



IN THE NORTH WEST HIGH COURT, MAHIKENG

CASE NO: 1334/2025A

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates: **NO**

In the matter between:

TSHEPO WILLIAM GAETLHOBOWE

Excipient/Defendant

AND

ORAPELENG PENNEL PHAKA

Respondent/Plaintiff

DATE OF HEARING

: 30 July 2026

DATE OF JUDGMENT

: 21 August 2026

FOR THE EXCIPIENT/DEFENDANT

: Mr. Khumalo

FOR THE RESPONDENT/PLAINTIFF

: Mr. Ramolebatsane

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives *via* email. The date and time for hand-down is deemed to be 10h00 on 21 August 2026.

ORDER

Resultantly, the following order is made:

- (i) The exception dated 11 June 2025 [first exception] is withdrawn and the excipient (defendant) Mr. Tshepo William Galetlhobogwe, is ordered to pay the costs thereof on a party-and-party basis on Scale A, to be taxed.
- (ii) The exception dated 23 July 2025 [second exception] is dismissed with costs. The excipient (defendant) Mr. Tshepo Galetlhobogwe, is ordered to pay the costs thereof on an attorney-and-client scale, to be taxed.
- (iii) The respondent (plaintiff) is ordered to provide a complete copy of the summons and accompanying particulars of claim to the excipients' (defendants') attorneys of record, within ten (10) court days from date of this judgment/order.
- (iv) The excipient (defendant) is to file his plea to the summons and particulars of claim within fifteen (15) court days after receipt of a copy of the complete summons and accompanying particulars of claim from the respondent (plaintiff).

JUDGMENT

Summary

Exception - Rule 23 - Periods are peremptory. Rule 30 and Rule 30A - Its applicability after the expiry of the time frames stipulated in Rule 23. Withdrawal of the exception and re-served. No application for condonation in terms of Rule 27. Attorney-and-client costs awarded.

HENDRICKS JP

- [1] The respondent (as the plaintiff) instituted an action for damages against the excipient (as the defendant). Summons was issued and filed with the Office of the Registrar of this court on 11 March 2025, stipulating that a notice of intention to defend should be filed within ten (10) days from service of the summons, whereafter within twenty (20) days the defendant should serve and file a plea, exception, notice to strike out or a counter-claim. The *dies* for the filing of the notice of intention to defend lapsed on 26 March 2025. The excipient only entered an appearance to defend on 28 March 2025, some two (2) days late, without seeking condonation from this court.
- [2] The *dies* for delivery of a plea or exception expired on 30 April 2025. On 05 May 2025 the respondent (plaintiff) served a notice of bar. On 12 May 2025 the excipient (defendant) delivered a notice of exception in terms of Rule 23 of the Uniform Rules of Court¹. The only ground raised in the

¹ Rule 23

23. Exceptions and applications to strike out

(1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that—

exception is that paragraphs 4.4 to 4.11 are omitted and therefore no cause of action is disclosed. It deserves to be mentioned that the particulars of claim attached to the summons are very brief and that paragraphs 4.4 to 4.11 are printed on the flipside of page one (1) thereof.

- [3] For the sake of completeness and to fully understand the complaint raised in the exception, the contents of the particulars of claim is reproduced and it reads thus:

“1.

PARTIES

ORAPELENG PENNELT PHAKA an adult male person currently residing at House 2[...], Letsapa section, Setlagole village, North West Province:

2.

WILLIAM TSHEPO GALET LHOB OGWE who resides at House No. 2[...], Lopapeng section, Setlagole village, North West Province. With further address at Setlagole Police station, North West Province.

(a) where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and

(b) the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception.

[Rule 23(1) amended by GNR 2164 in G. 10958 with effect from 2 October 1987, GNR 2642 in G. 11045 with effect from 31 December 1987, GNR 1262 in G. 13283 with effect from 1 July 1991; substituted by GNR 1343 in G. 42773 with effect from 22 November 2019.]

(2) Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the aforesaid matter, and may set such application down for hearing within five days of expiry of the time limit for the delivery of an answering affidavit or, if an answering affidavit is delivered, within five days after the delivery of a replying affidavit or expiry of the time limit for delivery of a replying affidavit, referred to in rule 6(5)(f): Provided that—

(a) the party intending to make an application to strike out shall, by notice delivered within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity to remove the cause of complaint within 15 days of delivery of the notice of intention to strike out; and

(b) the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in the conduct of any claim or defence if the application is not granted.

(3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.

(4) Wherever any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary.

3.

JURISDICTION

The above Honourable Court has jurisdiction to hear the matter in that the whole cause of action arose within the jurisdiction of the above Honourable Court.

4.

BACKGROUND

- 4.1 *On the 12th March 2022 at around 22h58 the Plaintiff went to visit his girlfriend Ms Smangele Mogashwa at her parental home at Letsapa section in Setlagole village.*
- 4.2 *Upon arrival at Mogashwa's house, the Plaintiff found Ms Gadihele Phaka in the sitting room and his girlfriend Smagele was inside the room, having sexual intercourse with the Defendant Mr William Tshepo Galetlhobogwe.*
- 4.3 *The Plaintiff and the Defendant had a fight over the incident which culminated to the Defendant to fleeing the scene naked.*
- 4.4 *At about 00h15, as the Plaintiff was leaving the Mogashwa house, he was confronted by the Defendant at the gate.*
- 4.5 *The Defendant then withdrew a firearm which I believe to be his service pistol and shot at me from the back as I was trying to run away.*
- 4.6 *The bullet from the Defendant's firearm hit the Plaintiff from behind and he felt on his stomach.*
- 4.7 *Despite the pain and bleeding, the Plaintiff managed to stand up and ran to his home to summon for help.*
- 4.8 *The Plaintiff was later driven to the clinic for medical intervention on his aunt's private vehicle and was further transferred to Mafikeng provincial hospital where he was eventually admitted on the 13 March 2022 until*

the 02 April 2022. Attached hereto are the statements made by the Plaintiff, Gadihele Phaka and Smangele Mogashwa and annexed as "OPP.1", "OPP.2" and "OPP.3" respectively.

4.9 At Mafikeng provincial hospital, the surgery was performed on me to remove the bullet and to repair the damage caused by the bullet. Attached hereto are the pictures of the Plaintiff revealing the damage to his body and annexed as "OPP.5".

4.10 The conduct of the Defendant was premeditated in that he managed to flee the scene of fight and later returned with a firearm and used it to shoot our client.

4.11 The Defendant knew or ought to have known that when the Plaintiff was running away, the firearm was not supposed to be used but he went on to shoot the Plaintiff from behind.

4.12 As the result of the shot, the Plaintiff suffered damaged in the form of trauma, excruciating pain and suffering, disfigurement due to scarce in his body and will continue to suffer future medical expenses and ultimately unable to work.

4.13 The damages suffered by the Plaintiff amount to R 1 800 000.00 (One Million Eight Hundred thousand rand) calculated as follows:

4.13.1.1 R 500,000.00 for trauma;

4.13.1.2 R 500,000.00 for pain and suffering;

4.13.1.3 R 500,000.00 for disfigurement; and

4.13.1.4 R 300,000.00 for future medical expenses.

WHEREFORE *the Plaintiff prays for judgment against the Defendant as follows:*

- 1. Payment in the amount R 1 800 000,00;*
- 2. Interest tempore mora thereon from date of judgment to date of final payment;*
- 3. Costs of suit;*

4. *Further and/or alternative relief.*"

- [4] Having been made aware of the defect in the particulars of claim attached to the summons, the respondents' (plaintiffs') attorneys of record offered to re-serve a complete copy of the summons and particulars of claim. This offer was refused by excipients' (defendants') attorneys of record. On 02 June 2025, the fifteen (15) day period within which the exception had to be set down lapsed. The excipient (defendant) failed to set the exception down for hearing. On 06 June 2025 the respondent (plaintiff) served a notice in terms of Rule 30A² on the excipient (defendant), recording his intention to apply, after the expiry of ten (10) days, for the exception to be struck out as an irregular step.
- [5] On 11 June 2025 the excipient (defendant) served an application for a date of hearing of the exception as well as an index thereto on the respondent (plaintiff). This was done despite the Rule 30A notice. On 12 June 2025 the respondent (plaintiff) served a notice in terms of Rule 30 (2)³, affording the excipient (defendant) a ten (10) day period to remove

² Rule 30 A

30A. Non-compliance with Rules and Court Orders

[Rule 30A heading substituted by GNR 2133 in G. 46457 with effect from 8 July 2022.]

(1) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order—

(a) that such rule, notice, request, order or direction be complied with; or

(b) that the claim or defence be struck out.

[Rule 30A(1) substituted by GNR 2133 in G. 46457 with effect from 8 July 2022.]

(2) Where a party fails to comply within the period of 10 days contemplated in sub-rule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.

[Rule 30A inserted by GNR 881 in G. 19009 with effect from 27 July 1998; substituted by GNR 842 in G. 42497 with effect from 1 July 2019.]

³ Rule 30 (2)

(2) Where a party fails to comply within the period of 10 days contemplated in sub-rule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.

the cause of the complaint. This ten (10) day period lapsed without compliance and an application in terms of Rule 30 (1) and Rule 30A (2) was served. On 23 July 2025 the excipient (defendant) delivered a notice of withdrawal of the exception, but simultaneously thereto filed another notice of exception based on the same grounds of the omission of paragraphs 4.4 to 4.11 and that therefore no cause of action is disclosed. This is the second exception.

[6] This exception was set down for 14 November 2025, on which date Masike AJ removed it from the roll with costs to be costs in the cause and further ordered that the exception and the Rule 30 applications be heard simultaneously. The date for the hearing of both applications (exception and Rule 30) was 30 July 2026, when after oral submissions were made, judgment was reserved.

[7] During oral submissions, it was submitted on behalf of the excipient (defendant) that the first exception delivered on 12 May 2025 is withdrawn and costs are tendered on a party-and-party basis on Scale A in terms of Rule 67A, to be taxed. Furthermore, that the second exception delivered on 23 July 2025 was timeously filed in full compliance with the applicable Rules of Court and is therefore unopposed. The relief requested by the excipient (defendant) is that because of the omission of paragraphs 4.4 to 4.11 of the respondents' (plaintiffs') particulars of claim, no cause of action is disclosed, and therefore the exception must be upheld and respondents' (plaintiffs') claim be dismissed with costs. To the contrary, the respondent (plaintiff)

submitted that the exception and index served on 11 June 2025 should be declared as an irregular step and set aside and that the excipient (defendant) should be ordered to pay the costs thereof on an attorney-and-client scale. Furthermore, that the exception dated 12 May 2025 be struck out; that leave be granted to the respondent (plaintiff) to proceed with the main action on an unopposed basis; and that the excipients' (defendants') attorneys of record be ordered to pay the costs *de bonis propriis*.

- [8] As alluded to earlier, at the inception of the hearing of oral submissions, Mr. Khumalo stated that the first exception dated 12 May 2025 is withdrawn and costs are tendered on a party-and-party basis, on Scale A in terms of Rule 67A⁴, to be taxed. This was accepted by Mr.

⁴ **67A. Costs**

(1) Subject to any order of the court awarding costs, the fees and disbursements as between party and party, which may be included in a bill of costs submitted for taxation, shall be—

- (a) for attorneys, in accordance with the tariff in rule 70;
- (b) for attorneys, which a right to appear in the Superior Courts and who appear in a matter, in accordance with rules 69 and 70, where applicable; and
- (c) for advocates, in accordance with the tariff in rule 69: Provided that for services rendered by an advocate referred to in section 34(2)(a)(ii) of the Legal Practice Act, 2014 (Act No. 28 of 2014), for work which is ordinarily performed by an attorney, the fee for such work shall be in terms of rule 70.

(2) In considering all relevant factors when awarding costs, the court may have regard to—

- (a) the provisions of rule 41A;
- (b) failure by any party or such party's legal representative to comply with the provisions of rules 30A; 37 and 37A;
- (c) unnecessary or prolix drafting, unnecessary annexures and unnecessary procedures followed;
- (d) unnecessary time spent in leading evidence, cross-examining witnesses and argument;
- (e) the conduct of the litigation by any party's legal representative and whether such representative should be ordered to pay such costs in his or her personal capacity; and
- (f) whether the litigation could have been conducted out of the magistrate's court.

(3)

(a) A cost order shall indicate the scale in terms of rule 69, under which costs have been granted.

(b) In considering the factors to award an appropriate scale of costs, the court may have regard to:

- (i) the complexity of the matter; and
- (ii) the value of the claim or importance of the relief sought.

(c) If the scale in terms of paragraph (a) is not indicated in the order, scale A of rule 69(7) shall apply to the costs that the court has awarded.

(4) A cost order may upon application by any party indicate—

- (a) which portions of the proceedings are deemed urgent; and
- (b) whether the fees consequent upon the employment of more than one advocate or attorney having right of appearance in the Superior Courts and who appears, are allowed and the scale in terms of rule 69, under which such fees are allowed.

(5) The taxation of fees as between party and party shall be effected by the taxing master in accordance with rules 69 and 70 and the applicable tariffs therein.

Ramolebotswana on behalf of the respondent (plaintiff). Without much ado, this takes care of the first issue. What remains is the Rule 30 / Rule 30A application as well as the second exception. The Rule 30 / Rule 30A application is unopposed. Although this was initially with regard to the first exception, to declare the application for a date of hearing and the delivery of an index as an irregular step, the Rule 30 / Rule 30A which is unopposed remains alive. The respondent (plaintiff) contended that the Rule 30 / Rule 30A application remains alive and that the excipient (defendant) took a further step and filed the second exception simultaneously with the withdrawal of the first exception, which raised the identical issue. The respondent (plaintiff) further submitted that the filing of the same exception again, is an attempt to render the Rule 30 (1) / Rule 30A (2) application moot. It is submitted that despite the Rule 30 / Rule 30A application, the excipient (defendant) nevertheless took the further step by filing the second exception. This, so it is contended, is a reckless abuse of the court processes.

- [9] Reference was made to Rule 23 of the Uniform Rules of Court which is peremptory, and reliance was placed on the case of *Frans Roelof Petrus De Bruyn vs Mile Inv 307 (Pty) Ltd and Others*⁵. If the exception is not set down and prosecuted, it automatically lapse at the end of the fifteen (15) day period after delivery of the notice of exception. It therefore becomes invalid, incompetent and incapable of being prosecuted further. This explains why the first exception was withdrawn and immediately replaced by the second exception which is similar to the first exception.

(6) Where an item in the tariffs set out in rules 69 or 70 requires the taxing master to exercise a discretion in determining the amount of a fee or disbursement to be allowed for such item, the taxing master may have regard to any guidelines recommended by the Legal Practice Council.

[Rule 67A inserted by GNR 4477 in G. 50272 with effect from 12 April 2024.]

⁵ (72427/2013) [2017] ZAGPHCP 286 (05 May 2017) par. [23].

Sight was however lost of the fact that summons was already served on 11 March 2025 and that the *dies* for the filing of the plea or exception lapsed on 30 April 2025.

[10] It was also contended that despite the knowledge of non-compliance with the rules and the fact that its exception has been extinguished by the effluxion of time, the excipient (defendant) chose not to implement the prescripts of Rule 27 (3)⁶. No application for condonation for non-compliance with the rules were made. The filing of the second replacement exception on 23 July 2025 does not assist the excipient (defendant) in any way, in the absence of an application for condonation for the non-compliance with the rules of court in terms of Rule 27 (3). The second exception is woefully and totally out of time, and is of no moment. This second exception stands to be dismissed with costs.

[11] It needs to be emphasized that it is a directive of this court, that court documents must be printed on both sides of each page. It is quite logical that page 2 of the particulars of claim, which is on the flipside of page one (1) and which contains paragraphs 4.4 to 4.11, was not printed or copied. When the first exception was filed, the attorneys of record for the respondent (plaintiff) offered to re-serve a complete summons and particulars of the claim, which offer was rejected by the excipients' (defendants') attorneys. Had this request been exceeded to, it would

⁶ Rule 27 (3)

27. Extension of time and removal of bar and condonation

...

...

(3) The court may, on good cause shown, condone any non-compliance with these Rules.
[Rule 27(3) substituted by GNR 235 in G. 1375 with effect from 18 February 1966.]

have avoided the delay that occurred and the unnecessary escalated costs that are incurred. This surely impacts on the costs to be awarded. The respondent (plaintiff) prays that costs be awarded on either the punitive scale as between attorney-and-client or *de bonis propriis* against the attorneys of the excipient (defendant). I am disinclined to accede to the latter. That costs should follow the result and be awarded in favor of the successful litigant unless there is valid reasons to order otherwise, is trite. I can find no cogent reason to direct otherwise. However, there is no reason why the respondent (plaintiff) should be out of pocket. I am of the view that it would be fair, just and equitable to award costs on the scale as between attorney-and-client.

[12] Insofar as the prayer that leave be granted to the defendant (plaintiff) to proceed with the main action on an unopposed basis is concerned, I find myself constrained to grant an order to such effect. In the interest of justice, I am of the view that a complete copy of the summons and accompanying particulars of claim be provided to the excipient (defendant) and that he be afforded an opportunity to file a plea thereto within a reasonable time, if he so wish, in order to ventilate the issues.

Order:

[13] Resultantly, the following order is made:

- (i) The exception dated 11 June 2025 [first exception] is withdrawn and the excipient (defendant) Mr. Tshepo William Galetlhobogwe, is ordered to pay the costs thereof on a party-and-party basis on Scale A, to be taxed.

- (ii) The exception dated 23 July 2025 [second exception] is dismissed with costs. The excipient (defendant) Mr. Tshepo Galetlhobogwe, is ordered to pay the costs thereof on an attorney-and-client scale, to be taxed.
- (iii) The respondent (plaintiff) is ordered to provide a complete copy of the summons and accompanying particulars of claim to the excipients' (defendants') attorneys of record, within ten (10) court days from date of this judgment/order.
- (iv) The excipient (defendant) is to file his plea to the summons and particulars of claim within fifteen (15) court days after receipt of a copy of the complete summons and accompanying particulars of claim from the respondent (plaintiff).

R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG

Appearances

For the Excipient/Defendant:
Instructed by:

Mr. Khumalo
ISE Khumalo Attorneys, Mahikeng

For the Respondent/Plaintiff:
Instructed by:

Mr. Ramolebatsane
RAMS Richard &Co. Inc, Mahikeng