

**REPUBLIC OF SOUTH AFRICA**

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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 2023-070478**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED: <del>YES</del> /NO	
<hr/> CB GARVEY AJ	29 MAY 2026

In the matter between:

<b>SUNIL GENESS</b>	<b>APPLICANT</b>
and	
<b>THE MELROSE RATEPAYERS ASSOCIATION</b>	<b>FIRST RESPONDENT</b>
<b>THE CITY OF JOHANNESBURG</b>	<b>SECOND RESPONDENT</b>
<b>MELROSE SPORTS AND RECREATION CLUB NPC</b>	<b>THIRD RESPONDENT</b>

In re:

<b>THE MELROSE RATEPAYERS ASSOCIATION</b>	<b>APPLICANT</b>
and	
<b>THE CITY OF JOHANNESBURG</b>	<b>FIRST RESPONDENT</b>
<b>SUNIL GENESS</b>	<b>SECOND RESPONDENT</b>
<b>MELROSE SPORTS AND RECREATION CLUB NPC</b>	<b>THIRD RESPONDENT</b>

*This judgment is handed down by the Judge whose name is reflected herein, and is submitted electronically to the parties or their legal representatives by email. It is further uploaded to the electronic file of this matter on CaseLines. The date of hand-down is deemed to be 29 May 2026.*

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**ORDER**

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1. The joinder of the third respondent, the Melrose Sports and Recreation Club NPC, to the main application by way of the first respondent's amended notice of motion dated 4 March 2024, is set aside as an irregular step in terms of rule 30.
2. The first respondent shall pay the costs of the application.

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## JUDGMENT

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### **GARVEY AJ**

#### *The parties*

- [1] The applicant is Mr Sunil Geness. He is the second respondent in the main application.
- [2] The first respondent is the Melrose Ratepayers Association ("*the MRA*"). It is the applicant in the main application.
- [3] The second respondent is the City of Johannesburg ("*the City*"). It took the decision under review. It took no part in this application.
- [4] The third respondent is the Melrose Sports and Recreation Club NPC ("*the MSRC*"). It is the party the MRA seeks to join. Its joinder is the subject of this application.

#### *Introduction*

- [5] This is an application in terms of rule 30. The applicant seeks to set aside the joinder of the MSRC as an irregular step.
- [6] The MRA attempts to effect the joinder by an amended notice of motion delivered under rule 53(4). The applicant says rule 53(4) does not permit the joinder of a party. For the reasons that follow, I agree.

#### *Background*

- [7] The main application is in two parts. Part A seeks interim interdictory relief. Part B is a review under rule 53.
- [8] In Part B the MRA seeks to review and set aside a decision of the City. The decision granted usage rights over a portion of erf 1[...] M[...] E[...], known as the M[...] B[...] C[...].
- [9] The MRA launched the application on 18 July 2023. The applicant opposed it. He delivered his answering affidavit in Part A on 21 November 2023. The MRA replied on 16 January 2024.
- [10] On 19 January 2024 the City dispatched the record under rule 53(1)(b). The record indicated that the rights had been granted to the MSRC.
- [11] On 4 March 2024 the MRA delivered an amended notice of motion and a supplementary affidavit. It relied on rule 53(4). It sought to join the MSRC as third respondent. The proposed amendment was directed at both Part A and B.
- [12] The applicant objected. On 27 March 2024 he delivered a notice in terms of rule 30. He gave the MRA the opportunity to remove the cause of complaint. The MRA did not do so. On 6 May 2024 the applicant launched this application.
- [13] The MRA opposes the application. It contends that rule 53(4) entitles it to join the MSRC as of right.

*The competing contentions*

- [14] The applicant's case is short. Rule 53(4) permits an applicant to amend, add to or vary the terms of its notice of motion and to supplement its affidavit. It does not permit the joinder of a new party. The proper course, he says, is an application for joinder.

[15] The MRA's case is that rule 53(4) operates as of right. It says the rule entitles it to join a party disclosed by the record, without an application to join. It says rules 10 and 28 have no application in the context of rule 53(4).

*Rule 53(4)*

[16] Rule 53(4) provides:

*"The applicant may within 10 days after the registrar has made the record available to the applicant, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of such applicant's notice of motion and supplement the supporting affidavit."*

[17] The rule must be read according to its terms. It permits three things. The applicant may amend the notice of motion. It may add to or vary the terms of that notice. It may supplement the supporting affidavit.

[18] Each of these acts is directed at the applicant's own papers. The rule speaks of the terms of the notice of motion and of the supporting affidavit. It says nothing of parties. It does not mention joinder.

[19] To "add to" the terms of a notice of motion is to add to the relief sought or the grounds advanced. It is not to add a party. The language does not carry that meaning.

[20] The purpose of the rule confirms the construction. Rule 53(4) exists to spare a review applicant the expense and delay of an amendment once the record is to hand. It allows the applicant to refine its own case considering the record. It is a facility for amendment. It is not a mechanism for joinder.

[21] The joinder of a party raises different considerations. The party to be joined must be given notice. It must be allowed to resist its joinder. It must be allowed to object to an amendment. A direct and substantial interest must be shown. Rule 53(4) provides for none of this. A joinder effected under it bypasses these protections.

[22] On a proper construction and interpretation, rule 53(4) cannot be extended to amend to add or join a party. The first respondent's reliance on it for that purpose is misguided.

[23] I am fortified in this view by *Pine Glow Investments (Pty) Ltd v Minister of Energy and Others* (3525/2020) [2021] ZAMPMBHC 5 (22 January 2021). There the applicant sought to use rule 53(4) to amend Part A of a notice of motion, which fell outside the review under Part B. The court held that rule 53(4) is designed for reviews. It held that the amendment fell outside the rule and that the proper procedure lay elsewhere. It held that the objection under rules 30 and 30A was correctly taken, and that costs should follow that result.

[24] The principle applies here. Rule 53(4) is confined to its purpose. It cannot be stretched to do work for which it was not designed. The joinder of a party is such work.

#### *The proper procedure*

[25] The procedure for joining a party in application proceedings is rule 10. By virtue of rule 6(14), the provisions of rule 10 apply to applications. A party seeking joinder must show that the party to be joined has a direct and substantial interest in the matter. The party to be joined must be afforded the opportunity to be heard.

[26] The MRA may well have grounds to join the MSRC. The record suggests that the MSRC holds the rights in issue. But that is a matter for an application to join the MSRC to the current matter. No such application is before me. I am not called upon to decide whether the MSRC should be joined.

#### *Rule 30 and rule 30A*

[27] Rule 30 allows a party to apply to set aside an irregular step. Rule 30A provides a remedy for non-compliance with the rules.

[28] The use of rule 53(4) to join the MSRC was a non-compliance with the rules. It was a step taken in disregard of the rules that govern joinder. The applicant and the MSRC, were denied the protections that a joinder application affords.

[29] The applicant followed the procedure laid down in rule 30. Notice was given and the MRA was afforded the opportunity to remove the complaint within the time allowed. The MRA did not.

[30] The rule 30 objection was properly taken. The joinder of the MSRC by way of amendment is irregular within the meaning of rule 30A read with rule 30. It falls to be set aside.

#### Costs

[31] Costs follow the result. The applicant has succeeded. There is no reason to depart from the ordinary rule. The first respondent will pay the costs of the application.

[32] In the result, the following order is made:

1. The joinder of the third respondent, the Melrose Sports and Recreation Club NPC, to the main application by way of the first respondent's amended notice of motion dated 4 March 2024, is set aside as an irregular step in terms of rule 30.
2. The first respondent shall pay the costs of the application.

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**C B GARVEY  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION  
JOHANNESBURG**

Date of hearing: 18 March 2026  
Date of judgment: 29 May 2026

## **Appearances**

For the applicant:

Adv B D Stevens  
instructed by Morgan Law Inc

For the first respondent:

Adv K Reddy  
instructed by Shirish Kalia Attorneys