REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

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

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DATE

Case no. **2020/36177**

In the matter between:

MARIETTE VILJOEN APPLICANT

And

IRAKLION TRADING CC DEFENDANT

In Re:

MARIETTE VILJOEN PLAINTIFF

And

IRAKLION TRADING CC DEFENDANT

Coram: Thupaatlase AJ

Date of hearing: 17 November 2021 – in a 'virtual Hearing' during a videoconference on Microsoft Teams digital platform.

Date of Judgment: 20 January 2022

This judgment is deemed to have been handed down electronically by circulation to the parties' representatives via email and uploaded onto caselines system.

JUDGMENT

THUPAATLASE AJ

INTRODUCTION

[1] This is an application in terms of Rule 30 in which it is alleged that the plea delivered by the respondent doesn't comply with the requirements provided for in in terms of Rule 18(4), Rule 18(4) and Rule 22(2).

[2] The applicant is an adult female person residing within the jurisdiction of this court.

[3] The respondent is a close corporation duly registered and incorporated in terms of the laws of the Republic of South Africa (the Republic).

[4] The applicant issued summons out of this court praying that the written agreement entered between the parties be declared null and void ab initio and payment of the sum of R 450 00.00 alternatively R 500 00.00. The cause of claim allegedly arose as a result of the respondent's failure to fulfil a suspensive condition of the written agreement entered between the parties.

[5] In response to the said summons respondent filed a plea and also incorporated a special plea together with a counterclaim. Upon receipt of the

plea the respondent launched the present proceedings. The application was in terms of Rule 30(1) read with Rule 30 (2).

[6] The application seeks an order that the defendant's plea and or counterclaim be set aside for the following reasons:

6.1. The respondent failed to identify the specific portions of the annexures which are relied upon in the plea. The applicant specifically refers to the counterclaim by the respondent and in particular paragraphs 7,83.3, 9.2.2,12.21, 12.2.2, 12.2.3, 12, 12.2.3, 12.2.4, 12.2.5, 12.3, 12.5.1, 12.5.2.2, 12.5.2.3, 12.6.3 and or 12.7 of the defendant's plea and paragraphs 2,3,4.1, 4.2,4.3,4.5, ,4.6, 6. 7.1,10.1, 10.2, 11.1, 11.2, of the defendant's counterclaim, the defendant purports to rely on certain purported correspondence, agreement(s), statement(s) and or other documents attached to the defendant's plea and counterclaim as Annexures ''IT1'' to '' IT17'' and in most instances pleads that the contents of these annexures are incorporated in the relevant paragraphs as if specifically pleaded therein.''

6.2. It is further the complaint of the applicant that the ''defendant furthermore incorporates the content of paragraph 12 of its plea in paragraphs 13, 14.1 and 15 of its plea and fails to identify and/or plead portions each annexure it wishes to rely upon in each of the aforesaid paragraphs in order for me to know what case the applicant has to meet.''

6.3. It is the complaint of the applicant that the respondent has failed to comply with the provisions of Rule 18(3) and/or Rule 22(2).

6.2. The applicant's second cause of the complainant is that by referring to annexures ''IT1'' to '' IT17'' and/or incorporating the aforesaid annexures into the defendant's plea and counterclaim as if specifically pleaded, the respondent is not only pleading alleged facts but also alleged evidence which is not allowed.

6.3. The third cause of the complaint is that the counterclaim failed to set out damages in such a manner as will enable the applicant reasonably to assess the quantum.

[7] In its opposing affidavit the respondent denies the validity of any of the causes of complaint raised by the applicant. It is alleged that the applicant has failed to specify any particularity of the impropriety complained of.

[8] The principal defense raised by the respondent is that the applicant hasn't shown that it suffered any prejudice by the attachment of various annexures to the plea. The respondent contends that in respect of the counterclaim or a plea as whole the applicant cannot be heard to be saying it is unable to plead.

[9] In respect of the annexures 'IT1' and 'IT2'' it cannot be said that attachment thereof amounts to irregular step as contemplated in rule 30. The respondent specifically denies having pleaded evidence.

[10] Rule 30 reads as follows:

''30 irregular steps''

(1) "A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of irregularity or impropriety alleged, and may be made only if: -

(a) The applicant has not himself taken a further step in the cause with knowledge of the irregularity;

(b) The applicant has, within ten days of becoming aware of the step, by written notice afforded opponent an opportunity of removing the cause of complaint within ten days;

(c) The application is delivered within fifteen days after expiry of the second period in paragraph (b) of subrule (2).

(3) If at the hearing of such application the court is of the opinion that the proceeding or step is irregular or improper, it may set aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.

(4) Until a party has complied with any order made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.''

[11] It follows that this rule can only be used if conditions referred in Rule 30(2) are satisfied; the rule applies to ''irregular proceedings'' as contemplated in Rule 18(12) in the event of non-compliance with Rule 18.

[12] Rule 18(12 reads as follows:

''If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be irregular step and the opposite party shall be entitled to act in accordance with rule 30.'' See *Minister van Wet en Orde v Jacobs* 1999 (1) SA 944 (O) at 945D-F

[13] Rule 18(3) provides as follows:

"Every pleading shall be divided into paragraphs (including subparagraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain distinct averment.''

18(4)' Every pleading shall contain a clear and concise statement of material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable opposite party to reply thereto."

[14] Rule 22(2) provides as follows:

"The defendant shall in his plea either admit or confess or deny or confess and avoid all material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to

what extent, and shall clearly and concisely state all material facts upon which he relies."

[15] The question is whether the plea and the counterclaim in the present case can be described as irregular or improper. The reading of the pleading reveals that the rule 18(3) requirements have been met. The plea as well as the counterclaim of the respondent are contained in distinct paragraphs and subparagraphs. The complaint of the applicant doesn't not point otherwise.

[16] I am satisfied that the same goes to complaint regarding rule 18(4). I hold the view that the proper reading of the whole pleading and counterclaim doesn't evoke any form of ambiguity on the part of discerning reader. The respondent has there not pleaded contrary to the rules in this regard.

[17] Whilst it is true that rule 18(4) requires that a party should plead with sufficient particularity to enable the opposing party to plead thereto, it has been held that the test to determine whether a pleading contains 'sufficient particularity' for purpose of this subrule is essentially a matter of fact. It is enough if a pleading contains sufficient particularity if it identifies the issues in such a way that it enables the opposite party to know what they are. See *Nasionale Aartapel Kooperasie Bpk v Price Westerhouse Coopers Ing*. 2001 (2) SA 790 (T) 789F- 799J.

[17] In respect of the calculation of the damages it is alleged by the applicant that the defendant relies on Rule 18(10). The rule provides in a nutshell that a plaintiff or defendant in reconvention suing for damages shall set out in such a manner as will enable the defendant or plaintiff in reconvention reasonably to assess the quantum thereof.

[18] The court has a discretion and it is not intended that an irregular step should necessarily be set aside. See *Rabbie v De Witt* 2013 (5) SA 219 (WCC) at 224B-225A. The discretion must be exercised judicially on a consideration of the circumstances and what is fair to both sides. See *Northern Assurance Co*

Ltd v Somdaka 1960 (1) SA 588 (A) at 596A and *SA Instrumentation (Pty) Ltd v Smithchem (Pty) Ltd* 1977 (3) SA 703 (D) at 705H- 706A.

[19] It follows that in the exercise of its discretion the court is entitled to overlook in proper cases any alleged irregularity which doesn't work any substantial prejudice to the other party. Proof of prejudice is therefore a prerequisite to success in an application in terms of rule 30(1). See *Carlkim (Pty) Ltd v Shaffer* 1986 (3) SA 619 (N) at 621N and also *Consani Engineering (Pty) Ltd v Anton Steinecker Maschinenfabrik GmbH* 1991 (1) SA 823 (T) at 824G-H; *Sasol Industries (Pty) Ltd t/a Sasol1 Electrical Repair Engineering (Pty) Ltd t/a LH Marthinusen* 1992 (4) SA 466(W) at 469G.

[20] The plea by the respondent is not a model of good drafting, however this clumsiness in drafting doesn't give rise to ambiguity which on every interpretation cannot be understood. The courts have often refused to se t aside proceedings which, while not technically perfect, caused no prejudice to the other party. See *Scott and Another v Ninza* 1999 (4) SA 820 (E). This court is unable to see out the plea and counter could at one stage, or another affect the development of the litigation. As stated above proof of prejudice is a prerequisite to success in application in terms of rule 30.

[21] I am not satisfied that any prejudice has been proved. It follows that the application in terms Rule 30(1) must fail.

I make the following order:

1. The plaintiff/applicant's application in terms of Rule 30 is dismissed with costs.

THUPAATLASE AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing:	17 November 2021
handed down on:	20 January 2021
For the Applicant:	AJ Reyneke
Instructed by:	Fullard Mayer Morrison Incorporated Attorneys
For the Respondent:	Steven Mushet
Instructed by:	Darren Ledden Incorporated Attorneys