



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

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Case no: 2022/034128

Date: 01 July 2026

In the matter between:

**VERNI SPECIALITY CONSTRUCTION
PRODUCTS (PTY) LTD**

First Applicant

MARIA CATHARINA STEENBERG

Second Applicant

SANTIE ROUX

Third Applicant

and

UROCHEM TRADING (PTY) LTD

First Respondent

CELENE TRADING (PTY) LTD

Second Respondent

In re:

UROCHEM TRADING (PTY) LTD

First Applicant

CELENE TRADING

Second Applicant

and

SANTIE ROUX

First Respondent

MARIA CATHARINA STEENBERG

Second Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] In this opposed motion, the applicants in this Rule 30/30A application (Santie Roux, Maria Catharina Steenberg and Verni Specialist Construction Products (Pty) Ltd) seek to have the respondents' (Urochem Trading (Pty) Ltd and Celene Trading) supplementary affidavit declared an irregular step and set aside. The applicants in this application are the respondents in the main application, and the respondents in this application are the applicants in the main application. They will be referred to as they are in this Rule 30 application.

Background

[2] The respondents instituted proceedings against the applicants in October 2022. After service of the notice of intention to oppose, the parties negotiated, and Dosio J granted a consent order on 25 October 2022.

[3] In terms of the consent order, the third applicant was required to immediately withdraw, remove, or recall its product from the market and permanently cease manufacturing it. The order also restrained the applicants from manufacturing, developing, selling, or marketing products in accordance with the respondents' formulae, data, instructions, recipes, business or trade information, and prohibited the use, dissemination, distribution, copying, publication, or implementation of such information.

[4] The consent order not only granted substantive relief but also required post-order affidavits, meetings, and inspections involving the parties, their legal representatives, and IT experts to identify and remove Urochem's and Celene's

information from devices and storage media. It reserved the costs of the main application for later determination.

[5] Following the grant of the order, a compliance and verification process ran from late 2022 to 2023. The respondents contend that contradictions arose from the compliance affidavits and the subsequent inspection process, including alleged discrepancies regarding the possession of hard-copy files, electronic media, and confidential information. To address this, and in line with the post-order process, an independent assessor was appointed by agreement between the parties. The assessment report was furnished later in 2023.

[6] The respondents submit that the report, together with the events following the consent order, demonstrated that the protection of their confidential information required continued enforcement steps and that those events were relevant to the question of the reserved costs. The applicants, by contrast, contend that once the consent order had been granted, the lis on the substantive relief had ended, and that these later events could not properly be used to enlarge the case originally made or to bolster the costs claim by way of a further affidavit.

[7] The respondents deposed to what they call a supplementary affidavit. The purpose of the affidavit was to place before the court facts that had arisen after the consent order and, on the strength of those facts, to seek an order unreserving costs and directing the applicants to pay the costs on the attorney-and-client scale, including certain enforcement-related and expert costs.

[8] The applicants contend that the supplementary affidavit constitutes an irregular step, as it was a further affidavit filed without the court's prior leave under Rule 6(5)(e). There were also concerns about the filing history and the use of an incorrect case number in the affidavit. To that end, they delivered a Rule 30(2)(b) notice calling upon the respondents to remove the cause of complaint, which the respondents refused.

[9] The applicants then launched the present application seeking to have the supplementary affidavit declared an irregular step and set aside. The respondents opposed this application, and, together with their answering affidavit, delivered a

conditional counter-application in which they sought, if leave were found to be necessary, condonation for the filing of the supplementary affidavit and an order admitting it, coupled with direction for the delivery of an answering affidavit thereto.

[10] The present dispute must be determined in light of these facts.

Issues to be determined

[11] The principal issue is whether the respondents' supplementary affidavit constitutes an irregular step for the purposes of Rules 30 and 30A.

[12] This will depend on whether that affidavit is, in substance, a further affidavit within the meaning of Rule 6(5)(e), even though no answering affidavit had been delivered in the main application. If it is a further affidavit, the next question is whether the respondents were required to obtain leave before serving and filing it. Related to that is the question of whether the fact that it was served on 7 March 2024 but filed only on 5 April 2024, and that it reflected the incorrect case number, renders the step further irregular. If so, it must be determined whether the applicants have established the prejudice required for relief under Rule 30 or Rule 30A. The last issue is the costs of this interlocutory application and of the conditional counter-application.

[13] The applicants contend that the supplementary affidavit is plainly a further affidavit under Rule 6(5)(e) and that the respondents were obliged to obtain the court's leave before delivering it. Even without their answering affidavit in the main application, the respondents were not entitled to supplement their founding affidavit with new information after the consent order had already been granted.

[14] Moreover, the applicants submit that the supplementary affidavit impermissibly expands the relief originally sought, including the costs of drafting the supplementary affidavit itself and post-order enforcement steps not covered by the original notice of motion.

[15] As for prejudice, they state that they are now confronted with a further affidavit containing new and allegedly irrelevant matter to which they cannot respond, as doing

so would, in itself, constitute a further step requiring leave. Thus, absent the affidavit being set aside, they might be denied an opportunity to reply, and the respondents would be able to rely on material that remains unanswered yet is not properly introduced.

[16] Regarding the counter-application, the applicants contend that it was an afterthought and does not cure the original irregularity. What should have happened instead is for the respondents to bring a proper interlocutory application for leave to file in the ordinary way, rather than delivering the supplementary affidavit first and, only later, when challenged, seeking its condonation and admission. They thus persist in seeking an order setting aside the supplementary affidavit, alternatively directing its withdrawal, together with costs on the attorney-and-client scale.

[17] The respondents submit that the application is unduly formalistic and that the court should prefer substance over form. They contend that the supplementary affidavit was filed to place facts before the court that arose after the consent order and bear directly on the reserved costs issue, which must still be determined.

[18] Furthermore, the respondents submit that, because no answering affidavit has yet been delivered in the main application, the applicants have suffered no real prejudice. According to the respondents, the applicants were invited to answer the supplementary affidavit and could have addressed its contents rather than launching the Rule 30/30A application. They view this as the applicants relying on technical objections to delay the determination of costs and to prevent the full factual picture from being placed before the court.

[19] The respondents further state that the incorrect case number was a misnomer that caused no real prejudice, as the applicants knew the matter concerned, and in fact relied on that affidavit for this application.

[20] The respondents submit that if leave was required under Rule 6(5)(e), they have filed a conditional counter-application for condonation and the admission of the supplementary affidavit. If an order is granted in accordance with the conditional

counter-application, they seek a prayer allowing the applicants to deliver any answering affidavit within ten days.

Legal analysis

[21] Rule 6(5)(e) provides that “[t]he court may in its discretion permit the filing of further affidavits.” In other words, the court may exercise its discretion to permit the filing of any affidavit that is not a founding, answering or replying affidavit.¹ The fundamental consideration is whether the matter should be adjudicated upon all the facts relevant to the issue. The receipt of a fourth set of affidavits, however, remains an exception to the rule.

[22] Whether a further set should be received is a question of fairness.² There should be a proper explanation for why the information was not put before the court earlier, and the court must be satisfied that no prejudice is caused by the filing of the additional affidavits which cannot be remedied without an appropriate cost order.

[23] Whether labelled as a supplementary affidavit or otherwise, the affidavit in question is, in substance, a further affidavit as contemplated by the rule. This is because it is not part of the ordinary trilogy of affidavits and may therefore be received only with the court's leave.³ That does not, however, mean that leave can be sought only by way of a separately enrolled interlocutory application before the matter is heard. It was made clear in *Kings Prop Development (Pty) Ltd v Checkmate Distribution (Pty) Ltd*⁴ that the ordinary practice is for leave to be sought from the court hearing the main proceeding itself, and that it is not the usual practice to require a separate interlocutory hearing for that purpose.

[24] The applicants also rely on the use of an incorrect case number in the affidavit, and on the disjuncture between service on 7 March 2024 and filing on 5 April 2024, as further markers of irregularity. Neither, on its own, advances the enquiry. The

¹ *Hano Trading CC v J R 209 Investments (Pty) Ltd* [2012] ZASCA 127 par 10.

² *Garnnett-Adams Properties (Pty) Ltd v Thomas* [2024] ZAGPJHC 534 par 16.

³ *Standard Bank of SA Ltd v Sewpersadh* 2005 (4) SA 148 C at 154.

⁴ 2019 JDR 1243 (GJ) par 18.

applicants suffered no prejudice from the misnomer: they plainly knew which matter was at issue, and indeed relied on the affidavit to bring this very application. The filing date discloses no independent prejudice either. What matters is not the mechanics of delivery but whether, in substance, the respondents were entitled to place this material before the court at all. That is the question to which I now turn.

[25] It follows from *Kings Prop* that the mere fact that leave was not sought by way of a separate interlocutory application does not, without more, render the procedure irregular. The applicants' Rule 30/30A application cannot succeed on that basis alone. But the applicants have not left matters there: they have brought this Rule 30 application precisely because no leave was sought at all, in any form, before the affidavit was filed. That places the question of leave squarely before this court. Whether or not a separately enrolled application was the ordinarily appropriate vehicle, the question of leave is now before me, by virtue of the relief the applicants seek and the conditional counter-application the respondents have brought in answer to it. I deal with it on that basis.

[26] The fact that the main application was disposed of by consent does not, per se, preclude a further affidavit. *Gamlan Investments (Pty) Ltd v Trillion Cape (Pty) Ltd*⁵ clarifies that once the merits have been resolved and only costs remain, a court must decide costs on broad general lines, identifying who was substantially successful, without allowing the costs issue to become an issue for extensive further evidence or a re-hearing of the merits. Instead, the court should make a proper allocation of costs on the material already at its disposal.

[27] In this case, on the logic of *Gamlan*, once the consent order was granted, the lis on the substantive relief was at an end, and what remained was the narrower issue of the reserved costs of the application. This does not entitle a party to reopen the factual inquiry by placing before the court extensive new post-order evidence, or to lead new contested evidence on matters that arose after the settlement of the merits. At most, there might be room for a limited affidavit directed only at matters genuinely necessary for the courts to exercise their discretion as to costs, in deciding who was

⁵ 1996 (3) SA 692 (C).

substantially successful in the application and thus who should bear the costs. The present affidavit goes far beyond such a limited inquiry.

[28] The further affidavit seeks to set out events that transpired after the granting of the order and to recover a wide range of additional costs said to have been incurred after the consent order, including the costs of drafting the contentious affidavit and enforcing the order. Those are not the “costs of the application” that were reserved by that order.

[29] It is unnecessary to decide whether *Gamlan* excludes every conceivable further affidavit once the merits have been settled and only costs remain. It is sufficient to hold that, at best for the respondents, any such affidavit would have to be confined with considerable strictness to what is truly necessary for deciding the reserved costs on broad general lines. The present affidavit plainly exceeds any such limits.

The counter application

[30] It is convenient to address the conditional counter-application at this point, since it determines the ultimate fate of the affidavit. Even assuming that a limited further affidavit might in principle have been admissible to address the narrow issue of who was substantially successful and thus entitled to the reserved costs, the present affidavit goes well beyond that. The respondents have accordingly not made out a proper case for leave to admit it in its present form. The conditional counter-application is dismissed.

Conclusion

[31] No leave was sought before the affidavit was filed. That renders the filing irregular. The applicants' argument that the absence of a separately enrolled application was itself the irregularity goes too far. *Kings Prop* makes clear no such application was required. Still, it was, on any approach, necessary that leave be sought in some form, and it was not. The counter-application is the respondents' attempt to obtain, after the fact, the leave that should have been sought. For the reasons given above, that leave is refused. The irregularity was never cured.

Costs

[32] As to costs, the costs reserved in the main application remain reserved. Insofar as the present application is concerned, there is no reason to depart from the ordinary rule that costs follow the result, and no proper basis for a punitive order. The applicants are therefore entitled to the costs of this application, taxed on Scale B.

Order

[33] The following order is made:

1. The respondents' delivery of the supplementary affidavit is declared to be an irregular step.
2. The supplementary affidavit is set aside.
3. The respondents' conditional counter-application for leave to admit the supplementary affidavit is dismissed.
4. The costs of the main application remain reserved.
5. The respondents are ordered, jointly and severally, the one paying the others to be absolved, to pay the applicants' costs of this application, to be taxed on scale B.


WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing: 15 April 2026

Date of judgment: 1 July 2026

For the applicant: LH Hennop instructed by Yammin
Hammond Inc

For the respondent: JHF Le Roux instructed by Cuthbertson &
Palmeira Attorneys Inc