IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 26822/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 29 September 2022

In the matter between:

KAMPEL: PAUL	**APLLICANT**
and	
SNEECH: BARRY HYLTON	**RESPONDENT**

JUDGMENT

ALLY AJ

INTRODUCTION

[1] This is an application in terms of Rule 30 of the Uniform Rules of Court which is opposed by the Respondent. The Court was informed at the beginning of argument that the Respondent had no objection to granting the Applicant

condonation for the delaying in launching this application. Satisfied that the requirements of condonation had been met, I granted condonation.

[2] The Applicant was represented by Mr Willis and the Respondent appeared in person.

[3] This application seeks the striking out of the Respondent's combined summons dated 2 September 2020 as an irregular step.

FACTUAL BACKGROUND

[4] The Respondent has been involved in litigation against Clients[1] of the Applicant one of which relates to this application wherein this Court declared the Respondent a vexatious litigant.

[5] The Respondent instituted an action for damages for defamation against the Applicant out of this Court.

[6] The Applicant, before pleading to the abovementioned action against him launched this Rule 30 application on the grounds that the Respondent has been declared a vexatious litigant and may not launch a proceeding against him unless and until he has obtained the leave of the Court.

LEGAL FRAMEWORK

[7] Rule 30 of the Uniform Rules of Court provides as follows:

> *"(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.*

[1] Caselines: 001-26 – 001-27

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the 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 his opponent an opportunity of removing the cause of complaint within ten days;

(c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2).

(3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it 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 of court 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."

[8] Rule 30A of the Uniform Rules of Court in turn provides as follows:

"(1) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days, to apply for an order that such rule, notice or request be complied with or that the claim or defence be struck out.

(2) Failing compliance within 10 days, application may on notice be made to the court and the court may make such order thereon as to it seems meet."

ANALYSIS AND EVALUATION

[9] It is common cause that the Respondent instituted action against the Applicant in circumstances as described above and that the Respondent received the requisite notice and declined follow the route of first obtaining leave from the Court.

[10] The crux of the dispute between the parties is that the Applicant is of the view that he falls within the persons mentioned in the vexatious litigant order handed down by this Court.[2]

[11] The Respondent, however, contends that the Applicant is not covered by the said Order. The Respondent submits and contends that the Applicant must show this Court that Nobre and Griffin [hereinafter referred to as 'Clients'] have a legal interest in the action instituted by the Respondent which is denied by the Respondent.

[12] It should be made clear that this Court will not adjudicate the merits of the defamation action instituted by the Respondent against the Applicant although the Respondent has taken pains to set out his case.

[13] What this Court must do, in my view, is determine whether the 'Clients' of the Applicant, are affected by the action for defamation instituted by the Respondent against the Applicant.

---

[2] supra

[14] It should be pointed out that the Respondent, although a layperson, has not launched a counter-application and therefore should this Court find against him, then he would have to deal with the consequences thereof.

[15] It is important at this stage to set out the relevant paragraphs of the Vexatious Litigant Order insofar as it relates to this application:

> *"In case number 2018/15236*
>
> 1. *The respondent, Barry Hylton Sneech is declared a vexatious litigant in terms of section 2 (1) (b) and (c) of the Vexatious Proceedings Act 3 of 1956 for an indefinite period.*
>
> 2. *No legal proceedings may be instituted by the respondent against:*
>
> *2.1. the applicants; or*
>
> *2.2. any other person if the either of the applicants has a legal interest in the proceedings instituted against that person."*

[16] Now in order to succeed, the Applicant needs to show that:

14.1 he is that "other person"

14.2 "either of the applicants in case number 2018/15236 has a legal interest in the proceedings instituted against him [my substitution for "that person"]"

[17] In the **South African Riding for the Disabled Association**[3] the Constitutional Court re-iterated the direct and substantial interest test:

[3] 2017 ZACC 4 at para 9

> *"It is now settled that an applicant for intervention must meet the direct and substantial interest test in order to succeed. What constitutes a direct and substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the Court. This means that the applicant must show that it has a right adversely affected or likely to be affected by the order sought.*[4] *But the applicant does not have to satisfy the court at the stage of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief.*[5]*"*

[18] Now the Vexatious Litigant Order[6] went further and spelt out who is covered by the Order. In other words, if the Applicant can show that either of his 'Clients', have a legal interest in the subject matter of the proceedings between the Respondent and the Applicant, then and in that event, the Respondent was obliged to first obtain leave from the Court to institute legal proceedings against the Applicant.

---

[4] *Snyders v De Jager (Joinder)* [2016] ZACC 54; *Minister of Local Government and Land Tenure v Sizwe Development: In re Sizwe Development v Flagstaff Municipality* 1991 (1) SA 677 (Tk) (*Sizwe Development)*.

[5] Id at 679A.

[6] supra

[19] It is clear from the evidence before this Court that the Applicant represented the ‘Clients’ in the proceeding that forms the basis of the Respondent’s action against the Applicant.

[20] It is my view that this close proximity in relationship and conduct, that is, the Applicant deposed to an affidavit setting out certain facts based on instructions between Attorney and Client. One cannot think of a closer relationship and a privileged one at that. I cannot conceive of how this relationship cannot be covered by the ‘direct and substantial interest test’ set out above because, in my view, the Applicant would need his ‘Clients’ in order to put up a defence against the action by the Respondent.

[21] The Respondent’s contention that the Applicant is being held to account for statements he made, misconstrues the relationship between Attorney and Client and the consequences of such relationship.

[22] I am satisfied that the Applicant has shown that his ‘Clients’, have a legal interest in the defamation action instituted against him by the Respondent.

[23] I need to deal with the submission by the Respondent that the Applicant claimed that he had personal knowledge of the allegations against the Respondent and thus does not need his ‘Clients’. This is the very issue I raised above regarding misconstruing the attorney and client relationship. The Applicant only has personal knowledge for the reason that he represented his ‘Clients’. In my view therefore it

cannot be said that his ‘Clients’ do not have a ‘legal interest’ in the proceedings between the Respondent and the Applicant.

CONCLUSION

[24] Accordingly, for the reasons set above, the Applicant must succeed in the relief for the combined summons dated 2 September 2020 to be struck out for failure to obtain the leave of the Court to institute action proceedings against the Applicant.

COSTS

[25] The Applicant has contended that should he succeed in this application, that the costs of the application be awarded to him on a punitive scale. The grounds for this contention, as I understand them are that the Respondent had been warned to remove the complaint, by first applying to the Court for leave and he refused to do so and that his opposition has been vexatious in that irrelevant material has been dealt with in his answering affidavit and he should be held to account for that even though he is a layperson.

[26] I must state that I agree that the Respondent has unnecessarily dealt with the merits of his defamation action against the Applicant as well as issues pertaining to judgements against him by this Court. However, the fact that the Respondent is a layperson is borne out by as I stated above, his misunderstanding of the principles of attorney and client relationships and the procedural nuances at play in this application.

[27] In my view, the Respondent can be forgiven for going the long route, wrongly so, in explaining his opposition to the application.

[28] It is trite that the Court is vested with the discretion in the awarding of costs and that such discretion must be exercised judicially.

[29] Furthermore, the successful party is entitled to costs unless extenuating or special circumstances are shown for this principle not be applied. In my view the Applicant is entitled to the costs of this application excluding the costs of the condonation application for the delay in launching this application.

[30] **Accordingly,** the following Order will issue:

a). The late filing of the Rule 30 (1) application is hereby condoned with no order as to costs;

b). The Combined Summons dated 2 September 2020 bearing the Case Number 26822/2020 is hereby set aside;

c). The Respondent is to pay the costs of this application on a party and party scale.

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **30 September 2022**.

Date of virtual hearing: 17 March 2022

Date of judgment: 30 September 2022

Appearances:

Attorneys for the Applicant:	**CLYDE & CO. INC**
	Wim.Cilliers@clydeco.com
Counsel for the Applicant:	**Adv. Reg Willis**
Attorneys for the Respondent:	**In person**
	Skiman@global.co.za