REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION JOHANNESBURG

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
11/05/2026	[redacted]
DATE	SIGNATURE

Case Number: 2024/000697

In the matter between:

GARY SKINNER NO Plaintiff/Respondent

versus

DEREK ASHLEY HARRISON First Defendant/Applicant

JACQUELINE SYLIVIA SKINNER Second Defendant

JUDGEMENT IN AN APPLICATION IN TERMS OF RULE 30 (1)

LIPHOTO AJ

1. This is an application in which the Applicant/First Defendant ("First Defendant") is seeking for an order in the following terms against the Respondent/Plaintiff ("the Plaintiff"):

   1.1. setting aside the Plaintiff's amended particulars of claim dated 20/06/2024.

   1.2. costs of the application.

   1.3. further and/or alternative relief.

BACKGROUND FACTS

2. On the 15/06/2010 at Alberton Gauteng Mr. Grant Percy Skinner ("the Deceased"), Mr. Derek Ashley Harrison ("the First Defendant") and Ms. Constance Grace Skinner all acting in their respective personal capacities at the time, executed and registered a deed of Trust for the benefit of Tanya Louise Skinner.

3. In terms of the Deed of trust, the name of the trust would be; the Skinner Family Trust.

4. The Deceased, the First Defendant and Constance Grace Skinner would be trustees of the Skinner Family Trust.

5. On the 05/04/2022 Judge Dippenaar in this Court granted an order in which Gary Skinner ("the Plaintiff") was appointed as the *curator bonis* to the patient named Tanya Louise Skinner, the beneficiary in the Skinner Family Trust.

COURT PROCEEDINGS

6. On/or around 09/01/2024 the Plaintiff issued summons against First Defendant and Ms Jacqueline Sylvia Skinner N.O in her capacity as the executrix in the estate of the Deceased.

7. At paragraph 6 of the particulars of claim, the Plaintiff indicated that as a consequence of their appointment as trustees of the Skinner Family Trust, at all material times during the administration of the Skinner Family Trust, the Deceased and the First Defendant were under a fiduciary duty to Tanya Louise Skinner ("beneficiary") to:

7.1. ensure that the assets and affairs of the Skinner Family Trust were managed for the benefit of the beneficiary;

7.2. observe due care and diligence when managing the affairs of the Skinner Family Trust;

7.3. exercise their power in good faith, acting independently and objectively;

7.4. avoid a conflict between personal interests and official fiduciary duties;

7.5. act exclusively in the best interests and official fiduciary duties;

7.6. act exclusively in the best interests of the beneficiary; and

7.7. avoid making a profit, either directly or indirectly from the trust administration.

8. At paragraph 7 of the particulars of claim the Plaintiff alleges that the Deceased and the First Defendant concluded transactions which were not for the exclusive benefit of the beneficiary, but rather for their personal interests and/or profit making from the trust administration and/or with the intention of depleting the funds of the Skinner Family Trust as follows:

8.1. on the 30/07/2013, the Skinner Family Trust advanced a loan to itec South Africa to the sum of R 1000 000.00 (one million rand);

8.2. on/or about April 2017, immovable property described as ERF 3454 (held under Deed of title number T40044/2017) was purchased in the name of the Deceased, in the sum of R 290 000.00 (two hundred and ninety-thousand rand);

8.3. on the 31/05/2017, immoveable property described as sectional title unit SS River Drive Mews (Scheme number 108) was purchased in the name of Limosa Investments 321 (Pty) Ltd ("Limosa") in the sum of R 480 000.00 (four hundred and eighty thousand rand);

8.4. during October 2006, property located at 43 Elisabeth Eybers, Randhard Ext 2 was purchased in the name of Limosa in the sum of R 1 900 000.00 (one million, nine hundred thousand rand)

8.5. property located at Princestraat, Bloemfontein was purchased in the name of Limosa, in the sum of R 90 000.00 (ninety thousand rand)

8.6. on/or about 16/02/2016, immoveable property described as ERF 1760, Brackenhurst Ext 2 (held under Title number T17992/2026) was purchased in the name of the Deceased and the First Defendant, in the sum of R 2 835.000.00 (two million, eight hundred and thirty-five thousand rand)

8.6.1. the above purchases were made using funds belonging to the Skinner Family Trust.

8.6.2. the purchases above were not made for the exclusive benefit of the beneficiary, but rather for personal interests and/or personal profit making from trust administration and/or with the intention of depleting the funds of the Skinner Family Trust.

9. Under the heading '**disposal of the assets due to the beneficiary'** at paragraph 7.10 of the particulars of claim, it is alleged that, on the 03/07/2015 at Gauteng, one Edward Wallance Skinner and Constance Grace Skinner (each acting in their respective personal capacities) executed a joint will.

9.1. in terms of the joint will, inter alia, the residue of their estate would be bequeathed to the Skinner Family Trust No. IT2128/2010, for the following purposes and subject to the following conditions:

9.1.1. to utilise so much of the income and in need of the capital as the trustees in their sole discretion consider reasonable for maintenance, wellbeing and other benefits of the beneficiary who is their daughter.

9.1.2. to terminate the trust on the date of death of the beneficiary and all trust capital and any undistributed income would be distributed to their two sons Gary Skinner and Grand Percy Skinner.

9.2. Edward Wallance Skinner and Constance Grace Skinner demised and their respective estates were wound up.

9.3. on the 24/06/2016, immovable property described as ERF 132 Brakensdowns (held under deed of title number T38433/2016 forming part of the residue of their estate and which was due to the beneficiary, was sold for R1 350 000.00 (one million three hundred and fifty thousand rand).

9.4. the transaction as above was not concluded for the exclusive benefit of the beneficiary, but rather for personal interests and/or personal profit making from trust administration and/or with the intention of depleting the funds of the Skinner Family Trust.

10. At paragraph 10 under the heading **negligent breach of fiduciary duties** the Plaintiff in the alternative claims that, the First Defendant and the Deceased effected the above purchases of properties and granting of loan amount negligently and in breach of the fiduciary duties towards the beneficiary.

11. At paragraphs 11 of the particulars of claim, the Plaintiff alleges further that, a reasonable Trustee in the position of the Deceased and the First Defendant would have:
    11.1. observed a degree of care which a reasonable Trustee would have observed in the circumstances.
    11.2. taken steps to ensure that assets belonging to the Skinner Family Trust were preserved for the exclusive benefit and utilized for the exclusive benefit of the beneficiary.
    11.3. the Deceased and the First Defendant failed to act in a manner as aforesaid.
    11.4. as a result of the Deceased and the First Defendant negligent breach of the fiduciary duties, the funds of the Skinner family trust were unlawfully misappropriated.

12. In consequence of the aforesaid, the beneficiary suffered loss of benefits that would have been due to her in the sum of R 7 945 000.00 (seven million, nine hundred and forty-five thousand rand).

13. The Plaintiff then sought for an order in the following terms:
    13.1. payment in the sum of R 7 945 000.00 (seven million, nine hundred and forty-five thousand rand)
    13.2. interest on the aforesaid sum at a rate of 11.25% per annum from the date of service of summons to the date of payment in full.
    13.3. the First Defendant is removed from the office as the trustee of the Skinner family trust.
    13.4. the First Defendant is directed to forthwith return his letter of authority to the Master of the High Court Gauteng.
    13.5. costs of suit on an attorney-client scale from the First Defendant, in his personal capacity, and the late estate of Grand Percy Skinner (estate

number (071 454/2020) jointly and severally, one paying the other to be absolved.

14. On the 23/01/2024 the First Defendant filed an appearance to defend the action.

15. On the same day being the 23/01/2024 the First Defendant filed notice in terms of Rule 30A to the effect that the Plaintiff has failed to comply with Rule 17 (4) of the uniform Rules of Court in that, the Plaintiff has failed to set forth in the summons dated 09/01/2024 the Second Defendant residence or place of business.
    15.1. the Plaintiff was afforded a period of ten days to remove the cause of complaint failing which the First Defendant intends to apply for an order that the Plaintiff summons and particulars of claim be truck out.

16. On the 14/02/2024 the Plaintiff filed the notice of an intention to amend the particulars of claim in order to remove the complaint raised in the First Defendant Rule 30A notice.

17. On the 30/04/2024 the Respondent served the Applicant with the amended summons and particulars of claim dated 18/04/2024.

18. On the 03/05/2024 the First Defendant filed Rule 30 notice against the Plaintiff's amended combined summons and particulars of claim, dated 18/04/2024 and served on the 30/04/2024 that same constituted an irregular step in that:
    18.1. on 14/02/2024 the Plaintiff served the notice of intention to amend the combined summons and the particulars of claim in terms of Rule 28 *the dies* for the Defendant to object to the proposed amendment expired on 28/02/2024.
    18.2. in terms of Rule 28 (5) of the uniform Rules of Court, the Plaintiff was required, within 10 days from the expiry of the objection period (which expired on the 28/02/2024), to serve his amended combined summons and particulars of claim.
    18.3. the Plaintiff served his amended combined summons and particulars of claim on 30/04/2024, being more than 10 days after the expiration of the objection period.

18.4. having regard to the aforesaid, the Plaintiff amended combined summons and particulars of claim served on the 30/04/2024 constitute an irregular step.

18.5. the Plaintiff was afforded the 10 days to remove the cause of complaint.

19. On the 28/05/2024 the Plaintiff served the First Defendant with the notice to withdraw the amended summons and particulars of claim dated 18/04/2024.

20. On the same day being the 28/05/2024 the Plaintiff served the First Defendant with another notice of an intention to amend the summons and the particulars of claim.

21. The Plaintiff served the First Defendant with the amended summons and particulars of claim on the 20/06/2024.

22. The First Defendant filed another Rule 30 notice to the effect that, the Plaintiff's amended particulars of claim constituted an irregular step in that, it does not comply with Rule 18 (4), 18 (6) and 18 (10) for amongst other reasons the following:

22.1. failure to attach the Deed of Trust for the Skinner Family Trust

22.2. failure to state the nexus between the First Defendant and Limosa

22.3. failure to calculate how an amount of R 7 945 000.00 (seven million nine hundred and forty-five thousand rand) was computated.

22.4. in the circumstances the allegations advanced constitute factual conclusions, absent the underlying facts upon which the conclusion is premised.

22.5. in the circumstances the allegations advanced lack the particularity necessary in order to enable the First Defendant to, inter alia, plead thereto.

23. The Plaintiff did not remove the cause of complaint, and the First Defendant filed an application in terms of 30 (1) in which he asked the Court to set aside the Plaintiff's amended particulars of claim, as same constituted an irregular step.

24. The purported application in terms of Rule 30 (1) only consists of the notice of motion without the founding affidavit contrary to the provisions of Rule 6 (1).

25. The grounds for the application in terms of Rule 30 (1) appear on the notice of motion.

26. The Plaintiff in turn did not file the answering affidavit on the basis that, there was no founding affidavit.

27. The application in terms of Rule 30 (1) was served on the Plaintiff within the prescribed time frames, however it was not filed in court and/or uploaded on caselines timeously.

28. The First Defendant then filed an application for condonation for failure to timeously file and/or upload on caselines an application in terms of Rule 30 (1).

ISSUES FOR DETERMINATION

29. There are two issues for determination:

    29.1. whether the First Defendant met the requirements for an application for condonation?

    29.2. whether the Plaintiff's amended particulars of claim constitute an irregular step and whether same has to be set aside?

THE REQUIREMENTS TO BE SATIESFIED BY THE APPLICANT FOR AN APPLICATION IN TERMS OF RULE 30 (1) TO SUCCEED

30. In the case of **Blom and Another v NWK Limited (750/2021) [2024] ZANWHC 83 (20 March 2024) in which Peterson J** had this to say at paragraph 9 and 10 of the Judgement:

    " The uniform Rules seek to regulate (form) and not substance. Any complaint raised in terms of Rule 30 therefore speaks to an alleged procedural irregularity in the conduct of the litigation. It therefore follows axiomatically that if a Court finds that the procedural steps taken by a party were irregular, a Court is vested with wide powers to either set aside the proceedings in its entirety or in part or make any other order the Court may deem fit. The Order which will generally follow in applications of this nature, if the Court finds a particular step to be irregular, it affords the party against whom the complaint is raised an opportunity to remove the cause of complaint.

Rule 30 envisages that any irregular step complained of must cause prejudice to the party seeking to set it aside. It is accepted though, that if a procedural step may be found to be irregular but it presents no prejudice in the further conduct of the case to the party complaining thereof, there would be no need to set it aside. See **Trans-African Insurance Co Limited v Maluleke 1956 (2) SA 273 (A) at 276F-H".**

31. I have perused the First Defendant's purported application in terms of Rule 30 (1) more than once and I noticed that, there is no paragraph at all dealing with the issue of prejudice to be suffered by the First Defendant due to an alleged irregular step and on this ground alone this application must fail.

32. Coming the First Defendant's application for condonation, it is trite that an Applicant in an application for condonation must satisfy the Court of the three following requirements:
    32.1. good cause for failure,
    32.2. prospects of success in the main application, in this case it would be prospects of success in an application in terms of Rule 30 (1).
    32.3. that there is no prejudice to be suffered by the Respondent if the application for condonation is granted.

33. I have perused the First Defendant application for condonation and I noticed that, the First Defendant failed to deal with the issue pertaining to his prospects of success in an application in terms of Rule 30 (1). The First Defendant further failed to deal with the issue of prejudice likely to be suffered by the Plaintiff if the condonation application is granted. On these grounds alone the Plaintiff's application for condonation must fail.

DELAY IN THIS MATTER

34. The First Defendant's complaints raised in his Rule 30A notice and one raised in his Rule 30 Notice (irregular step for failure to comply with Rule 18) should

have been raised simultaneously as such complaints were in the Plaintiff's initial particulars of claim.

35. Raising these complaints one after the other has delayed this matter unnecessarily and also increased costs, such conducts must be avoided by the litigants at all costs.

36. The First Defendant did not object to the Plaintiff's intention to amend the summons and particulars of claim in terms of Rule 28 until 10 days' period for filing the objection had lapsed, which means in essence the amendment was effected. I therefore find the First Defendant conduct of filing an irregular step notice for the Plaintiff's failure to file amended summons and amended particulars of claim untenable, the First Defendant should have just written an email to the Plaintiff and requested him to file the same, his conduct of filing an irregular step notice delayed the matter and increased the costs unnecessarily and such conduct should be discouraged.

37. In the case of **Pasiya v standard Bank South Africa Limited (37159/2020) [2026] ZAGPPHC 182 (04 March 2026), Matlapeng AJ** had this to say at paragraphs 20 and 21 of the Judgement:

"with regard to uniform Rule 30 (1), this Rule allows a party to set-aside an irregular step which is complimented by uniform Rule 30 (2) (b) which impel an Applicant to deliver his notice of objection, within 10 days (Ten) days from becoming aware of the irregularity.

The Rule requires prompt action and no further step to be taken with the knowledge of the irregularity by the party who must ***demonstrate prejudice***".

38. At paragraphs 28 to 31 the Learned Judge continued to say: The Applicant failed to bid the Court to grant him condonation for the Rule 30 application. **Litigation is not a tactical game of delay**. **The uniform Rules exist to secure the expeditious and inexpensive resolution of disputes.**

It is so that the uniform Rule 30 procedure, is not designed as a shield for dilatory litigants. It exists to remove procedural hindrances and not to

manufacture them.

The Applicant's conduct, demonstrates an attempt to avoid joining issue in the merits while exploiting technicalities long after the time for raising them has since expired.

Such conduct, is inconsistent with the duty of litigants to assist the Court in the proper administration of justice. There is no prejudice that has been demonstrated by the Applicant on the facts before the Court".

39. At paragraph 38 of the Judgement Matlapeng AJ continued to say: "in sum, there is no prejudice demonstrated and the application is fatally defective and devoid of merit".

    39.1. at paragraph 40.1 the Court dismissed the application with costs.

<u>CONCLUSION</u>

40. I have already indicated that the First Defendant's application in terms of Rule 30 (1) must fail.

41. I also indicated that the First Defendant's application for condonation must fail.

42. I further found that the First Defendant delayed this matter as indicated above.

43. I therefore make an order in the following terms:

    43.1. the First Defendant's application in terms of Rule 30 (1) is dismissed.

    43.2. the First Defendant's application for condonation is dismissed.

    43.3. the First Defendant is ordered to pay costs on scale B.

[redacted]

L LIPHOTO

ACTING JUDGE OF THE HIGH COURT,

GAUTENG LOCAL DIVISION JOHANNESBURG

On behalf of the First Defendant/Applicant: Adv D L WILLIAMS

Instructed by:	Malherbe Rigg & Ranwell INC
On behalf of Plaintiff/Respondent:	Adv N FELGATE
Instructed by:	Jailall & Associates
Date of Judgment:	11 MAY 2026