

REPUBLIC OF SOUTH AFRICA



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

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

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Name: FARBER AJ

Date: 13 October 2023

CASE NUMBER: 9893/2022

In the matter between:

KHATHATSO, PULENG GLORIA

APPLICANT

and

H.W. SMITH AND MARAIS ATTORNEYS

FIRST RESPONDENT

ANDRE STEPHANUS MARAIS

SECOND RESPONDENT

In re:

KHATHATSO, PULENG GLORIA

PLAINTIFF

and

H.W. SMITH AND MARAIS ATTORNEYS

FIRST DEFENDANT

ANDRE STEPHANUS MARAIS

SECOND DEFENDANT

JUDGMENT

FARBER AJ:

[1] In this application the Applicant (hereinafter referred to as the Plaintiff) seeks an order in terms of rule 30 for the striking out of the First and Second Respondents (hereinafter referred to as the Defendants) notice in terms of rule 28 on the basis that it constitutes an irregular step.

[2] The background is as follows. On 12 April 2022 the Plaintiff by way of a combined summons commenced an action against the Defendants. The Defendants furnished notice of their intention to defend the action and on 21 April 2022 they delivered a notice in terms of rule 30, as read with rule 30A. The Defendant in the latter notice contended that the Plaintiff's particulars of claim did not comply with the requirements of rule 18(10) in some seven respects. There may well have been merit in the contention for on 9 May 2022 the Plaintiff served a notice on the Defendants in terms of rule 28 signifying her intention to amend the particulars of claim in the action in

several respects. The Defendants on 30 May 2022 objected to the proposed amendments. This attracted a notice in terms of rule 30, as read with rule 30A, from the Plaintiff. The substance of the Plaintiff's complaint was formulated in the notice thus: -

- “1. *The Plaintiffs' Notice in terms of Rule 28 was electronically served on or about the 09th of May 2022, and the 1st and 2nd Defendants had until the 23rd of May 2022 to raise its/his objections against the intended amendments thereto in terms of Rule 28 (2) – (4) of the Uniform Court Rules; and*
2. *However, the 1st and 2nd Defendants only electronically served its/his objections against the Plaintiffs' Notice in terms of Rule 28 on or about the 30th of May 2022;*
3. *Therefore, the service of the 1st and 2nd Defendants' Notice of Objections Against the Plaintiffs' Notice in terms of Rule 28 is non – compliant with Rule 28 (2) – (4) of the Uniform Court Rules and thereby an irregular step in terms of Rule 30 and or Rule 30A of the Uniform Court rules thereof.”*

[3] The irregularity complained of thus stems from the fact that the Defendants notice of objection was not delivered within the timeframe specified in terms of rule 28.

[4] It is trite that proof of prejudice is a prerequisite for relief under rule 30 (see *SA Metropolitan Lewens Versekerings Maatskappy Bpk v Louw* 1981 (4) SA

329 (O), *De Klerk v De Klerk* 1986 (4) SA 424 (W) and *Consani Engineering v Steineckermaschinenfabrik GmbH* 1991 (1) SA 823 (T)).

[5] The Plaintiff in its founding affidavit did not address the question of prejudice. It was however pertinently raised by the Defendants in the answering affidavit. They contended that the Plaintiff had sustained no prejudice in consequence of the late delivery of the notice of objection. The Plaintiff chose not to deal with this feature of the matter in her replying affidavit.

[6] I can conceive of no prejudice to the Plaintiff by virtue of the late delivery of the notice of objection. The proprietary of the particulars of claim are in issue and it is clear that the matter will not progress until such time as a decision is made thereon. It is thus in the interest of the parties that the situation be clarified as soon as possible. A decision on an opposed application for the grant of the amendment will bring about such clarity. It is in this regard fairly predictable that should the late delivery of the notice of objection be upheld then exception proceedings at the instance of the Defendants will inevitably follow. The upholding of the irregularity contended for will do little to satisfactorily advance the litigation.

[7] In my view the Plaintiff has not sustained the necessary prejudice in consequence of the Defendants' marginally late delivery of the notice of objection. Costs must follow the event.

The Plaintiff's application is consequently dismissed with costs.

G Farber

ACTING JUDGE OF THE HIGH COURT

Date of Hearing: 11 October 2023

Date of Judgment: 13 October 2023

APPEARANCES

For the Plaintiff: Mr. T.P. Ramabokela

Instructed by: Ramabokela Inc

For the Defendants: In person