IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE DATE: 23 June 2026

Case No. A2025-202370

In the matter between:

MM	First Appellant
AW	Second Appellant
and	
SAT	First Respondent
GJT	Second Respondent

CORAM: WILSON J, MOTHA J and MAHOMED J

JUDGMENT

WILSON J (with whom MAHOMED J agrees):

1 This appeal is the latest iteration of a highly contested divorce action. The appellants oversee various entities in which the second respondent, GJT, is financially interested. GJT is in the midst of a divorce from the first respondent, SAT. SAT claims that some if not all of GJT's interests in these entities ought to be counted as part of the value of GJT's estate accrued during SAT's

marriage to him. SAT has sought discovery from GJT of documents meant to assist her in valuing that accrual. She has also sought to subpoena documents from the appellants for the same purpose.

2 This appeal arises from SAT's decision to combine in one notice of motion prayers to compel discovery of those documents from GJT and to compel compliance with subpoenas *duces tecum* issued to the appellants. The appellants objected to this manner of proceeding as an irregular step, because, they said, it was contrary to the Uniform Rules of Court, and it had the effect of drawing them in to the divorce proceedings to which they were not, and had no wish to be, involved.

3 In the court below, SAT's attorneys met the appellants' Rule 30 notices with two counter-notices, in which they set out the bases on which they believed that the appellants' objections were without foundation. The appellants took the counter-notices as indications that SAT did not intend to remove the cause of their complaint, and they applied in the court below to set aside SAT's omnibus notice of motion as an irregular step.

4 The court below dismissed the application, reasoning that there was no breach of the Uniform Rules, and that there was in any event no prejudice to the appellants in SAT's chosen manner of proceeding. The court below criticised the appellants' objections as purely technical. It also considered that the appellants ought to have engaged with SAT's counter-notices before applying to have the omnibus notice of motion set aside. The court below directed the appellants to pay costs on a punitive scale. The court refused leave to appeal, but the matter is now before us with the leave of the Supreme Court of Appeal.

5 We consider that the appeal should be dismissed. Under Rule 30, an irregular step may be set aside once two things have been established: first, an irregularity, whether embodied in a breach of the Rules or otherwise, and, second, prejudice caused to the objector as a result of that irregularity (see *SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO* 1981 (4) SA 329 (O) ("*Louw NO*") 333G–334G). Neither of these things was established in this case.

No irregularity

6 In the first place, we do not think that SAT committed an irregularity. The two main grounds on which the appellants submitted otherwise were (a) that, contrary to Rule 10 (3), the omnibus notice of motion joined factually and legally dissimilar causes of action – one to compel discovery, the other to compel compliance with a subpoena – in the same proceedings; and (b) that, contrary to rule 6 (11), the application was brought on a shortform notice of motion as interlocutory to the divorce action in circumstances where the relief was not really interlocutory, because it involved individuals not party to the action, and a longform notice of motion should accordingly have been used.

7 We find neither ground convincing. In the first place, as rule 10 (2) makes clear, different causes of action turning on different facts may be joined in a single proceeding, and the text of rule 10 (3) does not expressly rule out joinder of different defendants, even where the questions between the parties are factually or legally diverse. In reality, the question is always whether a particular manner of proceeding is justified by "convenience, equity, the saving of costs and the avoidance of multiplicity of actions" (see Erasmus, *Superior*

Court Practice RS28, 2025, D1, and the cases cited there). On the face of things, to sue three different respondents to produce a range of documents all of which are relevant to the same action by relying on two different causes of action – each actionable against different respondents – in the same proceeding seems to us both a permissible and expedient use of Rule 10.

8 Secondly, we reject the contention that an interlocutory application can never involve individuals who are not party to the main action. If that were so, applications for leave to intervene or to join interested parties could never be interlocutory in nature. Neither could the various evidence-gathering remedies which involve third parties, such as compelling compliance with subpoenas. These are well-known interlocutory remedies. What makes a proceeding interlocutory is that it has no existence apart from the main action because it seeks relief intended solely to bring the main action closer to an end, not that it only involves people who are directly and substantially interested in the main action. Depending on the circumstances, interlocutory proceedings involving such external parties may require the use of a longform notice of motion, but the question will always be whether the use of the shortform would be prejudicial. Even if it would, we cannot foresee the circumstances under which such prejudice could not be cured by the simple effluxion of time, by a postponement or an order for costs, or by some other form of commonsense court oversight.

9 The appellants relied on the decision of Goosen J in *Maqeda v Toyota Financial Services* [2014] ZAECMHC 4 (14 February 2014) in which it was held, at paragraph 29, that a person who is not already party to an action may

not seek relief in that action without first having been formally joined or granted leave to intervene. By parity of reasoning, the appellants submitted, the joinder of SAT's discovery cause of action against GJT with her cause of action on the subpoena against the appellants in the same notice of motion was incompetent without a formal application to join the appellants to the divorce proceedings.

10 The analogy the appellants seek to draw is inapposite. A person sued to comply with a subpoena to produce documents relevant to the relief sought in an action does not thereby become a party to that action – any more than a witness called to give evidence at trial, or a person who deposes to an affidavit in application proceedings, becomes a party to those proceedings. It is accordingly unnecessary for the witness, deponent or possessor of relevant documents to be joined to the proceedings in which the evidence they have to give will be admitted. A better analogy with this case is *NDPP v Zuma* 2009 (2) SA 277 (SCA) at paragraph 85, in which it was held that a witness against whom adverse credibility findings were made at trial does not thereby become party to the trial, and has no right to intervene in an ensuing appeal.

No prejudice

11 Even if we were to assume that there was a breach of the rules, the appellants have suffered no appreciable prejudice from SAT's use of the shortform omnibus notice of motion. Nor have they shown any other form of prejudice arising from the way that SAT chose to proceed. The appellants argued that, because the documents sought from them and from GJT were listed in the same annexure to the notice of motion, they were confused about which of the

documents they had to produce. We are unable to imagine how any such confusion would not be resolved by referring to the original subpoena, or by adopting the commonsense approach of disclosing only those of the documents that are in the appellants' possession. It was also suggested that the appellants were prejudiced by having to respond to allegations about the divorce proceedings which fell beyond their knowledge, and could only have concerned GJT. But the appellants did not have to respond to those allegations, precisely because they had no knowledge of the allegations and the allegations were not directed at the appellants.

12 We can accept that the need to pick apart the annexure to the notice of motion and to discern which of the allegations in the supporting affidavit really concerned them might have exasperated the appellants. It may even have caused them some inconvenience. But Rule 30 does not address itself to prejudice of that kind. The Rule is intended to prevent the sort of prejudice that puts a party under some genuine handicap in the pursuit of their case – in other words where there is "a hindrance to the future conducting of the litigation" (See *Louw NO* at 333G–H). SAT's omnibus notice of motion did not present such a hindrance.

Appealability

13 Ms. Andrews, who appeared for SAT, argued that the order of the court below is not appealable. We do not agree. The dismissal of an application to set aside an irregular step, though strictly interlocutory in nature, must be appealable in principle. This is because the irregular step may cause a party real prejudice, and the dismissal of the application to set the irregular step

aside may render that prejudice incurable. It seems to us that such an order would generally have final effect.

14 In this case, one of the issues between the parties was whether incurable prejudice could be established. That required us to consider the merits of the appeal. The Supreme Court of Appeal granted leave. We heard full argument on the merits of the appeal. Those merits were inextricably linked with the grounds upon which it was argued that the order of the court below was not appealable. In these circumstances, though we have found neither irregularity nor prejudice, it appears to us to be artificial to strike the appeal off the roll as technically unappealable.

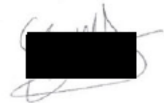
Costs

15 Finally, it was submitted that the punitive costs order granted in the court below cannot stand. It is well-known that a costs order must stand on appeal unless the appeal itself succeeds, or unless the costs order was vitiated by a misdirection or was otherwise clearly wrong, in the sense that it was not an order reasonably open to the court below on all the facts (see, for example, *Bidvest Bank Limited v Waste Partner Investments (Pty) Ltd* [2024] ZAGPJHC 1137 (11 November 2024), paragraph 17). We have some reservations about the criticism directed at the appellants in the court below. We do not think that the appellants were under an obligation to engage with SAT's counter-notices. As Rule 30 makes clear, the appellants were entitled to proceed to apply to set aside a step they regarded as irregular as soon as the cause of their complaint had not been eliminated within the prescribed period.

16 However, it seems to us that, though based on a technical misconception, the remarks made by the court below were really one facet of its overall view that the objections taken by the appellants were so meritless as to be animated solely by the intention to delay the resolution of SAT's claims. While we might not have taken such a robust view, we do not think that such a view was unreasonable on the facts as they confronted the court below. Accordingly, we decline to interfere with the punitive costs order.

Order

17 For all these reasons, the appeal is dismissed with costs, including the costs of counsel, which may be taxed on scale "B".



S D J WILSON
Judge of the High Court

MOTHA J:

Introduction

18 I have read my brother Wilson J's judgment and differ with him on whether this interlocutory application is appealable. Notwithstanding that we are in agreement on the balance of the reasons, I would have struck the matter off the roll. It would be idle to recount the facts already set out in the majority judgment, except to state that the appeal concerns AJ Ludwig's order dismissing the appellants' application to declare SAT's Notice of Motion and affidavit irregular steps.

19 It is noteworthy that the appellants are not involved in the divorce proceedings between SAT and GJT (the first and second respondents). Returning to the issue at stake, Wilson J asserts that this interlocutory application is appealable; hence, we part company. While I accept that there may be circumstances in which an interlocutory application is appealable, this one before us is not for the following reasons.

20 First, the order of AJ Ludwig was not final by any stretch of the imagination. The judgment focused mainly on whether the applicant's application and affidavit were irregular steps. The substratum of the appellants' submissions to the court *a quo* was that an incorrect short-form notice of motion under Uniform Rule 6 (11) was used instead of the long-form under Uniform Rule 6(5).

21 Expanding on this point, the appellants argued that it was an irregular step to combine, in one notice of motion, prayers to compel discovery of documents from GJT and to compel compliance with subpoenas *duces tecum* issued to the appellants. For completeness' sake, Uniform Rule 6 (11) needs to be referenced:

> "Notwithstanding the aforegoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and sit down at the time assigned by the registrar or as directed by a judge."

22 On a proper reading of this rule, it covers not only interlocutory applications but also other applications incidental to pending proceedings. It cannot be gainsaid that the appellants' application was interlocutory, if not incidental to

the proceedings. The fact that the application was a combo is, in all honesty, of no moment. Moreover, all issues were going to be ventilated in the Uniform Rule 30 application. Permitting an appeal on litigation over a combo is otiose.

23 Second, the court a quo neither ventilated nor ventured into the issues to be discussed during the Rule 30 (1) hearing. This much is stated in paragraph 6 of the leave to appeal judgment. It reads:

> "It is clear from my judgment in the s30(1) (sic) Application that I was not called upon to, and did not, deal with the actual Application to Compel which was the "main application" in this sub-set of litigation."

24 Moreover, it is notable that the majority judgment made the following remarks:

> "depending on circumstances, interlocutory proceedings involving such external parties may require the use of a longform notice of motion, but the question will always be whether the use of the shortform would be prejudicial. Even if it would, we cannot foresee the circumstances under which such prejudice could not be cured by the simple effluxion of time, by a postponement or an order for course or by some other form of common sense caught oversight."

25 Without equating the absence of prejudice with the absence of appealability, it is axiomatic that an appeal is embarked upon because a litigant cannot obtain any further relief from that court. To find that the potential prejudice can still be ameliorated by the very court that is seized with the matter militates against appealability.

26 Addressing an exception, the court in *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others* held that:

> "We are here concerned with a particular matter: the dismissal of two grounds of exception that go to the heart of the plaintiffs' cause of action. Applying the doctrine of finality, as I have sought to explain, a long line of authority in this Court has held that the dismissal of an exception is not appealable because no legal obstacle stands in the way of the trial court finally deciding the point of law. The dismissal of an exception is simply not a final decision, and until the matter is finally decided, an appeal should not lie to this Court to pre-empt what the high court has yet to bring to finality."[1]

27 Furthermore, the court in TWK issued a warning to the high court and held:

> "Whether the decision of a court is appealable is a matter of great importance, both for litigants and for the discharge by an appellate court of its institutional functions. That is why the doctrine of finality has figured so prominently in the jurisprudence of this Court. As a general principle, the high court should bring finality to the matter before it, in the sense laid down in Zweni. Only then should the matter be capable of being appealed to this Court. It allows for the orderly use of the capacity of this Court to hear appeals that warrant its attention. It prevents piecemeal appeals that are often costly and delay the resolution of matters before the high court. It reinforces the duty of the high court to bring matters to an expeditious, and final, conclusion. And it provides criteria so that litigants can determine, with tolerable certainty, whether a matter is appealable. These are the hallmarks of what the rule of law requires."

28 In this case, the court *a quo* dealt with what was far less than an exception. Having examined a combo argument and dismissed the appellants'

[1] Supra para 31

application, the court could hardly be said to have pronounced the last word on the issues to be heard later under the Uniform Rule 30(1) application. The principle of *stare decisis* is the pillar of our legal system. In my opinion, high courts should be wary of delusions of grandeur and of readily departing from *stare decisis*. This is a slippery slope to anarchy.

29 The dispute over the use of a long form versus a short form should not be a reason to delay a matter or add costs to the litigants. Sometimes a robust approach is necessary to have the matter heard. This divorce matter has been delayed far too long due to the taking of unmeritorious points at great emotional and financial expenses, often borne by the litigants, never by the lawyers.

30 Finally, it cannot be said that the court a quo's order was definitive of the rights of the parties, nor does it dispose of any portion of the relief claimed in the main proceedings. This matter is simply not appealable unless the intention is to open the flood gates and crowd the appellate court with unmeritorious applications.

31 When addressing appealability, it is common cause that the appellants do not rely on the interest of justice as outlined in the matter of *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*[2]. Their entire case rests on the *Zweni*[3] test.

[2] 2022 ZACC 34; 2023 (1) SA 353 (CC) (22 September 2022).
[3] *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A).

32 Referring to *Zweni*, the court in *TWK* held:

> "There were three attributes of a judgment or order, authoritatively stated in *Zweni*: final in effect and not susceptible of alteration by the court of first instance; definitive of the rights of the parties, that is, the order must grant definitive and distinct relief; and, the order must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. However, so it was argued, the *Zweni* trinity was subject to relaxation by recourse to the interests of justice, even when the Supreme Court Act was in force."[4]

33 The appellants' case fails to meet even a single element of the triad mentioned in *Zweni*. Consequently, this interlocutory application is not appealable. I am of the view that a punitive costs order was warranted. Accordingly, I do not interfere with the order on costs.

Order

34 I would have struck this appeal from the roll, with costs, including the costs of counsel, which may be taxed on scale "B".

pp MP MOTHA
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 23 June 2026.

HEARD ON: 27 May 2026

DECIDED ON: 23 June 2026

[4] *Twk* supra at Para 12

For the Appellants:	L Hollander (Heads of argument drawn by H Epstein SC and K Naidoo) Instructed by Douglas Smart Attorneys
For the First Respondent:	R Andrews Instructed by Nowitz Attorneys