

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

Not reportable

Case no: 4783/2025

In the matter between:

MARKET LIQUOR STORE CC

PLAINTIFF

[Registration number: 1995/049757/23]

and

ANDERSON 4 EYECARE INC.

FIRST DEFENDANT

[Registration number: 2014/108675/21]

MEGAN LEWIS

SECOND DEFENDANT

Neutral citation: *Market Liquor Store CC v Anderson 4 Eyecare Inc* (4783/2025)
[2026] ZAFSHC 249 (16 April 2026)

Coram: CRONJÉ AJ

Heard: 26 March 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 12h45 on 16 April 2026.] [CD1]

Summary: Request for reasons for cost order against defendants for

postponement of summary judgment application and rule 30 proceedings – plaintiff enrolled the matter and filed its practice note and heads of argument – defendants filed a rule 30 notice stating that leave to defend was granted and that the rule 30 notice should be disposed of first – as pleadings stood and considering the formulation of the rule 30 notice the summary judgment proceedings could proceed – court exercising discretion to postpone both the summary judgment and rule 30 proceedings to deal with both simultaneously – defendants ordered to pay the costs of the postponement.

REASONS

Cronjé AJ

[1] The application for summary judgment came before me on 26 March 2026. After submissions were made by the legal representatives for the parties, I erred on the side of caution and granted a postponement of the application. The order I made reads:

‘IT IS ORDERED THAT:

[1] The summary judgment is postponed to 30 April 2026.

[2] The Rule 30 proceedings and the summary judgment will be heard concurrently on 30 April 2026.

[3] Heads of Argument in respect of both applications to be served in terms of the Practice Directives of this court.

[4] The first and second defendants to pay the costs of the postponement jointly and severally, on scale B.’

[2] On 14 April 2026, the defendants filed a Notice in terms of Rule 49(1)(c) of the High Court Rules requesting that I furnish the reasons for the cost order. To address the request, a summary of the matter's history is apposite. This was to some extent already placed on record during the arguments presented by the legal representatives.

[3] The plaintiff served an application for summary judgment on the attorneys of the defendants on 8 December 2025 and on 9 December 2025 filed it at court. The defendants served their opposing affidavit on 16 January 2026 and filed it at court on 20 January 2026. On 21 January 2026, the plaintiff filed a notice to remove the summary judgment application from the roll after the defendants had served and filed their opposing affidavit.

[4] On 17 March 2026, the plaintiff served a notice of set down of the application on the defendants, and the notice was filed with the court on 18 March 2026. The plaintiff served its practice note and heads of argument on the defendants on 18 March 2026. On 20 March 2026, the date upon which the defendants had to file their practice note and heads of argument in accordance with the rules of this Court, the defendants elected to file a Notice in terms of Rule 30, which was served on the plaintiff's attorneys on the same date.

[5] In the notice, the defendants states that the delivery of the notice of set down constitutes an irregular step in that the plaintiff elected to abandon its application for summary judgment by unambiguously granting leave to the defendants to defend the action after careful consideration (of what I assume the plea and opposing affidavit), and that the defendants shall be unduly prejudiced by incurring unnecessary costs in arguing a summary judgment application in respect of which leave to defend was granted. The plaintiff was afforded the opportunity to remove the cause of complaint within ten 10 days from the date of delivery of the notice, failing which the defendants would apply to have it set aside as an irregular step.

[6] On 26 March 2026, the plaintiff was represented by Mr R van der Merwe and the defendants by Mr E Lubbe. Mr van der Merwe submitted that the rule 30 notice is an abuse of process. Summary judgment is expeditious. He referred to *Le Bonheur Wine Estate (Pty) Ltd v Stellenbosch Vineyards (Pty) Ltd (Neethling and Another as Third Parties)*,¹ where it was held:

‘[31] Rule 30(3) empowers a High Court to set aside a "proceeding or step" which, in the court's opinion, is "irregular or improper". It is trite law that rule 30 may only be invoked when a complaint relates to an irregularity in the form of a proceeding or step taken, rather than in relation to a matter of substance (see *Singh v Vorkel* 1947 (3) SA 400 (C) at 406 [also reported at [1947] 1 All SA 72 (C) – Ed]; *Odendaal v De Jager* 1961 (4) SA 307 (O) at 310F–G’.

¹ *Le Bonheur Wine Estate (Pty) Ltd v Stellenbosch Vineyards (Pty) Ltd (Neethling and another as Third Parties)* [2025] JOL 69172 (WCC).

[7] He submitted that the rule 30 notice can be summarily dismissed. If the rule 30 does not apply, a court is entitled to make a finding and hear the matter on the merits. The notice is an abuse of process, and if the matter is postponed, the defendants should pay the wasted costs on scale B.

[8] Mr Lubbe submitted that the set down is irregular and the time within which the plaintiff has to cure the irregularity has not expired. He submitted that letters were exchanged between the parties and that hearing the application would constitute an irregular step. Those letters were not before me, and I could not consider documents outside the papers that were before me. He implored me to dismiss the summary judgment application or postpone the application and the rule 30 proceedings, and that the plaintiff should pay the costs of the postponement on attorney-and-client scale.

[9] Mr van der Merwe replied that rule 30 does not relate to substance by procedure. The practice note and heads of argument were already filed, and costs incurred. The belated filing of the notice, if the court is inclined to grant the defendants' request, has resulted in wasted costs, and the defendants should therefore pay.

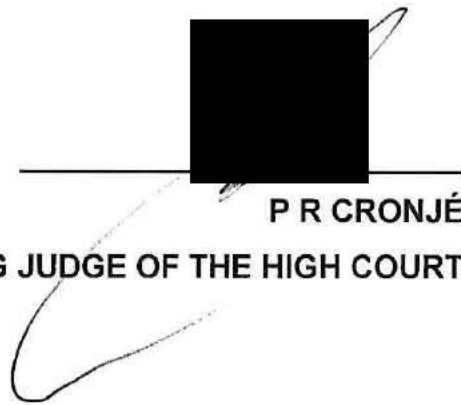
[10] Having heard the submissions of Mr van der Merwe and Mr Lubbe, I was inclined to deal with the summary judgment application. However, in order to keep the door open to the defendants to present an argument on the summary judgment application or to make submissions in respect of the applicability of rule 30, I made the cost order aforesaid.

[11] It is trite that a plaintiff is *dominus litis* in respect of the proceedings. The rules are designed to ensure orderly litigation unless good grounds exist not to comply with them. This is notwithstanding that the rules are for the court and the court not for the rules. When I perused the notice and bearing in mind the formulation

of paragraph 1.1 thereof, I could not find support for the argument that merely granting a defendant an opportunity to defend a matter implies that a plaintiff will not proceed with summary judgment. The rules provide that upon service of a summons, a defendant may elect to file a notice of intention to defend and a plea. Thereafter, a plaintiff may elect to launch summary judgment proceedings upon which the defendant then may file an opposing affidavit. This is what happened in the matter.

[12] I could therefore not find any reason why the defendants could not file a practice note and heads of argument but rather elected to file the notice. I reluctantly granted a postponement of the matter, notwithstanding that a substantive application for postponement was not filed.

[13] In view of the papers that were before me and the arguments, I was of the view that it would be in the interest of justice and fairness that the order I made be granted and that the defendants pay the wasted costs.



P R CRONJÉ
ACTING JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:

R Van der Merwe

Instructed by:

EG Cooper Majiedt Inc,
Bloemfontein

For the first defendant:

E Lubbe

Instructed by:

Green Attorneys,
Bloemfontein.