)(b) – substantial delay after serving notice to rectify before launching striking out application – rules conflated and misconstrued.

ORDER

The application is dismissed with costs.

JUDGMENT

Daniso J

[1] In these opposed proceedings, the applicant seeks an order, in terms of rule 30A of the Uniform Rules of Court (the Rules),¹ that the rescission application filed by the respondents on 26 April 2024 be struck out on the grounds of non-compliance with rule 6(5)(a), 6(5)(b)(iii) and 31(2)(b).

[2] The facts upon which the rescission application arose are briefly the following: The first respondent is a headman of the Maboela Traditional Council in the Matsikeng Village situated in Matsokong Township in Witsieshoek. As headman, he is responsible for allocating stands to residents and businesses in that area. During June 2018, the second respondent purchased and was thereafter allocated stand number 101A (the stand) in Matsikeng Village by the first respondent.

[3] On 5 February 2024, the applicant launched an urgent application, in this Court, alleging that he is the owner of the stand and the respondent was in unlawful occupation thereof. He sought an order that the second respondent removes its shack and fence from the stand and that the first respondent ensures that the order is duly carried out. The application was served on the first respondent's wife on 5 February 2024. On the next day, the matter served before Van Zyl J unopposed. An order was subsequently granted in favour of the applicant on the following terms:

¹ Rule 30A deals with enforcement of compliance with Rules and Court Orders. It reads as follows:

'Non-compliance with Rules and Court Orders

(1) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order—

- (a) that such rule, notice, request, order or direction be complied with; or
- (b) that the claim or defence be struck out.

(2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.'

1. The Applicant is granted leave to bring this application on an urgent basis and to dispense with Rules relating to service requirements.
2. The First Respondent is authorised to immediately ensure removal of the Second Respondent's shack and fence from the stand allocated to the Applicant situated at Matsikeng Village, opposite Maluti Towing and Repairs situated at Matsokung Township between Clubview and Bluegumbosch, Witsieshoek.
3. The Second Respondent shall immediately vacate the stand situated at Matsikeng Village, opposite Maluti Towing and Repairs situated at Matsokung Township between Clubview and Bluegumbosch, Witsieshoek and to immediately remove his/her shack and fence erected thereon.
4. The Applicant is granted leave to serve this application in the following manner:
 - 4.1 By delivering the application documents to the office of the MABOLELA TRADITIONAL COUNCIL at Matsikeng Village, Witsieshoek;
 - 4.2 By affixing the application documents to the fence or shack erected by the Second Respondent.
5. The Sheriff of the above Honourable Court is authorised to immediately remove the shack and fence erected by the Second Respondent on the stand situated at Matsikeng Village, opposite Maluti Towing and Repairs situated at Matsokung Township between Clubview and Bluegumbosch, Witsieshoek.
6. The First Respondent shall immediately cause the correction of the Applicant's Permission to Occupy in respect of the stand situated at Matsikeng Village, opposite Maluti Towing and Repairs situated at Matsokung Township between Clubview and Bluegumbosch, Witsieshoek to reflect the date of its issue to be 26 December 2023.'

[4] The respondents' rescission application was served and filed on 26 April 2024. It is premised on the provisions rule 42(1)(a) and it is based on the grounds that the order was granted in the absence of the respondents due to the severely truncated time periods provided by the applicant to oppose the application. The order was also erroneously granted in that, the court would not have granted the order if it had the benefit of considering the respondents' version.

[5] In addition to opposing the rescission application on the merits, on 24 May 2024, the applicant also served the respondents with a rule 30 A (1) notice objecting to the validity of the notice of motion. The premise is that the notice of motion does not comply with rule 6 (5)(a) and (5)(b)(iii) in that, it does not specify a day by which the applicant must file his

notice of intention to oppose the rescission application. In respect of the *dies* for the filing of the notice to oppose, the notice of motion refers to ten days instead of five days from the date of service of the application. Furthermore, the application was also filed out of the 20-day time limit predicated in rule 31(2). The respondents were granted ten days to remove the causes of complaints.² The respondents have since failed to rectify the defects despite being granted an opportunity to do so.

[6] The striking out application was filed on 7 February 2025. It is the applicant's case that there are no time frames within which the striking out application ought to be lodged. The application can be lodged at any time. It is the applicant's case that he is prejudiced by the respondents' failure to specify the date in the notice of motion because he does not know exactly when he should file the notice to oppose.

[7] The applicant argues that the rescission application has also been filed out of time. In terms of rule 31(2)(b), the rescission application ought to have been filed within 20 days after the order was granted on 6 February 2024. Instead, it was filed months later, on 26 April 2024. No condonation has been sought as a result, the rescission application 'does not exist'.

[8] It is further argued that the respondents' reliance on rule 42(1)(a) is merely an attempt to avoid compliance with the time frames as predicated in rule 31(2)(b) in any event, rule 42(1)(a) is designed to correct a wrong judgment and in their rescission application, the respondents do not point out any error of law or fact that has been committed by the Court in granting the order. Based on all these reasons, the rescission application must be struck out with costs.

[9] The application is opposed on the grounds that the application is hopelessly out of time. In paragraph 8 to 9 of the respondents' answering affidavit, the respondents aver that:

'... the rule stipulates that a party must notify the opposing party of their non-compliance within ten (10) days and allow them a further ten (10) days to rectify the issue. Furthermore, if the non-compliance is not remedied within the given timeframe, the applicant has 15 days from the expiry of that period to institute the necessary application.'

² Subrule (1).

[10] The respondents point out that the striking out application was only launched eight months after the notice to rectify was served on the respondents. The application is accordingly *pro non scripto* as condonation has not been sought.

[11] Considering that rule 30A is intended to enforce compliance with court rules to ensure the expeditious completion of litigation, the delay of eight months in launching the striking out application is indeed extreme. Be that as it may, there is no substance to the respondents' contention that rule 30A contains a 'further ten (10) days timeframe to rectify the issue' and 15 days within which the striking out application has to be filed. It is clear from the proper reading of rule 30A that, except for the ten days' notice to rectify the defects, there is no timeframe provided within which to lodge the striking out application. In *Helen Suzman Foundation v Judicial Service Commission*,³ the formalities of the provisions of rule 30A are succinctly explained by Kollapen AJ writing for the dissenting as follows:

'Rule 30A may not, as suggested in the first judgment, be read disjunctively. It is a rule in terms of which non-compliance with the Uniform Rules of Court is investigated by the High Court itself. The difficulty with separating rule 30A (1) from (2) is that under the rule only one application is envisaged and a single enquiry is conducted. There is no separate application to which rule 30A (2) applies. The application made to the court in terms of this subrule is the same application that was referred to in the notice previously issued in terms of rule 30A(1). In other words, rule 30A (1) authorises only the issuance of notice to a defaulting party. If that notice is not complied with, then rule 30A (2) is triggered and an application may be made to the court.'

[12] The respondents have clearly conflated the provisions of rule 30A with rule 30 which deals with irregular proceedings.⁴ The respondents' objection on this aspect is unsustainable.

[13] With regard to the merits, it is the respondents' case that the application is frivolous,

³ *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) para 151.

⁴ Rule 30 reads:

'(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 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 opponent an opportunity of removing the cause of complaint within 10 days;

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

vexatious and an abuse of process. The submission is that, the notice of motion clearly states that the respondent must file the notice to oppose within ten days of which the applicant would have been in possession of the date of service of the notice of motion and could determine the exact deadline for filing of the notice to oppose without any difficulty.

[14] It is respondents' submission that, as opposed to rule 31, rule 42 does not prescribe a specific time frame within which an application for rescission of judgment must be brought. The applicant has misapplied the legal framework pertaining to rescission applications. That aside, rule 30A is not the appropriate mechanism to challenge a delay in the filing of a rescission application.

[15] I am in agreement with the respondents' contentions on this point. Rule 6(5)(a) reads:

'Every application other than one brought ex parte shall be brought on notice of motion as near as may be in accordance with Form 2(a) of the First Schedule and true copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.' In terms of rule 6(5)(b)(iii):

'In a notice of motion the applicant shall—

...

(iii) set forth a day, not less than 10 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether respondent intends to oppose such application...'

[16] The examination of the respondents' notice of motion reveals that this application is indeed based on unmeritorious grounds as the notice of motion does mimic the provisions of subrule (5)(a) and (5)(b)(iii). The relevant parts of the respondents' notice of motion read as follows:

'TAKE FURTHER NOTICE THAT if you intend opposing this application you are required to:

(a) To inform the Applicant's attorneys of Record of its intention to do so within a period of ten (10) days of receipt of this notice and file such notice of opposition with the Registrar of the Honourable Court ...'

[17] Nowhere in the subrules relied upon is it indicated that a day must be specified for the filing of the notice of motion. There is also no reference to the 5-day period alluded to by the applicant.

[18] The issue of whether rule 31(2)(b) or 42(1)(a) is applicable in respect of the rescission application, including the respondents' motives for relying on 42(1)(a), is a matter to be adjudicated at the hearing of the rescission application.

[19] As I conclude, the applicant would be well advised to take note of what was said in *Khunou and Others v M Fihrer and Son (Pty) Ltd and Others*:⁵

'The proper function of a Court is to try disputes between litigants who have real grievances and so see to it that justice is done. The rules of civil procedure exist in order to enable Courts to perform this duty with which, in turn, the orderly functioning, and indeed the very existence, of society is inextricably interwoven. The Rules of Court are in a sense merely a refinement of the general rules of civil procedure. They are designed not only to allow litigants to come to grips as expeditiously and inexpensively as possible with the real issues between them, but also to ensure that the Courts dispense justice uniformly and fairly, and that the true issues which I have mentioned are clarified and tried in a just manner.

...

It follows that the principles of adjectival law, whether expressed in the Rules of Court or otherwise, are necessarily flexible. Unfortunately, this concomitant brings in its train the opportunity for unscrupulous litigants and those who would wish to delay or deny justice to so manipulate the Courts' procedures that their true purpose is frustrated. Courts must be vigilant against this and other types of abuse. What is more important is that the Court's officers, and especially its attorneys, have an equally sacred duty. Whatever the temptation or provocation, they must not lend themselves to the propagation of this evil, and so allow the administration of justice to fall into disrepute.'

[20] In my view, this authority sums up the conduct of the applicant and how it shaped these dilatory proceedings.

[21] Taking all these factors into consideration, I am not persuaded that there has been non-compliance with the rules. No proper case has been made out for an order striking out the respondents' rescission application. The application fails.

Costs

[22] With regard to costs, there is no reason why the costs should not follow the result.

⁵ *Khunou and Others v M Fihrer and Son (Pty) Ltd and Others* 1982 (3) SA 353 (W) at 355-6.

Order

[23] I make the following order:

The application is dismissed with costs.

The Honourable Justice
2026 -01- 2.6
N.S. Daniso



NS DANISO

JUDGE OF THE HIGH COURT

Appearances

For the applicant:	T E Tsoeu (In person)
Instructed by:	Makhabane Mopeli Attorneys Inc, Bloemfontein
For the respondents:	MP Modise
Instructed by:	Noge Attorneys, Phuthaditjhaba c/o Wesi Attorneys INC, Bloemfontein.