



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

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| Reportable: | YES/NO |
| Of interest to other Judges: | YES/NO |
| Circulate to Magistrates: | YES/NO |

Case No.: 284/2022

In the matter between:

FLEXI TRADE 110 (PTY) LTD
MASELSPOORT RESORT AND
CONFERENCE CENTRE (PTY) LTD

First Respondent/First Plaintiff

Second Respondent/Second Plaintiff

and

CAPITAUX (PTY) LTD

Applicant/Defendant

Coram: Opperman, J

Date of hearing: 9 June 2022

Judgment Delivered: 4 August 2022. The reasons for judgment were handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 4 August 2022. The date and time for hand-down is deemed to be 4 August 2022 at 15h00

Summary: Irregular step – Rules 17(3) and 18(1) of the Uniform Rules of Court – signature of legal representative not on copy of summons and pleadings served on opposing party or before issued by registrar.

JUDGMENT

BACKGROUND

[1] The applicant/defendant (“Capitiaux”) seeks an order setting aside the first and second respondents’/plaintiffs’ (“respondents”) summons, inclusive of the particulars of claim (combined summons¹), served on them on 1 February 2022 (“the 1 February 2022 – combined summons”), as being an irregular step.²

[2] The irregularity is to be in terms of Rule 30(1) of the Uniform Rules of the Court.³

Rule 30(1):

A party to a cause in which an irregular step⁴ has been taken by any other party may apply to court to set it aside.

[3] The application, fundamentally, turns on the alleged non-compliance with the provisions of Uniform Rules 17(3) and 18(1) that was acknowledged by both parties.⁵

[4] It is clear from BKR1⁶ introduced into evidence by Capitiaux and not disputed by the respondents; that a combined summons, the summons and the particulars of claim, was not signed and dated by the legal practitioner when it was issued by the Registrar of the Court on 25 January 2022 and served on the opposing party by the Sheriff on 1 February

¹ A combined summons is a summons to which is annexed a statement of the material facts relied upon by the plaintiff in support of the plaintiff's claim. A combined summons does not exist separately from the particulars of claim, JUSTICE COLLEGE - SAFLII <https://www.saflii.org/cases/ZARMC/1.pdf>.

² “Notice of Application in terms of Rules 30 and 30A” prayer 1 dated 14 March 2022 on page 1 of the Bundle indexed on 4 May 2022 (“the Bundle”).

³ Paragraph 3 of the Practice Note of Capitiaux and paragraph 1 of the Heads of Argument of Capitiaux.

⁴ *Suliman v Karodia* 1926 WLD 102. Harms with reference to case law stated that: “It is not possible to draw up an exhaustive list of what constitutes an irregular step but the term would embrace: *failure by qualified practitioners to sign particulars of claim*; delivering a plea to a simple summons before the plaintiff has delivered his declaration, and premature set-down.” (Accentuation added), *Civil Procedure in the Superior Courts*, Part B High Court, UNIFORM RULE 30 IRREGULAR PROCEEDINGS, <https://www.mylexisnexis.co.za/Index.aspx>, last updated: March 2022 - SI 73 at B30.3.

⁵ The Respondents’ Practice Note at paragraph 4.2.

⁶ Pages 11 to 27 of the Bundle.

2022 in terms of Rule 4(1)(a)(v) “by handing to the firstmentioned (sic) a copy thereof after exhibiting the original and explaining the nature and exigency of the said process RULE 4 (1)(a)(v).”⁷

- [5] It is the evidence of the respondents that the original version of the 1 February 2022 – combined summons (“the original combined summons”) was properly signed, issued and served. It seems as if it was not the original that was exhibited to the recipient nor so handed over. I will return to this aspect later.
- [6] There is a definite distinction to be observed between the 1 February 2022 – combined summons and the original combined summons. The application is for the 1 February 2022 – combined summons to be set aside;⁸ not the original combined summons.
- [7] Capitaux complied with Rule 30(2) that decrees that an applicant must give notice to all the parties whereby the particulars of the alleged irregularity are specified. Such an application may be made only if:
- (a) The applicant has not himself or herself or itself taken a further step in the proceedings with the knowledge of the irregularity;
 - (b) The applicant has, within 10 days of becoming aware of the irregular step by written notice afforded the opponent an opportunity of removing the cause of the complaint within 10 days; and
 - (c) The application to set aside is delivered within 15 days after the expiry of the 10-day period within which the opponent was supposed to have removed the cause of the complaint.

THE FACTS

⁷ BKR2 at page 77 of the Bundle. Rule 4(1)(a)(v): “if the person so to be served has chosen a domicilium citandi, by delivering or leaving a copy thereof at the domicilium so chosen;” [Substituted by GNR.1343 of 18 October 2019.]

⁸ “Notice of Application in terms of Rules 30 and 30A” prayer 1 on page 1 of the Bundle.

[8] The factual basis for the application as per the narrative of Capitaux that was caused by the reality they were confronted with at the time of the launching of the application, is the following:⁹

7. The Respondents' combined summons and particulars of claim were served on the Applicants' offices on 1 February 2022. A copy of the combined summons and particulars of claim as received by the Applicant are annexed hereto marked "BKR1", with the return of service annexed thereto marked "BKR2".
8. The combined summons that was served was dated 25 January 2022 and did not bear the signature of any attorney.
9. The particulars of claim that was served was not dated and did not bear the signature of an attorney.

The Respondent's response to the opportunity to remedy the irregularity

13. In accordance with rule 30(2)(b), the Respondents were afforded 10 days within which they had the opportunity to remove the causes of complaint.
14. On 16 February 2022 the Respondents' attorneys addressed a letter to my offices via email. The letter dated 16 February 2022 is annexed hereto marked "BKR5".
15. The letter enclosed signature (sic) pages that the Respondent's attorneys allege to be:
 - 15.1 *"a copy of the signed page 3 of the combined summons as well as a copy of the signed page 16 of the Plaintiff's particulars of claim."*
16. On 22 February 2022, I addressed a letter to the Respondents attorneys' offices, via email, in response to the signed pages emailed to my offices by the Respondent's attorneys. The letter dated 22 February 2022 is annexed hereto marked "BKR6".
17. For this Honourable Court's convenience our letter recorded the following observations at paragraph 3 thereof:
 - "3. *In respect of the above, we note that:*
3.1 – page 3 of the combined summons is not the same page that has been signed by the Registrar of the Court and served on our client by the sheriff; and

⁹ Supporting Affidavit: Bundle at pages 4 to 10.

3.2 – it appears that page 16 of the particulars of claim has been backdated, subsequently signed, and is also not the same page that was served on our client by the sheriff.”

18. On the grounds of the above observations, I informed the Respondents in my letter, at paragraph 4, that:

“... we are not able to respect the email receipt of the signed pages as the appropriate procedure to remedy your clients’ non-compliance with the Uniform Rules of the Court.”

19. On 28 February 2022 the Respondent’s attorneys addressed a letter, with annexures, to my offices via email. The letter dated 25 February 2022, and its annexures, are annexed hereto marked **“BKR7”**.

20. On the Respondents’ attorney’s own version, the letter records in paragraph 7 thereof:

“7.1 The only difference between the original summons (a copy of which was mailed to you) and the copy that was served on your client is that the original was signed and dated in manuscript¹⁰ by writer”; and

“7.2 The copies of the originally issued summons, were neither signed nor dated as it is not a requirement of the Uniform Rules of Court nor is it a practice in the Free State Division.”

21. The statements from the letter above are not only contradictory, but the Respondents’ attorneys acknowledged that:

21.1. there is a difference between the version emailed to us and the version that was served on the Applicant; and

21.2 the originally issued summons was not signed nor dated.

22. One only has to look at the signature page of the summons as part of Annexure BKR5 to see that the date of the summons sent to my offices via email, and the date of the summons served on the Applicant, are different.

¹⁰ **“The original form before being printed”**, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/in%20manuscript>. Accessed 26 July 2022.

Conclusion

23. Despite being afforded the opportunity (sic) correct the irregularity and/or non-compliance with the Uniform Rules of Court, the Respondents have failed and/or refused to correct the irregularity and/or non-compliance.
24. The Rules require that a summons and particulars of claim be signed in a particular manner in order that there can be no dispute at a later stage as to which documents the defendant party/ies are being called upon to answer. In this case, the Applicant cannot be expected to answer a claim not knowing which version of the summons or particulars of claim it is expected to answer. On the Respondent's own attorney's correspondence, per paragraph 7.1 of Annexure BKR7, there is a difference between the original version, and the version served on the Applicant.
25. The Respondents' combined summons and particulars of claim should therefore be set aside with costs, including costs of counsel.

[9] Counsel for the respondents is mistaken in their submission in paragraph 6.2 of their Heads of Argument: "That the respondents' original combined summons and particulars of claim with annexures "A" to "C" (*the process*) was served upon the applicant's registered address on 1 February 2022." It was a copy and not a true or exact copy of the original that was handed over to Capitaux. The original was not handed over to the Sheriff according to the statement of the legal practitioner and could neither have been served nor exhibited.

1. If it was the original or an exact copy of the original, it would have borne the signature of the legal practitioner of the respondents; this, on the version of the legal practitioner that the original was indeed signed by him and issued by the Registrar of the Court. The legal practitioner states as follows:
14.8.2 Pursuant to the photo stating of the documents referred to in paragraph 14.8.1 above, the date of 24 January 2022 was recorded in manuscript by myself *on only the not yet issued original combined summons and particulars of claim* and which not yet issued original combined summons and particulars of claim I also signed on 24 January 2022. (Accentuation added)
2. According to the statement it is this document that was issued by the Registrar; the signed original document. One Mr. Mvambi (paragraph 14.8.7) "... returned the now issued original combined summons, together with photo stated copies to

the offices of Symington & de Kok Inc.” (There is a definite distinction between the original signed documents, probable copies of the original signed documents and the unsigned (by the legal practitioner) photo stated copies. It is not known if copies were made of the original signed and issued version.)

3. Subsequent thereto aforesaid documents were attached to a letter of instruction addressed to the Sheriff with the necessary jurisdiction. Mr. Mvambi delivered the letter of instruction together with the “*now issued original combined summons, a copy thereof* (on the basis explained above) as well as ...” (paragraph 14.8.8).
4. “14.8.9 *The sheriff, in turn, caused a copy of the original combined summons to be served upon the applicant, on 1 February 2022, ...*” This cannot be correct because an unsigned copy was served on Capitaux; the original combined summons was signed and the copy of the original combined summons would also have been a signed version. An unsigned photo stated document was handed over and it differs from the original combined summons in regards to the signature(s) and the manner the date was written by the Registrar.
5. In paragraph 14.8.10 the legal practitioner confusingly so, stated that: “... it is appropriate to point out that the copies of the original combined summons are true copies thereof except for the fact that said copies do not reflect my signature and date of 24 January 2022 as recorded on the original combined summons and particulars of claim.” This might prompt the inference that the copy of the original referred to is not a copy of the original but the photo stated version that was not signed. It must be noted that Capitaux did not have any evidence or assurance that the document they received was a true copy; it differed from the original and the affidavit of the legal practitioner was not available to them.
6. In summary; an inference can be made that the 1 February 2022 – combined summons is the same as the “original” referred to by the Sheriff exhibited to the recipient. In other words, there was not a signed version; original or copy, in the possession of the Sheriff.
7. The 1 February 2022 – combined summon cannot be a true copy of the original if it does not bear the signature of the legal representative. The original was signed and the date signed by the Registrar altered.

8. BKR3 and BKR4 was electronically signed (the so-called stamp signature).
9. Rule 4 permits the service of a copy of the summons but, as will be shown later, it must be a true copy and true reflection of the original properly signed and issued.

[10] The unfortunate reality of the case is that the documents that were served on Capitaux were not signed and dated by the legal practitioner; only the Registrar. It could therefore not have been the original or a true copy of the original. The original was signed and dated by the legal practitioner and issued by the Registrar. The 1 February 2022 – combined summons did not bear the signature of the legal practitioner (BKR1). The date on page 3 later supplied (page 84 of the Bundle) has been altered by the Registrar and is different from page 3 of the 1 February 2022 – combined summons. It was not the date signed by the legal practitioner that was altered but the date signed by the Registrar.

[11] In *Russel and Flemming v Levitt* 1904 TH 322¹¹ Wessels, J, as he then was, ruled that the copy of a promissory note served on the defendant was not a true copy of the original note, in that the names of certain sureties which had been scratched out on the original did not appear as so scratched out on the copy served on the defendant. Wessels, J dismissed the summons on this basis with costs.

THE ISSUES

[12] Firstly; did the manner in which the respondents litigate offend against the Rules of Court to the extent that it caused an irregular step or irregularity?

[13] The second issue is whether the respondents' presentation, *via* email, of copies of two pages that purports to represent the whole of the document, remedied the objections of Capitaux and the administration of justice in general. May the alleged oversight of the

¹¹ Law Reports, 1828 to 1946 - All South African Law Reports, Law Reports, Witwatersrand High Court (TH) 1902-1910, 1904, <https://www.mylexisnexis.co.za/Index.aspx>.

respondents be condoned with the mere presentation of copies of pages 3 and 16 of the original papers that are different from the copy served and exhibited; or should original documents, or true and exact copies thereof, as a whole have been served on Capitaux?

THE LAW & FINDINGS

[14] The Constitutional Court in *Grootboom v National Prosecuting Authority and another* 2014 (2) SA 68 (CC) noted that the inundation of courts by slovenly litigation is unacceptable. I align myself with this concern.

[32] I need to remind practitioners and litigants that the rules and court's directions serve a necessary purpose. Their primary aim is to ensure that the business of our courts is run effectively and efficiently. Invariably this will lead to the orderly management of our courts' rolls, which in turn will bring about the expeditious disposal of cases in the most cost-effective manner. This is particularly important given the everincreasing costs of litigation, which if left unchecked will make access to justice too expensive.

[33] Recently this court has been inundated with cases where there has been disregard for its directions. In its efforts to arrest this unhealthy trend, the court has issued many warnings which have gone largely unheeded. This year, on 28 March 2013, this court once again expressed its displeasure in *eThekwini*¹⁹ as follows:

'The conduct of litigants in failing to observe rules of this court is unfortunate and should be brought to a halt. This term alone, in eight of the 13 matters set down for hearing, litigants failed to comply with the time limits in the rules and directions issued by the Chief Justice. It is unacceptable that this is the position in spite of the warning issued by this court in the past. In [Van Wyk], this court warned litigants to stop the trend...

'The statistics referred to above illustrate that the caution was not heeded. The court cannot continue issuing warnings that are disregarded by litigants. It must find a way of bringing this unacceptable behaviour to a stop. One way that readily presents itself is for the court to require proper compliance with the rules and refuse condonation where these requirements are not met. Compliance must be demanded even in relation to rules regulating applications for condonation.'

[34] The language used in both *Van Wyk* and *eThekwini* is unequivocal. The warning is expressed in very stern terms. The picture depicted in the two judgments is disconcerting. One gets the impression that we have reached a stage where litigants and lawyers disregard the rules and directions issued by the court with monotonous regularity. In many instances very flimsy explanations are proffered. In others there is no explanation at all. The prejudice caused to the court is self-evident. A message must be sent to litigants that the rules and the court's directions cannot be disregarded with impunity.

[35] It is by now axiomatic that the granting or refusal of condonation is a matter of judicial discretion. It involves a value judgment by the court seized with a matter based on the facts of that particular case. In this case, the respondents have not made out a case entitling them to an indulgence. It follows that their application must fail.

[15] With regard to and respect for the significance of proper and due process and the rights of Capitaux in the instance; the legal representatives of the parties could have prevented the unsavoury mudslinging with one or two professionally mature collegial conversations *via* any method of communication but litigation. The constitutional piety and virtue of litigation; or access to court and integrity of legal practitioners, are precious commodities.

[16] This is what they accuse each other off:

The applicant

2. We note that you have enclosed a copy of a signed version of what you now allege to be page 3 of your clients' combined summons, as well (sic) a copy of a signed version of what you allege to be page 16 of your clients' particulars of claim.
3. In respect of the above, we note that:
 - 3.1 page 3 of the combined summons is not the same page that has been signed by the Registrar of the Court and served on our client by the sheriff; and
 - 3.2 it appears that page 16 of the particulars of claim has been backdated, subsequently signed, and is also not the same page that was served on our client by the sheriff.¹²

The respondent

4. Properly interpreted, your letter under reply is spurious and defamatory as to its content.¹³

[17] The approach of this Court to be applied will not be balanced if I do not caution in the words of Rampai, J in *Louw v Grobler and another* (3074/2016) [2016] ZAFSHC 206 (15 December 2016) that:

[18] The purpose of the uniform court rules is to regulate the litigation process, procedures and the exchange of pleadings. The entire process of litigation has to be driven according to the rules. The rules set the parameters within the course of litigation has to proceed. The rules of engagement, must, therefore, be obeyed by the litigants. However, dogmatically rigid adherence

¹² "BKR6" at page 86 of the Bundle.

¹³ "BKR7" at page 88 of the Bundle.

to the uniform court rules is as distasteful as their flagrant disregard or violation. Dogmatic adherence, just like flagrant violation, defeats the purpose for which the court rules were made. The prime purpose of the court rules is to oil the wheels of justice in order to expedite the resolution of disputes. Quibbling about trivial deviations from the court rules retards instead of enhancing the civil justice system. The court rules are not an end in themselves.

[18] The above noted; parties to litigation have a right to have irregularities set aside if it affects the efficacy of constitutional litigation. All parties have a right to trust the veracity of a summons and particulars of claim. Eksteen, AJ in a scenario similar to the case in hand, in *Bredenkamp v Dart* 1960 (3) SA 106 (O) set aside the plaintiff's replication in the matter of *Neuritzza Dart v Johannes Christoffel Bredenkamp* and the respondent was ordered to pay the costs of the application *for the fact that it was not properly signed*.

[19] In 2016 Rampai, J of this division ruled unequivocally in *Louw v Grobler and Another supra* that the summons and particulars of claim *must* be signed and non-compliance *shall* cause an irregular step.

Rule 18(12)

If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30.

[20] Rule 17(3):

(3)(a) *Every summons shall be signed by the attorney acting for the plaintiff and shall bear an attorney's physical address, within 15 kilometres of the office of the registrar, the attorney's postal address and, where available, the attorney's facsimile address and electronic mail address.*

(b) If no attorney is acting, the summons shall be signed by the plaintiff, who shall in addition append an address within 15 kilometres of the office of the registrar at which plaintiff will accept service of all subsequent documents in the suit, the plaintiff's postal address and, where available, plaintiff's facsimile address and electronic mail address.

(c) *After paragraph (a) or (b) has been complied with, the summons shall be signed and issued by the registrar and made returnable by the Sheriff to the court through the registrar.*

[Para. (c) substituted by GNR.1603 of 17 December 2021.] (Accentuation added)

[21] Rule 18(1):

A combined summons, and every other pleading except a summons, *shall be signed* by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party. [Amended by GN R873 of 1996.] (Accentuation added)

[22] The lawgiver as supported by the courts of the country demands that “every summons” and “a combined summons and every other pleading” shall be signed.

[23] “Every other pleading” includes the particulars of claim.¹⁴

[24] “Every summons” and “a combined summons and every other pleading” shall by implication include the summons and supporting papers, the very documents, served by the parties on each other; *even if it is a copy*. If this is not adhered to the receiver of the document and the Court may doubt the veracity of the document and hesitate to reply and act thereon. *The crux lies in the trustworthiness of the papers.*

[25] What made the matter worse in the instance is that the Registrar of the Court signed and issued the unsigned 1 February 2022 – combined summons served on Capitaux in complete disregard of Rule 17(3)(c). This is irregular; the Registrar should not have signed and issued the document and the respondents should not have used and served this document on Capitaux as it was not signed by the legal practitioner. *The Registrar may not issue an unsigned summons and particulars of claim and is the document that was served on Capitaux irregular on this aspect in itself.* (Rule 17(3)(c): “After paragraph (a) or (b) has been complied with, the summons shall be signed and issued by the registrar and made returnable by the Sheriff to the court through the registrar.”)

[26] The allegations of back dating, justifiably so, made by Capitaux with the information they had at hand; fall by the wayside when compared to the respondents’ answering

¹⁴ *Louw v Grobler and another supra.*

affidavit.¹⁵ The explanation must be accepted. Capitaux did not prove an irregularity on the evidence of this case that can cause an order setting aside the first and second respondents' *original* summons and particulars of claim.

[27] Capitaux did indeed prove prejudice in that it is understandable that they mistrusted the whole of the content of the 1 February 2022 – combined summons and would and could not reply before the irregularity was remedied. The two pages sent *via* email and separate from the document as a whole, incensed the confusion. The respondents caused litigation that could have been avoided if only they had adhered to the basic principles. One fails to understand why the photo stated copies cannot be signed by the legal practitioner or why the original cannot be signed by the legal practitioner and then photo stated.

[28] The issue is about the signatures and the dates affixed thereto and the veracity of the copy of the entire document that was served on Capitaux; not the original document in possession of the respondents.

[29] The legal representative of the respondents caused the situation of this case when an unsigned summons and particulars of claim, irregularly so issued by the Registrar of the Court, were served upon Capitaux. (This is “BKR1” at pages 11 to 27. It is an unsigned version of the documents referred to in paragraphs 2.3 and 2.4 of the affidavit filed by Malihambe Christian Godfrey Mvambi (L52) on page 112 of the Bundle.) Again; on the version of the respondents, it seems as if a signed and an unsigned version of the documents were issued by the Registrar and exist; but the unsigned version was served on Capitaux. This existence of the original does not remedy the irregularity.

[30] Yet again, Rule 17(3)(a): “*Every summons shall be signed...*” and Rule 18(1): “*A combined summons, and every other pleading except a summons, shall be signed...*”. The Rules; literally interpreted and with due regard to the criticalness of these documents,

¹⁵ Pages 97 to 117 of the Bundle. *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E to 635C.

must be accepted to demand that the original and copies of the original be signed the same.

- [31] Copies are used as summonses and pleadings and nothing else and it has the same impact and force when so used; it must be an exact representation of the original. The veracity of these documents must be protected and unnecessary litigation on the issue prevented. It must be signed by the legal practitioner and may not be served by the Sheriff on any party as summonses if Rule 17(3) and Rule 18(1) have not been complied with.
- [32] Legal practitioners must immediately desist from and cease the alleged behaviour that it is practise in this division that the use of unsigned copies is standard in litigation. I could not trace precedent on the claimed practise nor was any referred to by the legal practitioner of the respondents.
- [33] *The original document must be signed and dated and issued; and then and then only must copies be made thereof. This will ensure legal certainty and the veracity of documents. Unsigned court documents of this nature and significance must not be tolerated; not if it is purported to be the original, nor if it is purported to be a copy of the original.*
- [34] In fact; this habit that caused Court files to be littered with unsigned summonses and pleadings has caused some awkwardness in a case wherein interlocutory orders were issued by two Presiding Judges on unsigned documents and only when the matter appeared for hearing on the main case was the signed document handed up. The state of affairs was brought to the attention of the parties by myself as Presiding Officer. The Court had to adjourn for the issue to be resolved. The same happened on 26 July 2022 in another case and the matter had to be postponed for, among others, the tracing of the original and signed documents. The copies in this case were also contaminated with handwritten notes and emphasis by an unknown entity.¹⁶

¹⁶ Case 284/2022 on 24 March 2022 and case 118/2019 on 26 July 2022.

- [35] These unsigned and confusion - causing documents lie before a Court and must be respected by all involved to have veracity. It can cause dire consequences for any or all of the parties.
- [36] Legal representatives must ensure that the utmost diligence and care be taken when documents of this nature are issued and dispersed.
- [37] It might be the behaviour of legal practitioners in this division not to sign the copies of these crucial court documents; but it is definitely not good practise. It might also be practise tolerated in this division but it is not practise directed by this division.¹⁷
- [38] The original must be signed and dated by the legal practitioner and thereafter may copies of this document be issued by the Registrar of the Court. (“In manuscript: The original form *before* being printed (or copied)”)
- [39] A true and exact copy of the above original combined summons inclusive of the particulars of claim must be the documents served on the parties. The original must be presented to the Court; not the copy.
- [40] Non-compliance with the Rules on the facts of this case may not be condoned. The irregular step that has been taken by the respondents stands to be set aside. The Court must be fair to both parties and serve the administration of justice. The respondents will be granted the opportunity to serve a copy that represents the original combined summons on Capitaux.

¹⁷ *Louw v Grobler and another* (3074/2016) [2016] ZAFSHC 206 (15 December 2016). The case of *Protea Insurance Co Pty v Vinger* 1970 (4) SA 663 (O) turns on the signature and date stamp of the Registrar; not that of the legal practitioners as is decreed in Rules 17 and 18.

COSTS

[41] This brings me to the issue of costs; the respondents did indeed serve an irregular summons on Capitaux. They caused the litigation and they will have to bear the costs. The matter could have been addressed more collegially by the parties. They can also take legal action against each other for insult and offense. It will be a case for another day and it is not relevant to this application and the costs hereof.

[42] ORDER

1. The application to set aside the combined summons inclusive of the particulars of claim, served on Capitaux (Pty) Ltd on 1 February 2022 (BKR1/the 1 February 2022 – combined summons), as being irregular as contemplated by Rule 30(1) read with Rule 17(3) and Rule 18(1) of the Uniform Rules of Court, is granted and is it ordered set aside.
2. The first and second respondents (Flexi Trade 110 (Pty) Ltd and Maselspoort Resort and Conference Centre (Pty) Ltd/plaintiffs in the main action) are granted leave to serve the applicant in this matter (Capitaux (Pty) Ltd/defendant in the main action) with a complete and properly signed and dated combined summons, inclusive of the particulars of claim, that represents the original papers relied upon and issued by the Registrar of the High Court of South Africa: Free State Division on 25 January 2022. Service shall be within fifteen (15) days of the date of this order.
3. The first and second respondents to pay the costs of this application.

M OPPERMAN, J

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