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**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 2605/2024

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

18/05/2026
Date

Signature

In the matter between:

FREDERICK GRANGER
CATHARINA MARIA GRANGER

FIRST APPLICANT
SECOND APPLICANT

And

PAUL JN STEYN
TRUDIE GM STEYN

FIRST RESPONDENT
SECOND RESPONDENT

DELIVERED:

18 MAY 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 18 MAY 2026 at 16:00.

Date heard:

13 MAY 2026

Coram:

NGOBENI J

JUDGMENT

NGOBENI J

[1] This is an application for the setting aside of the respondents' Combined Summons and Particulars of Claim filed under this case number, being 2605/2024 as an irregular step. The applicants also seek condonation in terms of Rule 27(1) for the late filing of this application. The application is opposed by the respondents.

[2] The factual background of this case must be outlined for this application to be understood. The applicants and the respondents entered into a written agreement for the sale of an immovable property by the respondents to the applicants on 21 January 2022 for an amount of

R1 200 000-00 (One million two hundred thousand rand). The address of the said property is Erf 1[...], S[...] Close, Extension 5, Leeupoort, Vakansiedorp, Limpopo (property).

- [3] The property is held under deed of transfer number T[...]. The building plan that was provided to the applicants is not approved by the necessary authority and the house was not built according to the specification of the plan. Upon taking occupation of the property, the applicants allege that they discovered latent defects on that property which the respondents did not tell them about. The applicants also allege that had they known about those defects they would not have bought the property, because the house is actually not good for habitation.
- [4] The applicants as a result of the alleged latent defects on the property, issued summons under case number 923/2023 from this court against the respondents with the date of issue reflected on the date stamp of the registrar clerk as 06 February 2023, for the refund of the purchase price and for the property to be returned to the respondents. The respondents filed a plea with the registrar clerk on 17 May 2023. The oral submissions in court by the applicants is that the respondents after filing a plea, asked for consent or permission from the applicants to file a counterclaim, which request was refused by the applicants.

[5] The respondents then issued summons which were allocated this case number under which this application is being made, being 2605/2024, and raised the issuing of summons under this case number as an irregular step, and the view of the applicants is that when they refused to give the respondents consent to file their counter-claim, they should have brought an application before court for such leave to be granted if the court would have so found. That is what brought about this application, in which the applicants apply to the court to declare the summons issued by the respondents to be an irregular step in terms of rule 30(2)(b).

[6] In issue between the parties is indeed whether the issuing of summons against the applicants is an irregular step, or a right which any litigant is at liberty to pursue. The applicants filed this application four days late and their submission is that they were granting the respondents an opportunity to remove the cause of complaint, which they did not remove. The court therefore has to first decide as to whether the court can condone the late filing of this application or not. It remains significant in this case that the applicants must show the court good cause as to why was the application filed out of time, and the court must also consider prejudice that might be suffered by the respondents if such condonation is granted.

- [7] Rule 27 deals with the Extension of Time and Removal of Bar and Condonation. Rule 27(1) reads as follows:

27 Extension of Time and Removal of Bar and Condonation

"(1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these Rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step-in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet".

- [8] The good cause to be shown entails the following requirements: first, that the applicant's affidavit should provide a full explanation of the default so that the court may assess the explanation. Secondly, the court should be satisfied from the affidavit that the applicant has a *bona fide* defence. Thirdly, that the grant of the indulgence would be compensated by an order of cost, or alternatively that the granting of the indulgence will not prejudice the opposing party¹.

¹ Showrooom Centre (PTY) LTD & Others and Ronald Kagan (54023/2021) [2024] ZAGPJHC 101 (8 February 2024); Colyn v Tiger Food Industries Limited t/a Meadow Feed Mills (Cape) 2003 (2) ALL SA 113 (SCA), Du Plooy v Anwes Motors (EDMS) Bpk 1983 (4) SA 212 304 (C) at 217H, Dalhouzie v Bruwer 1970 (4) SA 566 (C) at 572A.

[9] The Constitutional Court (CC) gave guidance on what the courts have to consider when dealing with condonation applications. In the cases of *Grootboom v National Prosecuting Authority and Another*² and *Brummer v Gorfil Brothers Investments (Pty) Ltd*³, the court held that if it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The court went further to say that the interests of justice must be determined by reference to all the relevant factors, including the nature of the relief sought, the extent and cause of the delay, the nature and cause of any other defect in respect of which condonation is sought, the effect on the administration of justice, prejudice and the reasonableness of the applicant's explanation for the delay or defect.

[10] Cases are brought before the courts because the litigants want issues to be resolved. It is also desirable that litigation is not protracted unnecessarily because that is costly for the litigants. It is not only costly financially, but emotionally as well because of not being certain of the outcome until the court pronounces. I have not been shown actual prejudice that the respondents may suffer if the court allows that this matter be proceeded with. In the result I find that the interests of justice do permit that this matter be dealt with so that we can move towards finality, and in the result condonation for the late filing of this application

² (2014) 1 BLLR 1 (CC).

³ 2000 (5) BCLR 465 (CC).

is granted. I see no reason why the applicants should be mulcted with costs, as I found their explanation to be reasonable and no prejudice was suffered by the respondents because of the four-day lateness period.

[11] I now turn to the complaint that has been raised by the applicants which is based on provisions of Rule 24 which reads as follows:

24 Claim in Reconvention

“(1) A defendant who counterclaims shall, together with his plea, deliver a *claim in reconvention setting out the material facts thereof in accordance with rules 18 and 20 unless the plaintiff agrees, or if he refuses, the court allows it to be delivered at a later stage. The claim in reconvention shall be set out either in a separate document or in a portion of the document containing the plea, but headed 'Claim in Reconvention'. It shall be unnecessary to repeat therein the names or descriptions of the parties the proceedings in convention.*

(2) *If the defendant is entitled to take action against any other person and the plaintiff, whether jointly, jointly and severally, separately or in the alternative, he may with leave of the court proceed in such action by way of a claim in reconvention against the plaintiff and such other persons, in such manner and on such terms as the court may direct.*

- (3) *A defendant who has been given leave to counterclaim as aforesaid, shall add to the title of his plea a further title corresponding with what would be the title corresponding with what would be the title of any action instituted against the parties against whom he makes claim in reconvention, and all further pleadings in the action shall bear such title, subject to the proviso to subrule (2) of Rule 18.*
- (4) *A defendant may counterclaim conditionally upon the claim or defence in convention failing.*
- (5) *If the defendant fails to comply with any of the provisions of this rule, the claim in reconvention shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30".*

[12] The applicants did not grant consent to the respondents to file their counterclaim out of time. It is common cause that the respondents did not approach the court to apply for such leave. It is so that upon reading the provisions of rule 24 (2) the respondents may have approached the court for such leave, but they chose not to. They instead instituted action against the applicants, as they allege, on the same issues as in the summons of the applicants. The summons issued by the respondents in this case are not attached, and as a result I am unable to comment whether the issues and the parties are the same or not.

[13] Whether the summons of the respondents is attached to this application or not, mine is to decide whether it is an irregular step to issue that summons. Van Loggerenburg, in Erasmus Superior Court Practice, Volume 2, second edition, opines as follows on rule 24(2), that the defendant would be entitled to take action against those mentioned in the rule if:

"(a) he is eligible in law to institute action against the persons contemplated in the rule; and

(b) they are eligible in law to be sued"

[14] Mbenenge JP, in *Mzontsundu Trading (Pty) Ltd and Another v Lavelikhwezi Investments (Pty) Ltd and Another*⁴, found that nothing prevents the respondents from pursuing a claim against the applicants in a separate action where the respondents delivered a notice to amend a counter-claim in an action that had been determined. Mbenenge JP relied on the judgment of the Supreme Court of Appeal in *Soil Fumigation Services Lowveld CC v Chemfit Technical Products (Pty) Ltd*⁵, where on paragraph 11 the court said the following:

"[11] ... Even where summary judgment has been granted for that part of the claim that would be extinguished by the counter-claim, the defendant can still pursue the counter-claim by issuing summons in a separate action"

⁴ (3996/19) [2021] ZAECMHC 44 (7 December 2021).

⁵ 2004 (6) SA 29 (SCA).

[15] In the case at hand the respondents instituted a new action under a different case number from which they were initially sued. This application was brought under that new case number which the intervention of this court is sought. I have already referred to case law that shows that it is permissible to pursue an action in another case even though other issues might have been decided in another case. I therefore find that the respondents are not precluded to pursue a case even though other issues in that case might have been pursued in another case. I believe that under the circumstances the applicants will then follow the normal pleadings procedures and raise whatever issues that they have with the proceedings or action which the respondents initiated in their pleadings.

[16] It is of course desirable that issues involved in one case be determined holistically without duplication in order to save costs and the risk of multiple judgments which might even differ for the same issues, but in different cases. I therefore find that the respondents cannot be prevented from pursuing an action, even though the action might be arising from the same issues as in the case that was initially pursued by the applicants. The applicants cannot be said to be frivolous in bringing this application, because their cause for concern has merit in it. I have already said that one of the reasons why it is desirable that issues

involved in the same case be decided together, is to save costs. The road is still long for the litigants in this case as I project. It is for that reason that I will in this application order that each party bear its own costs.

[17] In the result the following order is made:

- (i) the application in terms of rule 30(2)(b) is dismissed,
- (ii) each party to bear its own costs.

J.T. NGOBENI

Judge of the High Court

APPEARANCES

For the applicants:

Adv. Mashudu Shiburi

Instructed by:

JV Rensburg Kinsella Inc Attorneys

For the respondents:

Adv. F. Van Vyck

Instructed by:

AB Lowe Attorneys

Date of hearing:

13 May 2026

Date of judgment:

18 May 2026

POLOKWANE HIGH COURT