



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

Reportable

Case no: 1142/2021

In the matter between:

PHETHOGO CONSULTING (PTY) LTD

APPLICANT

and

MANGAUNG METROPOLITAN MUNICIPALITY

RESPONDENT

Neutral citation: *Phethogo Consulting (Pty) Ltd v Mangaung Metropolitan Municipality* (1142/2021) [2026] ZAFSHC 26 (30 January 2026)

Coram: OPPERMAN J

Heard: 22 January 2026

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 30 January 2026.

Summary: Uniform Rules of Court – rule 21(2) – application to compel for further particulars – applicant inactive then demanded compliance during festive recess – balancing of procedural compliance against fairness and proportionality.

ORDER

1 The respondent is directed to file a reply to the applicant's request for further particulars for trial, in terms of rule 21(2), within ten (10) days of the date of this order.

2 In the event of the respondent's failure to comply with para 1 above, the applicant is authorised to apply on the same papers, duly amplified, for an order striking out the respondent's defence, with costs, and for judgment in favour of the applicant in accordance with the prayers of the summons.

3 Each party shall bear its own costs, save for the wasted costs of 18 December 2025, which shall remain payable by the respondent in terms of the order previously granted.

JUDGMENT

Opperman J

[1] It is well established that dogmatically rigid adherence to the Uniform Rules of Court is as undesirable as their flagrant disregard. The rules are not an end in themselves. Their purpose is to facilitate the fair, efficient and cost-effective adjudication of disputes, not to obstruct the proper ventilation of the real issues between the parties:

‘However, dogmatically rigid adherence to the uniform court rules is as distasteful as their flagrant disregard or violation . . . Quibbling about trivial deviations from the court rules retards instead of enhancing the civil justice system.

. . .

The court rules are not an end in themselves.’¹

¹ *Louw v Grobler and Another* (3074/2016) [2016] ZAFSHC 206 (15 December 2016) (*Louw*) paras 18 and 40.

[2] This is an application in terms of rule 21(2) of the Uniform Rules of Court² to compel the respondent to furnish further particulars for trial. It is common cause that the respondent was out of time in complying with the request. The respondent acknowledged this from the outset.

[3] The matter must be approached against the constitutional imperative that courts exist to determine disputes through a fair process directed at the resolution of the real issues between the parties. Procedural mechanisms are designed to serve that end and not to be deployed as instruments of tactical advantage.

[4] A court enjoys a wide discretion to condone non-compliance with procedural requirements where the interests of justice so demand. The primary consideration remains the proper and effective adjudication of the substantive dispute rather than adherence to technical formalism.

[5] On 28 November 2025, the applicant launched an application, set down for hearing on 18 December 2025, seeking an order compelling the respondent to provide further particulars by 29 December 2025. It is common cause that the respondent requested an indulgence for additional time.

[6] The applicant caused the litigation to remain procedurally dormant for a period of approximately four years. The respondent sought an extension until February 2026 to comply. It was not suggested by the applicant that the information

² It is convenient at the outset to refer to Uniform Rule 21 of the Uniform Rules of Court, which regulates the delivery of further particulars for purposes of trial. The Rule provides that, after the close of pleadings, any party may, by notice, request only such further particulars as are strictly necessary to enable that party to prepare for trial. Such notice must be delivered not less than twenty days prior to the trial, and the party upon whom the notice is served is obliged to furnish the requested particulars within ten days of receipt thereof. The rule further provides that the particulars must, so far as practicable, avoid repetition of matters already contained in the pleadings and must be confined strictly to what is necessary to enable the requesting party to prepare for trial. Should the party upon whom the request is made fail to comply timeously or deliver insufficient particulars, the requesting party is entitled to apply to the Court for an order compelling the delivery of such particulars, and the Court is vested with a discretion to make such order as it deems appropriate, including as to the costs of the application.

sought was urgent or that its absence would prejudice the applicant's preparation for trial. No steps had been taken by the applicant since 2021 to advance the matter towards finality. The insistence upon expedition arose only at this stage and without reason.

[8] The applicant required compliance, within five days, during the annual festive recess, and declined to grant any extension. The timing of the application had the foreseeable consequence that the respondent was compelled to incur costs in preparing an answering affidavit and briefing senior counsel. The issue in the main action is of grave and complicated nature and an application for an order striking out the respondent's defence with costs and granting judgment in favour of the applicant was looming.

[9] On 18 December 2025, an order was made that the matter is postponed to the opposed roll of 22 January 2026, and the respondent shall pay the wasted costs.

[10] The respondent's attorneys of record were closed for the festive season from 12 December 2025 until early January 2026. Following a period of prolonged inactivity, the file could not be traced immediately and had to be reconstructed from the court file.

[11] Junior and senior counsel were briefed on 12 December 2025. Consultation with senior counsel took place on 17 December 2025, senior counsel having travelled from Johannesburg. The respondent's legal team was required to take instructions in order to respond meaningfully to the request for further particulars and the rule 37(4) questionnaire, a process that could reasonably be undertaken only once operations resumed in mid-January 2026. The witnesses were not readily available.

[12] The relevant procedural chronology is the following:

- (a) The plaintiff issued combined summons on 15 March 2021.
- (b) The defendant delivered its plea on 25 May 2021.
- (c) The plaintiff replicated on 15 June 2021.
- (d) Discovery was exchanged by both parties during June and August 2021.
- (e) No further steps were taken until the plaintiff served its request for further particulars for trial purposes and its rule 37(4) questionnaire on 28 October 2025.
- (f) On 13 November 2025, a letter of demand was addressed to the respondent's attorneys, requiring compliance by 19 November 2025, failing which the present application will be launched.
- (g) On 8 December 2025, the respondent through its legal representatives sought the matter to be removed from the roll with a tender of costs.
- (h) By the time this application was heard, the respondent had had almost three months within which to comply with the request but had failed to do so.
- (i) Counsel was briefed by the respondent only on 12 December 2025.

[13] To reiterate, the court has an inherent power to regulate its own process and to prevent its procedures from being used in a manner that is vexatious, oppressive, or calculated to secure an improper advantage.

[14] Abuse of process is not confined to proceedings that are frivolous or manifestly unfounded. It includes the use of procedural mechanisms in a manner that is disproportionate, unfair, or inconsistent with the proper administration of justice.

[15] In applications to compel, the court is required to balance the legitimate interest of a party in obtaining procedural compliance against the broader interests of fairness, proportionality, and the expeditious resolution of the dispute. The discretion must be exercised judicially, having regard to all relevant circumstances.

[16] The applicant was entitled to request compliance with the rule 21(2) notice and, in the absence of timeous compliance, to approach this Court for relief. Equally, the respondent bears responsibility for failing to provide the requested information within a reasonable time and for not formally seeking an extension from the court.

[17] The prolonged period of procedural inactivity between 2021 and October 2025 is a material consideration. Against that background, the insistence upon compliance within a truncated period during the festive recess with its resultant complications, in circumstances where no demonstrable prejudice or urgency was shown, weighs against the applicant.

[18] The timing and manner in which the application was pursued had the practical effect of placing procedural pressure on the respondent rather than advancing the substantive resolution of the dispute. The conduct of the applicant advances the kind of disproportionate use of procedure that the authorities caution against.

[20] In the exercise of this Court's discretion, and having regard to the conduct of both parties, it is appropriate that each party bear its own costs, save for the wasted costs occasioned by the appearance of 18 December 2025, which have already been ordered against the respondent. The period of compliance will remain ten days as per rule 21(2).

[21] The following order is made:

1 The respondent is directed to file a reply to the applicant's request for further particulars for trial, in terms of rule 21(2), within ten (10) days of the date of this order.

2 In the event of the respondent's failure to comply with para 1 above, the applicant is authorised to apply on the same papers, duly amplified, for an order striking out the respondent's defence, with costs, and for judgment in favour of the

applicant in accordance with the prayers of the summons.

3 Each party shall bear its own costs, save for the wasted costs of 18 December 2025, which shall remain payable by the respondent in terms of the order previously granted.

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M L OPPERMAN

JUDGE OF THE HIGH COURT

Appearances

For the applicant:

J Els

Instructed by:

Hendre Conradie Inc., Bloemfontein

For the respondent:

L Halgryn

Instructed by:

Rampai Attorneys, Bloemfontein.