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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case no: 2025-052719

In the matter between:

TERESA KLEIN

Applicant

and

MARK NEWTON

Respondent

In re: the matter between

MARK NEWTON

Plaintiff

and

TERESA KLEIN

Defendant

Neutral citation: *Klein v Newton; Newton v Van Zyl* (Case no 052719/2025) [2026] ZAWCHC (22 June 2026)

Coram: LOUW AJ

Heard: 12 May 2026

Delivered: Electronically on 22 June 2026

Summary: Rule 30 application concerns the setting aside of alleged irregular steps taken by the respondent, with the applicant also seeking condonation for non-compliance with Rule 30(2) – Improper service of the summons and inadequate particulars of claim – Service of summons was irregular, as it was affixed to a property where the applicant neither resided nor worked, contrary to the rules applicable to natural persons, and was also emailed without authority solely to avoid prescription – The non-compliance was not condoned, and the defective service and cause of action were set aside as irregular steps.

ORDER

1. Condoning the late filing of this application.
2. That the Respondent's/Plaintiff's action application (the summons and particulars of claim) be set aside in its entirety as an irregular step in terms of Rule 30.
3. No cost order is made with each party to carry their own costs.

JUDGMENT

Louw AJ:

Introduction

[1] The applicant, Ms Teresa Klein, filed an application in terms of Rule 30 of the Uniform Rules for the setting aside of an irregular step taken by the respondent, Mr Mark Newton, in action proceedings pending before court, which is opposed (main proceedings). Furthermore, Ms Klein did not strictly comply with the time periods prescribed in Rule 30(2)¹ and accordingly seeks the court's indulgence to condone her non-compliance.

[2] The main matter before this Court concerns action proceedings for the recovery of a debt allegedly owed by Ms Klein to Mr Newton, arising from monies advanced under a verbal credit agreement concluded

¹ Rule 30(2) provides that an application to set aside an irregular step may be brought where:

- a) the applicant has not himself or herself taken a further step in the cause with knowledge of the irregularity;
- b) the applicant has, within 10 days of becoming aware of the step, by written notice afforded his or her opponent an opportunity of removing the cause of complaint within 10 days;
- c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of sub-rule (2).

several years ago, with advances dating back to 2018, and repayable on demand. Mr Newton sent a formal and written demand for the repayment of all monies loaned to Ms Klein on 13 March 2025, and accordingly issued the summons on 16 April 2025. For ease of reference and to simplify the discussion, the parties will be referred to throughout as Mr Newton (or the creditor) and Ms Klein (or the debtor).

[3] This application arises from two alleged fundamental procedural defects in the action proceedings instituted by Mr Newton against Ms Klein. The first pertains to the service of the summons, and the second to the adequacy of the pleadings.

[4] As regards the first defect, it is contended that the summons was improperly served. The return of service reflects that, on 16 April 2025, the summons was affixed to the gate of immovable property that was neither Ms Klein's residence nor her chosen *domicilium citandi et executandi*. In doing so, Mr Newton's attorneys appear to have relied on Rule 4(1)(a)(v) applicable only to juristic persons. This was followed by an attempt to transmit the summons by email to Ms Klein's attorney, notwithstanding the absence of any authority permitting service in that manner.

[5] The second defect relates to the particulars of claim, which are alleged to be non-compliant with Rule 18(4). Mr Newton relies on an alleged long-running verbal agreement, but fails to plead its essential terms or sufficient factual detail. No repayment timeframe is alleged, and although a breach is claimed, the particulars do not show how Ms

Klein was placed *in mora*. It is consequently contended that the cause of action is inadequately formulated, rendering the particulars vague and embarrassing, and preventing Ms Klein from reasonably pleading thereto or properly defining the issues in dispute. Mr Newton opposes the application before this Court, contending that no procedural defects arise in respect of either the service of the summons or the formulation of his claim, and seeks its dismissal.

- [6] Furthermore, Ms Klein did not strictly comply with the time periods prescribed in Rule 30(2) and also seeks this Court to accept her explanation for non-compliance with the set periods prescribed.

Factual background

- [7] Mr Newton and Ms Klein concluded a verbal credit agreement during 2018 spanning over several years in terms of which Mr Newton would dispense monies to Ms Klein at different times and in different amounts. The amounts due were apparently payable on demand. The nature of the relationship between the parties was not clarified to the court, but it is common cause between the parties that the National Credit Act² did not apply to the loan agreement.

- [8] On 13 March 2025, Mr Newton, through his attorneys, Frank Holland & Associates, demanded repayment from Ms Klein of the full loan amount of R664 654.00, together with interest thereon at the prescribed legal rate, with effect from 11 April 2022, the latter date

² Act 34 of 2005.

being the date upon which Mr Newton first called for the repayment of the loan made to Ms Klein. The formal letter of demand in paragraph 2 thereof states that Ms Klein confirmed and admitted to her liability on 14 April 2022. However, the date differs from that in the particulars of claim in the action proceedings where it is stated in paragraph 5 that Ms Klein acknowledged the liability on 19 April 2022. Reference is also made to an email sent by Ms Klein on or about 19 April 2022, in which she acknowledges her indebtedness to Mr Newton (“acknowledgement of debt”).³ There are thus two different dates on which the alleged acknowledgement of debt was made, and it is not common cause between the parties that the email message constitutes such an acknowledgement. However, nothing turns on these aspects for purposes of the matter before this Court.⁴

[9] Ms Klein instructed her attorneys at the time, Schoeman Law Inc, to respond to the attorneys of Mr Newton. It is common cause that these attorneys assisted her with the letter of demand. Ms Klein did not repay the amount claimed. So subsequently, Mr Newton’s attorney issued a summons on 16 April 2025 for R779 075.40. The formal letter of demand claimed payment of R664 654.00, together with interest at the prescribed legal rate, whereas the subsequent summons that followed reflected an increased claim of R779 075.40. An email dated 3 April 2025, compiled by Mr Newton’s attorneys, sets out the amounts allegedly owed and provides an explanation for the higher

³ See para 7.3 of the answering affidavit in these action proceedings and attached thereto as annexure DJH2; and para 5 of the particulars of claim in the main action proceedings and marked as Annexure FA8 to the founding affidavit in the application proceedings before this Court and found in the Court Index at page 42.

⁴ See the letter of demand marked Annexure FA5 to the founding affidavit in the application proceedings before this court and found in the Court Index at page 38.

amount subsequently claimed in the summons. The summons further provides for interest on the amount of R779 075.40, ‘calculated at the prescribed legal rate a *tempore morae* to the date of final payment’.

[10] The summons was served on 16 April 2025 by affixing it to the gate of a property owned by Ms Klein in Camps Bay. The property was neither Ms Klein’s residence nor her chosen *domicilium citandi et executandi*. The sheriff of the court only served the summons once and it was a one-day service offered. The property to which gate the summons was affixed is used as a rental property and available for short-term rent like an Airbnb. Apparently, the property has been rented out in this manner since December 2023 to date.

[11] The attorneys of Mr Newton then proceeded to also email the attorneys that had assisted Ms Klein with the letter of demand, namely Schoeman Law Inc, a copy of the summons on 17 April 2025. On 24 April 2025, Schoeman Law Inc advised Mr Newton’s attorneys that, although they had received the summons via email, it had not been properly served. They indicated that no person at the service address had accepted service on Ms Klein’s behalf, and that they had neither consented to service by email nor agreed to accept service of the summons on her behalf. They further stated that they would inform Ms Klein accordingly, take instructions, and revert.⁵

⁵ See the email correspondence marked Annexure FA3 to the founding affidavit in the application proceedings and found at the Court Index at page 36.

[12] Mr Newton's attorneys responded to this email, dated 24 April 2025 by expressly stating that they confirm that the summons was served by affixing a copy to the front gate of said property, but added that '[s]uch became necessary in respect of the impending date of prescription'.⁶ They further added that they acknowledged that the attorneys to whom the summons was emailed did not have instructions to receive service on Ms Klein's behalf and that the email of the summons was 'merely a courtesy' and would ask for condonation for the manner of service if necessary.⁷

[13] After receiving the summons via email, Schoeman Law Inc, subsequently also contacted their former client, Ms Klein, on 24 April 2025 and informed her of the summons they received and the summons that was affixed to her rental property in Camps Bay. The attorneys were then later formally appointed to represent Ms Klein during court proceedings.

[14] In the meantime, Mr Newton proceeded to continue with the action proceedings, and it was initially on the unopposed roll, whereafter the matter became opposed. In the particulars of claim⁸ in the action proceedings only the following facts are provided:

'3. In and during 2018, and at Cape Town, Plaintiff [Mr Newton] and Defendant [Ms Klein] entered into an oral agreement whereby Plaintiff lent and advanced the total sum of R779 075.40 to Defendant between the

⁶ See the email correspondence marked Annexure FA4 to the founding affidavit in the application proceedings and found in the Court Index at page 37.

⁷ *Ibid.*

⁸ See Annexure FA8 to the founding affidavit in the application proceedings and found in the Court Index at page 42.

period August 2018 to August 2019, and at the Defendant's special instance and request.

4. No time was stipulated in the agreement when repayment of the loaned monies had to be effected.
5. On or about 19 April 2022, Defendant, in response to Plaintiff calling for repayment of the capital loan amount, admitted her liability in respect of the capital loan amount due and owing to Plaintiff, yet failed to make payment.'

Ms Klein opposed the proceedings and afforded Mr Newton 10 days to remove the causes and intention and to amend the particulars of claim, but he failed to do so.

[15] Ms Klein entered an appearance to defend despite the summons not being found at the service address, to avoid default judgment and preserve her right to challenge procedural irregularities. She filed her notice of intention to defend on 6 May 2025 and only consulted with her legal representatives on 14 May 2025, when the summons and particulars were properly considered. It was submitted that Ms Klein only became truly aware of the irregularities relating to service on that date.

[16] Ms Klein then filed an application in terms of Rule 30 for the setting aside of an irregular step taken by Mr Newton. Ms Klein did not strictly comply with the time periods prescribed in Rule 30(2) and thus also requested the court's indulgence to condone her non-compliance.

Issues for determination

[17] The principal issue for determination is whether the alleged defects, whether considered individually or cumulatively, constitute irregular steps as contemplated in Rule 30. A further issue for determination is Ms Klein's non-compliance with the time periods prescribed in Rule 30(2), and whether her explanation in this regard warrants condonation.

Arguments before court

[18] Counsel for Ms Klein contended that the defects relating to the service of the summons and the pleadings are not merely technical or procedural. Rather, they strike at the core of the proceedings' validity and materially impair Ms Klein's ability to engage meaningfully with, and respond to, the case advanced against her. Accordingly, the cumulative effect of these defects is that Mr Newton has neither properly brought Ms Klein before the court nor articulated a case to which she can reasonably be expected to plead. In these circumstances, Mr Newton's conduct constitutes an irregular step as contemplated in Rule 30, and Ms Klein has therefore made out a proper case for the relief sought in the notice of motion.

[19] Counsel for Ms Klein also contends that the email dated 24 April 2025 received from Mr Newton's attorneys confirms that service was never effected, rendering Mr Newton's process materially defective in both service and the formulation of the cause of action. It is further argued that the claim had prescribed and that the attempt by Mr

Newton's attorneys to email the summons to Ms Klein's attorneys was an improper and purely opportunistic effort to circumvent prescription.

[20] Counsel argues that Ms Klein duly served a notice to remove the causes of complaint in terms of Rule 30 on 27 May 2025, within a reasonable period after identifying the irregularities and obtaining instructions. Mr Newton failed to remedy the complaints within the prescribed time, or at all, necessitating the institution of the present application on 1 July 2025.

[21] Counsel for Ms Klein argues that Mr Newton's particulars of claim fail to comply with the requirements of Rule 18(4), in that they do not contain a clear and concise statement of the material facts pleaded with sufficient particularity to enable Ms Klein to reasonably and meaningfully respond. In particular, Mr Newton has failed to plead, *inter alia*, the individual amounts allegedly advanced over the period August 2018 to August 2019, the dates upon which such advances were made, the terms governing repayment, including when payment became due and payable, and the basis upon which it is alleged that Ms Klein is in breach. Counsel submits that, in the absence of these material averments, Ms Klein is unable to properly plead to the claim.

[22] Counsel for Ms Klein submits that, insofar as it may be contended that the Rule 30 notice and/or the present application were not delivered within the prescribed time periods in Rule 30(2), any non-compliance is satisfactorily explained by the timing of Ms Klein's consultation

and the subsequent identification of the irregularities. Counsel further argues that, in the event that this Court finds that there was non-compliance, Ms Klein has demonstrated good cause for the granting of condonation, having regard to her reasonable explanation for the delay, the absence of prejudice to Mr Newton, the serious nature of the irregularities complained of, and her strong prospects of success in the Rule 30 application.

[23] Counsel for Ms Klein submits that this Court must exercise its discretion in favour of condonation, having regard to the principle that matters should be determined on their merits rather than on technicalities. Relying on *Melane v Santam Insurance Co Ltd*,⁹ *Uitenhage Transitional Local Council v South African Revenue Service*,¹⁰ and *Ferris and Another v FirstRand Bank Ltd*,¹¹ counsel argues that the enquiry is one of fairness and the interests of justice, requiring a flexible consideration of factors such as the explanation for the delay, prospects of success, and prejudice.

[24] Counsel contends that Mr Newton's complaint regarding lateness is overly formalistic, and that 'awareness' for purposes of Rule 30(2) must be understood practically, namely when Ms Klein was able to obtain instructions and properly identify the irregularities. It is further argued that the raising of multiple grounds of complaint, including exceptions and Rule 30 relief, does not constitute a 'further step' in

⁹ 1962 (4) SA 531 (A).

¹⁰ 2004 (1) SA 292 (SCA).

¹¹ 2014 (3) SA 39 (CC).

terms of Rule 30(2), as supported by *Jowell v Bramwell-Jones*¹² and related authority.

[25] Counsel submits that Ms Klein has provided a full and reasonable explanation for any delay, which arose from the timing of consultation and the complexity and historical nature of the matter, and that she acted promptly thereafter. There was no wilful default, Mr Newton has suffered no prejudice, and Ms Klein has strong prospects of success. Accordingly, it is submitted that this is a proper case for the granting of condonation, to the extent required.

[26] Counsel for Ms Klein submits that proper service of process is a foundational requirement for the valid institution of legal proceedings, as it ensures that a defendant is afforded proper notice and an opportunity to be heard. Rule 4 prescribes, in peremptory terms, the manner in which service must be effected, and non-compliance renders such service defective. Moreover, Rule 4(1)(a)(v), relied upon by Mr Newton, applies to service on a company or corporation and requires delivery to a responsible employee at the registered office or principal place of business. Only where such an employee is unavailable or unwilling to accept service may the process be affixed to the main door. Absent compliance or proper authorisation, defective service cannot confer proper notice.

[27] Counsel for Ms Klein submits that non-compliance with the Rules regulating service renders such service defective and incapable of

¹² 1998 (1) SA 836 (W) at 903J-904G.

conferring proper notice, unless properly cured in a manner permitted by law or authorised by a court. Further, in *Absa Bank Limited v Mare and Others*¹³ the court confirmed that while a sheriff's return constitutes *prima facie* evidence of its contents, it may be challenged by clear evidence to the contrary. In this instance, the sheriff's return of service indicates that service was effected by affixing the summons to the main entrance gate after a single attempt on 16 April 2025, without making further enquiries, and with a same-day service fee charged. Counsel for Ms Klein, therefore, contends that this did not constitute proper service, as the affixed document never came to Ms Klein's attention. Thus, Mr Newton's attorney's conduct was dilatory, as evidenced by the email of 24 April 2025, in which the attorney acknowledged that service by affixing was resorted to due to impending prescription, despite long-standing knowledge of the claim. Mr Newton's attorney also acknowledged that Ms Klein's attorneys had not agreed to accept service on her behalf.

[28] Ms Klein's counsel submits that Rule 4(2) makes it clear that where service cannot be effected in the prescribed manner, a party must approach the court for directions, and any deviation from the Rules, such as service by email, requires prior judicial authorisation. Substituted service is an exceptional remedy and will only be permitted where there is a proper evidentiary basis showing that the chosen method is reasonably likely to bring the proceedings to the defendant's attention. Absent such authorisation or consent, electronic

¹³ 2021 (2) SA 151 (GP) in para 19.

service of initiating process is invalid and does not cure defective service.

[29] Counsel further relies on *BMW South Africa (Pty) Ltd v William and Another*,¹⁴ where the court emphasised that compliance with Rule 4 is mandatory and that any purported service not sanctioned by the court constitutes an irregularity and is invalid. The court there held that deviations from the prescribed method of service must be authorised in advance through an application for substituted service, and criticised attempts by litigants to adopt informal methods, such as email, to avoid the consequences of late service or prescription. The court further found that such conduct may amount to an improper attempt to circumvent the Rules and does not cure the defect in service.

[30] Counsel for Ms Klein further argues that the attorneys of Mr Newton failed to effect proper service in accordance with Rule 4 and did not obtain court approval for any deviation. Instead, the attorneys attempted to serve the summons by email on Ms Klein's attorneys without consent, which constitutes an irregular and invalid form of service. Counsel submits that this conduct, coupled with the instruction to effect urgent same-day service and the subsequent emailing of the summons, demonstrates an attempt by the attorneys to circumvent the Rules to avoid prescription. Such actions, it is argued, are impermissible, amount to an irregularity, and cannot constitute proper service of initiating the process.

¹⁴ (31587/21) [2022] ZAGPPHC 450 at paras 22-24.

[31] Ms Klein's counsel submits that Mr Newton accordingly failed to effect service of the summons in accordance with the peremptory provisions of Rule 4, with the result that Ms Klein was not properly brought before this Court. The reliance on Rule 4(1)(a)(v) is fundamentally misplaced, as it applies only to juristic persons and not to a natural person such as Ms Klein. The purported service by affixing the summons to a property that was neither her residence nor chosen *domicilium* is therefore irregular and invalid *ab initio*, particularly where the summons never came to her attention and was not served by a method reasonably calculated to do so.

[32] Counsel further argues that Mr Newton's subsequent attempt to serve the summons by email does not cure the defect, as such service requires prior consent or judicial authorisation, neither of which was present. Mr Newton also failed to obtain an order for substituted service in terms of Rule 4(2), and his own correspondence acknowledges the need for condonation, effectively conceding non-compliance. Accordingly, the defective service constitutes an irregular step that goes to the root of the proceedings, depriving Ms Klein of proper notice and rendering the process liable to be set aside.

[33] Counsel for Ms Klein submits that Rule 18(4) requires a clear and concise statement of material facts with sufficient particularity to enable a party to plead, the purpose being to properly define the issues and avoid speculation as to the case to be met. Relying on *Trope v*

South African Reserve Bank,¹⁵ counsel argues that a party must plead the underlying material facts with clarity, and not merely make bald or conclusory allegations. In that case, the court held that a failure to set out the factual basis of a claim renders a pleading vague and embarrassing, particularly where it prevents the opposing party from understanding the case it must meet. Counsel also further referred to *Jowell v Bramwell-Jones*,¹⁶ where it was held that the enquiry is twofold, firstly, whether the pleading is vague, and secondly, whether such vagueness causes prejudice. Thus, a pleading is only excipiable if the vagueness is serious enough to prejudice the opposing party by impairing its ability to plead.

[34] Counsel for Ms Klein submits that Mr Newton's particulars of claim fall materially short of the requirements of Rule 18(4) and the principles in the case law relied upon, in that they fail to set out the necessary material facts to sustain the alleged oral loan agreement. In particular, Mr Newton does not itemise the amounts allegedly advanced, provide dates, explain the method of payment, plead the essential repayment terms, or furnish a proper computation of the amount claimed, rendering the claim a bare and unsupported assertion of indebtedness.

[35] Counsel also argues that the pleading is internally inconsistent and incomplete, especially regarding the alleged breach and demand, as no proper particulars were given as to when repayment became due or

¹⁵ 1993 (3) SA 264 (A).

¹⁶ 1998 (1) SA 836 (W).

how Ms Klein was placed *in mora*. This lack of particularity causes substantial prejudice, as Ms Klein is unable to meaningfully respond, assess quantum, or raise prescription. Accordingly, the defects are substantive, render the particulars of claim vague and embarrassing, and constitute an irregular step that falls to be set aside, particularly in light of Mr Newton's failure to remedy the defects despite notice.

[36] Counsel for Mr Newton referred this Court to the well-established principles governing applications for condonation, relying on established case law, such as *Smith NO v Brummer NO and Another*¹⁷ to emphasise that condonation is not a right, but a discretionary remedy granted only upon a showing of 'good cause'. In this regard, the authorities make clear that courts deliberately refrain from exhaustively defining 'good cause', preserving a flexible, case-by-case approach.

[37] Mr Newton's counsel submitted, while relying on *Ingosstrakh v Global Aviation Investments (Pty) Ltd and Others*,¹⁸ that a court will generally consider factors such as whether a reasonable and full explanation for the delay has been provided (covering the entire period of non-compliance) whether the application is *bona fide* and not intended to delay proceedings, whether there has been any reckless disregard of the rules, the prospects of success in the underlying claim, and whether any prejudice to the opposing party can be cured by an appropriate costs order.

¹⁷ 1954 (3) SA 352 (O) at 357H-358A and 357. The court there uses the term 'sufficient cause'.

¹⁸ [2021] ZASCA 69 at para 21.

[38] In addition, Mr Newton's counsel highlighted that the court in *HL v Member of the Executive Council for Health of the Free State Provincial Government*¹⁹ emphasised broader considerations of fairness and the proper administration of justice, including the adequacy of the explanation, the applicant's *bona fides*, responsibility for the delay, and any contributing factors.

[39] Counsel for Mr Newton further referred to the following facts: Ms Klein served her notice of intention to defend the action proceedings on 6 May 2025, but only delivered her Rule 30 notice on 27 May 2025. Thereafter, she proceeded to serve this application before this court out of time on 1 July 2025. It was further noted that Ms Klein subsequently sought to regularise these delays by filing a notice to amend together with an amended notice of motion, in which she applied for condonation for the late filing of the application.

[40] Mr Newton's counsel argued that Ms Klein failed to provide an adequate or acceptable explanation for her non-compliance with the Rules. Her attempt to justify the late delivery of the irregular step notice on the basis that she only became aware of the alleged defects upon consulting her attorneys is untenable, as the applicable test is when she ought reasonably to have become aware of the causes of complaint. On this basis, it was contended that, had Ms Klein exercised reasonable care, she would have identified the alleged defects when her attorneys received the summons and particulars of claim, or at the latest by 6 May 2025, when she served her notice of

¹⁹ [2017] JOL 39373 (FB) at para 45.

intention to defend. Her failure to account for the delay in launching the application within the prescribed time periods was submitted to be fatal to her case.

[41] Counsel further submitted that Ms Klein's conduct is contradictory and opportunistic, in that she seeks to have the summons and particulars of claim set aside for non-compliance with the Rules, while she herself has failed to comply with those same Rules. This criticism was extended to her failure to include a condonation prayer in her initial notice of motion and her inability to explain the significant delay, before seeking to regularise the position.

[42] Therefore, counsel contended that Ms Klein cannot properly seek relief from court in circumstances where she is guilty of the very procedural irregularities she complains of, and that she has failed to make out a case for condonation. Accordingly, it was argued that the application falls to be dismissed on this ground alone.

[43] Mr Newton's counsel submitted that, in terms of Rule 18(4), a party is required to plead the material facts underlying the claim clearly and concisely, with sufficient particularity to enable the opposing party to respond. In this context, a 'cause of action' refers to the complete set of material facts that must be proved to establish an enforceable claim and entitle Mr Newton to judgment. It encompasses every fact

necessary to sustain the claim, but does not extend to the evidence by which those facts are to be proved.²⁰

[44] In short, counsel submitted that Mr Newton has met the requirements of Rule 18(4) by pleading the material facts necessary to sustain his cause of action. It was argued that, to succeed in a claim for repayment of a loan, a party need only allege and prove the existence of the agreement, the advancement of money pursuant thereto, and that the amount is repayable. In the absence of any agreement to the contrary, a loan is, at common law, repayable on demand, and no express averment to that effect is required. Thus, while relying on *Interaccess (Pty) Ltd v Van Dorsten*²¹ and *Credit Corporation of SA v Roy*²² counsel argued that it is therefore not required to include an allegation that the amounts sought are due and payable.

[45] Mr Newton's counsel contended that these essential averments have been properly pleaded, and that the particulars of claim adequately inform Ms Klein of the case she is required to meet. The demand for further detail, such as the exact amounts and dates of each payment, was characterised as unnecessary for pleading purposes, as such matters pertain to evidence rather than the formulation of a cause of action. It was submitted that these issues are more appropriately dealt with during discovery, through requests for further particulars, or at trial. Accordingly, the complaint regarding non-compliance with Rule 18(4) is without merit and ought to be dismissed.

²⁰ Relying on *Ascendis Animal Health (Pty) Limited v Merck Sharpe Dohme Corporation and Others* 2020 (1) SA 327 (CC) at paras 51 and 53.

²¹ [1999] 2 All SA 561 (C).

²² 1966 (1) SA 12 (D).

[46] During argument, counsel for Mr Newton placed considerable reliance on the wording of the email received from Schoeman Law Inc dated 24 April 2025, in response to receiving the summons via email. Therefore, it is imperative to provide the exact wording of the email. It reads as follows:

‘Please note our *Client* was not served (did not receive personal service) nor did we agree to receive service of process on her behalf for purposes of service of your summons. Rights in this regard are fully and strictly reserved.

We will take instructions and revert.’ (Own emphasis.)

[47] Mr Newton’s counsel contended that the use of the word ‘Client’ and the statement ‘we will take instructions and revert’ were indicative of Schoeman Law Inc acting as attorneys of record for Ms Klein. It was further argued that, in light of the letter of demand dated 13 March 2025, which expressly referred to the institution of summons should payment not be forthcoming, as well as subsequent email correspondence relating to the demand, Ms Klein must have been aware of the impending proceedings. On this basis, counsel submitted that Schoeman Law Inc could be regarded as the attorneys of record with a mandate to accept service of the summons on behalf of their client, Ms Klein.

[48] However, counsel for Mr Newton also conceded that service of the summons and particulars of claim did not comply with Rule 4, but submitted that such non-compliance is not decisive. Relying, *inter alia*, on *Prism Payment Technologies (Pty) Ltd v Altech Information*

*Technologies (Pty) Ltd (t/a Altech Card Solutions) and Others*²³ and other cases, counsel argued that the true enquiry is whether service was nevertheless effective. In particular, counsel referred to the *Prism* case where it was said that:²⁴

‘The effectiveness issue is not, in my view, appropriately decided as a condonation issue. It is the central underlying purpose of the rule. On the face of it a summons served in any manner, but which is served effectively, is regularly served. Great injustice may follow if the service is set aside on the basis of irregularity without applying the effectiveness test since it may then be argued that prescription has not been interrupted. In my view it is doubtful that rule 30 is the proper procedure to follow.’

[49] Further reference was placed on *Obiang v Janse van Rensburg and Others*²⁵ where the SCA said, while relying *inter alia* on *Prism*:²⁶

‘It has long been established in our law that service in strict compliance with rules of service is not the test for effective service. That approach is formulaic and mechanical and has been rejected by our courts. The test is rather, despite non-compliance with the rules of service, whether the other party received notice. This gives effect to the purpose of the rules of service which is that a person who is being sued must receive notice. Provided that this purpose is achieved there will be proper service, even though not in strict compliance with the rules.’

[50] In the matter before this Court, it was contended that there had been extensive engagement between the parties’ attorneys before the issuing of summons concerning the same dispute, namely the repayment of the alleged loan, during which Ms Klein’s attorneys actively sought indulgences and considered proposals on her behalf.

²³ 2012 (5) SA 267 (GSJ) at paras 18 and 21-24.

²⁴ *Idem* at para 24.

²⁵ (714/2023) [2025] ZASCA 30 (31 March 2025) at para 28.

²⁶ *Prism* above fn 23 at para 28 (footnotes omitted)

[51] It was further submitted that, against the backdrop of impending prescription, Mr Newton had little option but to proceed with the issuing of summons. The fact that the summons and particulars of claim ultimately came to the attention of Ms Klein was, according to counsel, borne out by her subsequent delivery of a notice of intention to defend, followed by the irregular step notice and the present application. On this basis, counsel argued that the ‘effectiveness test’ articulated in *Prism* had been satisfied.

[52] Counsel also submitted that any issue relating to prescription ought properly to be raised by way of special plea rather than through the present application. Finally, it was contended that Ms Klein suffered no prejudice as a result of the defective service, as she was able to take the necessary procedural steps, and that the absence of prejudice militates against upholding the challenge to service.

[53] Mr Newton’s counsel argued, in conclusion, that this Court should follow the reasoning in the *Prism* case regarding effective service and dismiss the application with costs. It was further contended that any non-compliance with the Rules relating to service of the summons and particulars of claim should be condoned to the extent necessary.

Applicable legal principles, discussion and conclusion

[54] The issues before the Court turn on the application of Rules 4, 18(4), and 30. Generally, Rule 4 regulates the manner of service of court

process and does so in peremptory terms. It prescribes distinct methods of service depending on whether the party to be served is a natural person or a juristic person.

[55] Rule 4(1)(a)(i) to (iv) and (vi) set out the primary methods for service of process on a natural person. In essence, service must preferably be effected personally on the individual, or alternatively at the person's residence or place of business by delivery to a person apparently over the age of 16 years in charge of the premises, or, where the person cannot be found, at the place of employment by leaving the process with a person in authority. Service may also be effected at the person's chosen *domicilium citandi et executandi*, or by delivering a copy to any agent who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected. Additionally, Rule 4(1)(a)(aA) provides that, where a party to be served with initiating application proceedings is already represented by an attorney of record, such documents may be served on that attorney by the initiating party. These provisions reflect a structured approach aimed at ensuring that service is effected in a manner reasonably likely to bring the process to the attention of the person concerned.

[56] Rule 4(1)(v) provides for service in the case of a juristic person, such as a company, and provides that service is concluded by the sheriff of the court:

‘in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within

the court's jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law'. (Own emphasis.)

[57] So, in short, in the case of a natural person, service must ordinarily be effected personally, at the person's residence or place of employment, or at a chosen *domicilium*. In the case of a juristic person, such as a company, service must be effected at its registered office or principal place of business on a responsible employee or in the absence of any such employee willing to accept service, by affixing a copy to the main door of such office or place of business. This distinction is important, as the Rules recognise the different nature of these parties and regulate service accordingly by setting minimum, mandatory standards.

[58] Where service cannot be effected in these prescribed ways, Rule 4(2) becomes relevant and provides:

'If it is not possible to effect service in any manner aforesaid, the court may, upon the application of the person wishing to cause service to be effected, give directions in regard thereto. Where such directions are sought in regard to service upon a person known or believed to be within the Republic, but whose whereabouts therein cannot be ascertained, the provisions of sub-rule (2) of rule 5 shall, mutatis mutandis, apply.'²⁷

[59] Rule 4(2) permits a party to apply to court for authorisation to use an alternative method of service that is reasonably likely to bring the process to the attention of the party concerned. Thus, Rule 4(2)

²⁷ Rule 5(2), in essence, provides that service of documents may be effected in various prescribed ways, including delivery by hand, post, or other permitted methods, depending on the circumstances.

operates as a limited exception to the strict requirements of Rule 4, but only where judicial oversight has been obtained in advance. Rule 4(2) deals with substituted or alternative service. It provides that where service cannot be effected in any of the prescribed manners set out in Rule 4, a party must approach the court for directions as to how service is to be effected. This means that any deviation from the ordinary methods of service, such as service by email or another unconventional method, requires, in my view, prior judicial authorisation. Without such authorisation, the service will be irregular and invalid. It is common cause that no such authorisation for alternative service was sought in the action proceedings.

[60] It is, in my view, entirely irrelevant whether Ms Klein may have become aware of the summons and its contents, as such awareness cannot cure or legitimise clear non-compliance with and total disregard for the peremptory provisions of Rule 4 for natural persons. The Rules governing service are designed to ensure that legal process is brought to a party's attention in a manner that is lawful, structured and reasonably certain, and not by chance or fortuity. To hold otherwise would undermine the fundamental purpose of proper service and permit parties to disregard the prescribed procedures with impunity.

[61] In *Erasmus Superior Court Practice* it is stated that '[m]ere knowledge of issue of summons does not constitute service and cannot relieve a plaintiff of the obligation to follow the prescribed

rules.’²⁸ Actual knowledge of the proceedings cannot therefore override, nor serve as a justification for, a failure to comply with the Rules regulating service on natural persons. The fact that a litigant may have become aware of proceedings does not, without more, dispense with the requirement that service be effected in accordance with Rule 4. Proper service is a jurisdictional prerequisite designed to ensure procedural fairness and legal certainty. Actual knowledge of the proceedings cannot ordinarily cure a failure to comply with the prescribed modes of service, unless the court, in the exercise of its discretion, condones the irregularity or authorises substituted service.

[62] However, Erasmus, relying on *Investec Property Fund Limited v Viker X (Pty) Limited and Another*²⁹ and *Obiang*³⁰ emphasises that even where service does not strictly comply with the prescribed rules, it may nonetheless be valid if it was effective, namely, where the defendant actually received the summons ‘and suffered no prejudice’ as a result.³¹ It is evident from the facts before this Court that the primary motivation for circumventing proper service, as required by Rule 4 in respect of a natural person, was to prevent the claim from prescribing, it having been clearly stated that prescription would occur on or about 19 April 2025. An attempt solely to avoid prescription cannot justify non-compliance with the Rules. That reason alone is wholly insufficient in my view.

²⁸ Van D E Van Loggerenberg *Erasmus Superior Court Practice* Volume 2, Second Edition (loose-leaf) at pages D1 Rule 4–6 Service 28, 2025; and see the authorities relied upon there in fn 5, namely *First National Bank of SA Ltd v Ganyesa Bottle Store (Pty) Ltd*; *First National Bank of SA Ltd v Schweizer Drankwinkel (Pty) Ltd* 1998 (4) SA 565 (NC) at 568B-C and *Sekoati v Standard Bank of South Africa Ltd* 2025 (5) SA 581 (GP) at para 26.

²⁹ (2016/07492) [2016] ZAGPJHC 108 (10 May 2016) at paras 7-19.

³⁰ *Obiang* above fn 25 at para 28.

³¹ *Erasmus Superior Court Practice* above fn 28 at pages D1 Rule 4–6 Service 28, 2025.

[63] Proper service of summons in accordance with the Rules is cardinal. It is not sufficient that the summons may come to the attention of a defendant. What is required is at least a reasonable and lawful attempt at service in the genuine hope that it will come to the defendant's attention. The Rules, including Rule 4, establish the minimum standards applicable to service on both juristic and natural persons, and must be adhered to. In this matter, no prior judicial sanction was sought for alternative service, and I find no basis to condone what is plainly non-compliance with the Rules.

[64] In the answering affidavit filed in the action proceedings by Mr Newton's attorney, it is conceded in paragraph 5 that the delivery of the summons by email to Schoeman Law Inc did not constitute formal service. It was described instead as a courtesy, extended on the basis that, at that stage, Ms Klein was believed to be represented by Schoeman Law Inc. During argument, Mr Newton's counsel relied heavily on the wording of Schoeman Law Inc's email dated 24 April 2025, discussed above, in an attempt to establish that Schoeman Law Inc already held a mandate to represent Ms Klein at the time the summons was emailed. In my view, however, this contention is, properly considered, misplaced. The correspondence, read as a whole, does not support the contention that Schoeman Law Inc was authorised to accept service or was acting as attorneys of record. Crucially, the responding email from Mr Newton's attorneys expressly indicates that the summons had been transmitted merely as a

courtesy, which undermines any suggestion that Schoeman Law Inc had the requisite mandate to accept service on behalf of Ms Klein.

[65] Counsel for Mr Newton referred the Court to various authorities in which alternative methods of service were accepted and where reliance was put on ‘effective service’ as provided for in *Prism* and *Obiang*, respectively as opposed to compliant service in terms of the Rules. It is thus true that courts have held that where it is incontrovertibly established that the summons came to the defendant’s attention and no prejudice resulted, strict reliance on technical defects may not always be permitted. However, it is trite that ‘[s]ervice is at the court’s discretion, and the court has the inherent jurisdiction to regulate its process’ and thus has a discretion to condone service.³² Each matter must be determined on its own facts, and those decisions do not necessarily detract from the requirement that the present case be assessed in light of its particular circumstances. Besides, there are also courts, such as in the *BMW* case that have reaffirmed that actual knowledge does not automatically cure defective service. In the matter before me, the position is rendered decisive by the email of Mr Newton’s attorney dated 24 April 2025, which expressly acknowledges that there had been no proper service and that the transmission of the summons by email was merely a courtesy and to prevent prescription. This admission is fatal to Mr Newton’s case and effectively brings the issue of service to an end.

³² See *Obiang v Van Rensburg and Others* [2023] 2 All SA 211 (WCC) at para 61.

[66] In the *Prism* case, service of the summons on the fourth defendant took place at 1[...] E[...] Close, Linbro Business Park, Sandton, which the Sheriff recorded as being the defendant's place of employment. The process was not handed to the fourth defendant personally, but was effected at that address by leaving the documents with a person present there, identified as an employee (including an HR practitioner on a prior occasion). This address functioned as the central reception point and gateway to the fourth defendant's place of work: it was where visitors reported, where calls were received and routed to him, and where his presence in or out of office was recorded. Although his actual office was located approximately 1.5 kilometres away, access to him could only be obtained through this reception point. On this basis, the court there found that service at this address was sufficiently connected to his employment to constitute service at his place of employment, and in any event, that the service was effective as it brought the summons to his attention.

[67] In *Obiang*,³³ service of the various court processes took place after the appellant, the President of Equatorial Guinea, terminated his attorneys' mandate, and was carried out primarily through the Equatorial Guinea Embassy in Pretoria, which had been identified as a contact point in the notice of withdrawal. After the termination in July 2020, the appellant's former attorneys filed notices of withdrawal indicating that he could be reached via the Embassy, specifically for the attention of Ms Hombria. Despite this, the appellant failed to comply with rule 16(2) by not appointing a new address for service.

³³ *Obiang* above fn 25.

Following this, the respondent proceeded to serve the application to strike out the appellant's defence in July 2020 by both emailing it to Ms Hombria at the Embassy, clearly indicating the hearing date, and by physical service through the Sheriff at the Embassy, where it was received by an official. Although the return of service contained a minor error in the street number, this defect did not invalidate the service.

[68] Further trial-related documents in *Obiang* were also served at the Embassy between January and February 2021. These included the notice of set down for trial, a Rule 28 notice of amendment, expert notices, and the trial bundle index. These documents were physically delivered to the Embassy and signed for by a security guard, and this was supplemented by email transmissions to Ms Hombria, attaching copies of all the documents. In addition, the rule 28(7) notice together with the amended pages was hand-delivered directly to Ms Hombria, who acknowledged receipt, and this notice explicitly recorded the trial date as 8 March 2021.

[69] Throughout the litigation, there was a consistent pattern of service. Documents were served by hand delivery at the Embassy to staff or officials and by email communication to Embassy representatives, particularly Ms Hombria. This dual method reinforced the likelihood that the documents would reach the appellant through official channels. In evaluating this method of service, the court held that strict compliance with formal rules such as edictal or substituted service was not decisive. The essential question, was whether the

documents came to the attention of the appellant. The court found that service was valid because it was reasonably likely, and indeed demonstrated, that the documents reached him through Embassy channels. The appellant's failure to appoint an address for service, together with his inaction, justified the respondent's reliance on the Embassy as the effective address for service. The SCA held that, although service did not strictly comply with formal rules, it was valid because it was effected at the designated address and brought the proceedings to the appellant's attention, thereby achieving the purpose of service.

[70] The SCA in *Obiang* does not suggest, as a general proposition, that non-compliance with the court rules of service is permissible, nor does it imply that the Rules may simply be disregarded. In my view, on a proper reading, it instead affirms the court's discretion to condone service, recognises the court's inherent jurisdiction to regulate its own processes, and clarifies the correct test for effective service, a test that must be applied with due regard to the particular facts and circumstances of each case. The SCA emphasises that strict, mechanical compliance with the rules is not decisive. Instead, the central inquiry in applicable cases is whether, despite any procedural irregularity, the intended recipient in fact received notice of the proceedings. This purposive approach gives effect to the underlying objective of the rules of service, namely, to ensure that a person being sued is made aware of the action. Where that purpose is fulfilled, service may be regarded as effective even in the absence of strict compliance.

[71] In my view, reliance on *Prism* and *Obiang*, respectively and the ‘effective service’ principle is distinguishable from the facts in the present matter. In *Prism* the summons and in *Obiang* the documents were served by being left with a person at a location sufficiently connected to the defendant and appellant respectively, thereby providing a tangible basis for concluding that the process would come to the defendant’s or appellant’s attention. These aspects materially distinguish the present facts from those in *Prism* and *Obiang*, where there was at least some human intermediary through whom the process could be received and brought to the attention of the litigant.

[72] By contrast, in the matter before this Court, service was not effected on any person at all, but merely by affixing the summons to the gate of the property. This constituted an entirely irregular procedure, as it was purportedly carried out in terms of a rule applicable to juristic persons, and was accordingly inappropriate and invalid in the circumstances.

[73] In addition, the conduct of Mr Newton’s attorneys in effecting service was, in my view, notably careless. The sheriff made only a single attempt at service, and no proper or meaningful effort was made to effect service by alternative means. It is evident that the primary objective was simply to interrupt prescription, with little regard for compliance with the Rules. This lack of diligence and disregard for the prescribed procedures does not persuade me to exercise my discretion in favour of condoning the irregular service. Furthermore,

in *Prism* and *Obiang* there was no reliance on an incorrect subrule of Rule 4 governing service, as is the position in the present case. Accordingly, the inference and acceptance of effective service in *Prism* and *Obiang* do not readily apply to the present matter, as the instances of service in those cases arose from highly specific circumstances.

[74] Rule 18(4) governs the form and content of pleadings. It requires that every pleading contain a clear and concise statement of the material facts upon which the party relies, pleaded with sufficient particularity to enable the opposing party to reply. In the particulars of claim in the action proceedings, Mr Newton pleads only that an oral agreement was concluded during 2018 in terms of which a total amount of R779 075.40 was advanced between August 2018 and August 2019, that no time for repayment was stipulated, and that Ms Klein admitted liability on or about 19 April 2022 but failed to make payment.

[75] Rule 18(4) requires that a pleading contain a clear and concise statement of the material facts relied upon, with sufficient particularity to enable the opposing party to reply. I further observe that oral unsecured loan agreements, while valid in law, often present significant evidential challenges. It is frequently difficult to prove not only their existence, but more importantly their terms. In the present matter, the existence of the oral agreement is not in dispute. However, the difficulty lies in the absence of clearly pleaded and defined terms. The particulars of claim contain sparse information regarding the terms of the agreement.

- [76] I agree with counsel for Ms Klein that the essential facts, being the *facta probanda* to which Ms Klein is required to plead, are neither clear nor concise and do not set out the material facts upon which Mr Newton relies. This renders the pleading vague and embarrassing. This case further illustrates the difficulty in practice to sometimes distinguishing between *facta probanda* and *facta probantia*, namely between the essential facts required to be pleaded and the evidence required to prove those facts.
- [77] In my view, the submission that all material facts have been adequately pleaded must be approached with caution in the present context. While it may well be correct in matters involving written agreements, where the terms are clearly defined and readily ascertainable, the same cannot readily be said of a verbal agreement of the nature alleged in this case.
- [78] Where reliance is placed on an oral agreement, the terms thereof are, by their very nature, less certain and more difficult to establish. In such circumstances, it becomes all the more important that the pleadings set out the material terms with sufficient clarity and particularity to enable the opposing party to understand the case he or she is required to meet. Absent such detail, the distinction between material facts and evidence becomes less easily maintained.
- [79] In the present matter, the lack of specificity regarding the essential terms of the alleged agreement, including the manner in which the advances were made and are said to be repayable, raises legitimate

concerns as to whether the cause of action has been pleaded with the degree of particularity required in law.

[80] Counsel of Mr Newton argued that, at common law, a loan is repayable on demand, unless otherwise agreed, and therefore it is not necessary to expressly allege in the particulars of claim that the debt is due and payable. Reliance was placed on *Interaccess*³⁴ and *Credit Corporation v Roy*³⁵ in support of this proposition. However, I am unable to agree with this contention. In the present matter, the particulars of claim merely allege that, in terms of the verbal agreement concluded between the parties, no time was fixed for repayment of the loan. Paragraph 5 of the particulars of claim merely states that on or about 19 April 2022, Ms Klein, in response to a demand for repayment, admitted liability but failed to pay. The particulars do not allege when the loan became repayable or when any demand was made, rendering it unclear when the obligation to repay arose. It is therefore not self-evident that the agreement falls squarely within the category of loans repayable on demand as contemplated in the authorities relied upon by counsel. The applicability of those cases is, at best, debatable on the facts before this Court.

[81] In any event, the very uncertainty surrounding the terms of repayment underscores the necessity for greater particularity in the pleadings. In circumstances where no express terms governing repayment are alleged, it is incumbent upon the plaintiff to set out clearly the basis upon which it is contended that the debt has become due and payable.

³⁴ Above fn 21.

³⁵ Above fn 22.

The omission to do so renders the particulars of claim lacking in the requisite clarity and particularity expected in pleadings.

[82] In my view, the particulars of claim do not meet this standard, as they fail to set out the necessary material facts with adequate particularity. The result is that the pleading is vague and embarrassing and does not enable Ms Klein to meaningfully plead or properly identify the issues in dispute. In particular, there is insufficient clarity as to when repayment became due, what the loan related to, and when and on what basis repayment was demanded. Consequently, the pleading does not fulfil the purpose of Rule 18(4), which is to ensure that the issues between the parties are properly defined and that a party is not left to speculate as to the case it must meet.

[83] Rule 30 provides a procedural remedy in respect of irregular proceedings or steps. It allows a party to apply to court to set aside any step or proceeding that does not comply with the Rules, provided that the complaint is raised within the prescribed time periods, or condonation is sought. It is aimed at ensuring procedural fairness and compliance with the Rules.

[84] I find that Mr Newton's institution of the action application is fundamentally defective in respect of the formulation of the cause of action. In relation to service, Mr Newton failed to comply with the peremptory provisions of Rule 4, relied on an inapplicable subrule, and purported to effect service by electronic means without consent or judicial authorisation. As a result, Ms Klein was not properly brought

before court. These defects, whether considered individually or cumulatively, constitute irregular steps in terms of Rule 30 and materially prejudice Ms Klein in the preparation of her defence.

[85] In my view, the impending prescription of a claim cannot, without more, justify non-compliance with the Rules governing service. While it may explain the urgency with which a party acts, it does not excuse a failure to comply with what is a fundamental procedural requirement. Proper service is essential to the fair and orderly conduct of proceedings, and cannot be disregarded lightly. Accordingly, although prescription may form part of the broader context within which the court exercises its discretion, it cannot be the sole or dominant factor in condoning non-compliance. The enquiry must remain a balanced one, taking into account all relevant considerations, including the nature of the irregularity, the explanation tendered, and the interests of justice.

[86] In my view, counsel for Mr Newton, in advancing submissions on condonation for service, loses sight of the nature of the discretion this Court is called upon to exercise in the present matter. In particular, insufficient regard is had to the distinction between the respective forms of condonation sought by the parties. Ms Klein seeks condonation in respect of non-compliance with prescribed time periods, which arose in the context of the summons that was not served in accordance with the Rules. Mr Newton, by contrast, seeks effectively to overlook or excuse non-compliance in relation to a fundamental procedural step, namely the proper service of the

summons itself. These are not analogous forms of relief and cannot be approached on the same footing.

[87] Moreover, it is necessary to consider the impact that the defective service of the summons has had on the procedural timeline. The absence of proper service is not a mere technicality, but a foundational irregularity which has a direct bearing on when and how Ms Klein was required to act. Of particular significance is the fact that she only became aware of the summons through attorneys who were not formally on record as acting on her behalf in the manner ordinarily contemplated by the Rules. This circumstance must be considered when assessing the reasonableness of her conduct and any delay attributable to her.

[88] Ultimately, the enquiry is whether either, or both, parties have provided good cause, *bona fide*, reasonable and full explanations for their respective delays and instances of non-compliance.³⁶ That assessment must be undertaken with due regard to the differing procedural positions of the parties and the overarching interests of fairness and justice.³⁷

[89] Insofar as there may have been any non-compliance with the time periods prescribed in Rule 30(2), I am satisfied that Ms Klein has provided a full and reasonable explanation. She acted promptly upon

³⁶ See also *AH Vest Limited t/a Joy Foods Limited v Corruseal Corrugated Gauteng (Pty) Ltd* (2025/049929) [2026] ZAGPJHC 470 (28 April 2026) at para 19 to 31 and the authorities cited regarding 'good cause'.

³⁷ See also *Bertie van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others* 2010 (2) SA 181 (CC) at para 14.

obtaining proper instructions and upon identifying the irregularities, and there is no indication of wilful delay.

[90] As to prejudice, Mr Newton has not demonstrated any cognisable prejudice arising from the timing of this application. His reliance on the impending prescription of the claim cannot avail him, as any prejudice in that regard is self-created and stems from his failure to act timeously in instituting proceedings. In any event, on the facts before me, the debt appears, and it is indeed quite possible, to have already prescribed, irrespective of whether the email from Ms Klein constitutes an acknowledgement of debt. However, it is not necessary for me to make any definitive finding on prescription.

[91] It must be emphasised that extinctive prescription is grounded in the principle of legal certainty, ensuring that debtors are not indefinitely exposed to old claims while promoting fairness by requiring creditors to enforce their rights within a reasonable time. It also encourages creditors to exercise their rights diligently by collecting their debts timeously and without undue delay.³⁸ By contrast, Ms Klein would suffer substantial prejudice if compelled to plead to a defective summons and inadequately particularised claim merely to prevent Mr Newton's claim from prescribing. In these circumstances, the interests of justice favour the granting of condonation to Ms Klein, to the extent required, and the setting aside of the impugned proceedings.

³⁸ See J Saner *Prescription in South African Law* (1996-) (loose-leaf) at para 1.2; M Kelly-Louw and P N Stoop 'Prescription of debt in the consumer-credit industry' (2019) 22 *PELJ* 1 at 2; *Murray & Roberts Construction (Cape) (Pty) Ltd v Upington Municipality* 1984 (1) SA 571 (A) 578F-H; *KLD Residential CC v Empire Earth Investments 17 (Pty) Ltd* [2017] 3 All SA 739 (SCA) at para 13; and *Road Accident Fund v Mdeyide* 2011 (2) SA 26 (CC) at para 2.

[92] It is most unfortunate that Mr Newton delayed for such an extended period before seeking to enforce repayment of the alleged debt. The law of prescription exists precisely to prevent debts from remaining indefinitely suspended over a debtor, thereby promoting legal certainty and finality in financial obligations. Creditors are required to act timeously to enforce their rights, while debtors are obliged to meet their obligations when properly called upon to do so before prescription intervenes.

Costs

[93] As to costs, it is trite that the court retains a discretion in awarding costs, notwithstanding the general principle that costs follow the result. In the present matter, I am not persuaded that either party is deserving of a costs order in their favour. I am inclined to the view that Ms Klein was aware of the alleged indebtedness, but there is little to indicate that she made any meaningful effort to settle it over the years. Conversely, Mr Newton failed to act timeously and thereafter his attorneys attempted to circumvent the Rules governing service in order to avert prescription. In these circumstances, the conduct of both parties does not justify a costs order in favour of either. Accordingly, each party is directed to pay their own costs.

Order

[94] The following order is made:

1. Condoning the late filing of this application.
2. That the Respondent's/Plaintiff's action application (the summons and particulars of claim) be set aside in its entirety as an irregular step in terms of Rule 30.
3. No cost order is made with each party to carry their own costs.

M LOUW
ACTING JUDGE OF THE HIGH COURT

Appearances

For applicant/defendant: Adv M Garces

Instructed by: Schoeman Law Inc, Cape Town

For respondent/plaintiff: Adv J K Felix

Instructed by: Frank Hollard & Associates, Cape Town.