



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case Number: 136433/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
24/4/2026 DATE	 SIGNATURE

ANNETTE CLARK ATTORNEYS INC

RESPONDENT / PLAINTIFF

AND

SBV SERVICES (PTY) LIMITED

APPLICANT / DEFENDANT

JUDGMENT

MAKUME, J:

INTRODUCTION.

1. In this matter, the applicant who is the defendant in the main action, seeks an order in terms of Rule 30(2)(B) of the Uniform Rules of Court declaring that:

1.1. The plaintiff's notice in terms of Rule 30(2)(B) which was delivered on 24 February 2025 is an irregular step in the proceedings because the plaintiff, having done so, proceeded to file a replication to the defendant's special plea.

1.2. That by so doing the plaintiff is precluded from instituting the Rule 30 application in terms of Rule 30(2)(a). Rule 30(1) and (2) reads as follows:

- i. "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.
- ii. An application in terms of sub-rule 1 shall be on notice to all the 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 ten days of becoming aware of the step by written notice afforded his opponent an opportunity of removing the cause of complaint within 10 days.

Background facts.

2. I find it necessary at this stage to set out a brief narrative of certain facts and circumstances giving rise to the litigation which bear on

the questions to be decided as they emerge from the papers. In doing so I shall refer to the parties by their nomenclature used in the action proceedings.

3. On 24 November 2024 the plaintiff issued summons against the defendant claiming payment of an amount of 2.5 million alternatively payment of the sum of 3.9 million being fees for professional services rendered. It is common cause and not in dispute that the plaintiff acted as the defendant's attorneys in a number of legal matters over a period.
4. A dispute arose as to the reasonableness of their attorney and client statement of account, as a result the defendant demanded that the plaintiff submits their statement of account and bill for taxation by the taxing master at this court. The plaintiff did not do that, instead proceeded to issue summons as indicated above.
5. On 11 December the defendant entered an appearance to defend the action. On 11 February 2025 plaintiff served on the defendant a notice of bar, calling on the defendants to file their plea to the plaintiff's particulars of claim within five days, failing which they shall be barred *ipso facto* and judgment will be entered against them by default and in their absence.
6. On 12 February 2025, a day after receiving a notice of bar, the defendants filed and served a notice of motion in terms of Rule 27 of the Uniform Rules seeking an order staying the action pending or until the plaintiff's fees shall have been taxed by the master.

7. Two days later on 14 February 2025 the defendant filed and served a special plea to the plaintiff's claim pleading that:

7.1. On 4 December 2024 SBV demanded that plaintiff's fees be subjected to taxation, that until the fees claimed shall have been taxed the action should not proceed.

7.2. On 24 February 2025 the plaintiff entered appearance to oppose the stay application in terms of Rule 27. On the same day, the plaintiff filed a 28-page notice which he described as a notice in terms of Rule 30(2)(B).

8. In that notice, the plaintiff informed the defendant that it is affording the defendant a period of 10 days to remove the irregularity and improper proceedings and steps as listed in Schedule A attached to the notice. Schedule A is a long, convoluted, and repetitious repetition of the purpose of claim. It is in paragraph 12 of that Schedule A where the plaintiff says that the stay application filed by the defendant is an irregular step and also in paragraph 13, the plaintiff identifies the special plea also as an irregular step.

9. On 3 March 2025 the plaintiff filed his replication to the defendant's special plea. That replication also stretches for some 28 pages, containing mostly repetitive and irrelevant averments. Simultaneous to that an application for summary judgment was also filed, which is over 30 pages long.

10. On 17 March 2025 the plaintiff filed and served a notice in terms of Rule 30(1) in which it sought an order striking out the defendant's notice of intention to defend dated 11 January 2025, the defendant's application dated 12 February being the stay application in terms of Rule 27, and lastly, the defendant's special plea dated 14 February 2025.
11. It was on receipt of that notice that on 24 March 2025 the defendants then filed and lodged this application as set out in paragraph 1 above. The plaintiff had been given notice in terms of Rule 30(1) to remove the complaint, but failed to do so.

THE LAW APPLIED TO THE FACTS.

12. The purpose of Rule 30 is to afford a party to an action the opportunity to ask the court to set aside an irregular step which has been taken by its opponent and which is prejudicial.
13. It is common cause that an aggrieved party that is applicant in a Rule 30 application forfeits to have the offending steps set aside if he has taken any further step in the course of the knowledge of the offending step. In the matter of *Jowell versus Bramwell-Jones* 1998 (1) SA 836(w) at 905 his Lordship, Heher J said the following.

“A further step in the proceedings is one which advances the proceedings one stage nearer completion and which objectively viewed

manifests an intention to pursue the course despite the irregularity.”

14. In this matter, the plaintiff, after having identified and given notice that the defendant's notice to defend the application to stay as well as a special plea were irregular steps, the plaintiff proceeded on 5 March 2025 to file a replication to the defendant's special plea. That, in terms of the law, put paid to the plaintiff's application of irregularity in the defendant's pleadings and by so doing the plaintiff took an irregular step.
15. An application to set aside an irregular step may only be brought if the applicant has not himself taken a further step in the course with knowledge of the irregularity. The launching by the plaintiff of its Rule 30 notice on 17 March 2025 constitute an irregular step because by 5 March 2025 the plaintiff took a further step in the proceedings by filing an extensive replication to the special plea.
16. A replication is a substantive pleading that closes the pleadings and by its very nature advances the litigation one step nearer the completion. It does not arrest the proceedings, it propels them forward. It was found in *Odendaal versus De Jager* 1961 (4) SA 307 (0 at 310) that the filing of a replication constitutes a further step.
17. In the matter of *Klein versus Klein* 1993 (2) SA 648(B) it was held that knowledge of the irregularity is knowledge of the step taken,

whether or not coupled with an appreciation that the step was irregular or improper.

18. All the defenses raised by the plaintiff in this application have no merit and stand to be dismissed. The point *in limine* that the defendant itself took a further step in respect of the stay application by setting it down is misguided. The stay application was removed from the roll and could thus not qualify to be a further step. The stay application would never have advanced the proceedings. It was aimed at halting the proceedings. The same goes for the application for summary judgment by the plaintiff.
19. The next defense raised is set out in paragraph 25.4 of the plaintiff's answering affidavit. In that paragraph, the attorneys seem to suggest that the determining factor in deciding whether a party has taken a further step for purposes of Rule 30(2)(A) is the party's intention. That is not correct and is a misunderstanding of the rules. In the matter of Minister of Law-and-Order v Taylor NO 1919 (1) SA 165E the court held that knowledge referred to in the rule is knowledge that a step has been taken whether or not coupled with an appreciation that the step was irregular or improper. Clark attorneys knew that it had taken a step by filing a replication to the special plea. It is an objective test. The plaintiff is a law firm in this regard and they are presumed to know the law including the rules of this court.

20. The replication engaged on all corners with a special plea on its merits, thus moving the action closer to completion. I do not deem it necessary to deal with all further defenses raised being the alternative formulation of the replication as well as reliance on the provisions of Section 173 of the Constitution as both are without merit and fall to be rejected.
21. There is clear prejudice that that will befall the defendant if the plaintiff is permitted to advance argument on his Rule 30 notice as this will have the effect of striking out two procedural steps raised by the defendant being the stay application. It also touches on the merits whether fees should first be taxed or not, where there is a clear dispute on reasonableness.
22. In conclusion, the plaintiff has unnecessarily overburdened this application with long and repetitious material which serve no real purpose in raising a laudable defense. This calls for a punitive cost order. In the result, I make the following order:

Order.

1. The defendant's application in terms of Rule 30(1) and (2) is upheld. The plaintiff's replication to the special plea is declared irregular and is set aside.
2. The plaintiff is ordered to pay the defendant's tax cost on scale C.



MAKUME J [Redacted]

JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearance

For the Respondent / Plaintiff:

Annette Clark Attorneys

For Applicant / Defendant :

Tabacks Attorneys