

REPUBLIC OF SOUTH AFRICA



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

Case No: 21/42640

[1]	(1) REPORTABLE: NO
[2]	(2) OF INTEREST TO OTHER JUDGES: NO
[3]	(3) REVISED YES/NO
[4]	
[5]	
[6]	
[7]	
[8]	16 March 2023
[9]
[10]

	SIGNATURE
	DATE

In the interlocutory application between:

DA CRUZ, MANUEL JORGE MAIA

Applicant

and

MANZELLA, PATRICIA MARLENE

First Respondent

SOLBEL PROPERTIES CC

Second Respondent

MANZELLA, PATRICIA MARLENE N.O.

Third Respondent

in re

DA CRUZ, MANUEL JORGE MAIA

Applicant

and

MANZELLA, PATRICIA MARLENE

First Respondent

SOLBEL PROPERTIES CC

Second Respondent

JUDGMENT

Heard: 19 January 2023

Delivered: 16 March 2023 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines*. The date and time for hand-down is deemed to be 10:00 on 16 March 2023.

Summary: *Uniform Rule 30* – further steps taken preclude reliance on Rule - overly technical approach not justified.

TURNER AJ

[1] This is an application brought by the applicant for an order in the following terms:

That the applicant's interlocutory application served on 21 July 2022 and the applicant's notice in terms of Rule 6(11) brought by the first and second respondents be set aside as an irregular step pursuant to Uniform Rule 30(1).

[2] Papers were exchanged between the parties and heads were filed. However, on the day of the hearing, only the applicant was represented by counsel ready to argue the matter. Mr Salani appeared *pro bono* for the first respondent to request that the matter be postponed so it could be consolidated with an application which I was informed had been delivered by the respondents for the liquidation of the second respondent. That liquidation application is set down for mid-February 2023. Mr Salani was not briefed to argue the Rule 30 application.

[3] Mr Moreno, who appeared for the applicant, addressed the court on the postponement and Rule 30 application. Although there was some confusion as to the scope of the hearing when Mr Moreno attempted also to address the Court on the merits of the main application, after reviewing the documents filed on Caselines and particularly the set down notices which were before me, it was clear that only the Rule 30 application had been set down and was before me for a decision. The merits of the main dispute were not set down. This also accords with the practice note delivered by the applicant dated 4 January 2023, which indicated that the matter was an interlocutory one with a duration of only 30 minutes.

[4] As appears from the relief quoted above, the respondents attack two steps taken by the applicant as “irregular steps” :

- (i) The applicant’s delivery of its interlocutory application served on 21 July 2022; and
- (ii) The applicant’s notice in terms of Rule 6(11) delivered on 6 October 2022.

[5] Uniform Rule 30 provides (in relevant part):

“30 Irregular proceedings

- (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 the irregularity or impropriety alleged and 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 10 days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within 10 days;
- (c) the application was delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2).”

Applicant’s interlocutory application served on 21 July 2022

[6] There is no basis for the respondents to use Rule 30 to attack the regularity of the interlocutory application delivered on 21 July 2022. First, the respondents did not deliver the required notice within 10 days of becoming aware of the application having been delivered on 21 July 2022; second, the respondents delivered a notice to oppose the application on 15 August 2022 and then filed an answering affidavit responding to that application on 5 September 2022. All of these further steps were taken before the Rule 30 notice was delivered and so the Rule 30(2)(a) requirement was not met.

Rule 6(11) notice delivered 6 October 2022

[7] After receiving the Rule 6(11) notice, the respondents delivered a Rule 30 notice on 12 October 2022 calling on the applicant to remove the cause of complaint. On 14 October the applicant indicated that he did not intend to comply with the notice and waived the 10-day period afforded to him to remove the cause of complaint. The current application was delivered on 26 October 2022, within the 15 days required.

[8] There is therefore no technical irregularity with the delivery of the Rule 30 notice directed at the Rule 6(11) notice and so it is necessary to deal with the merits thereof.

- [9] The first objection is that the wrong rule was used. The respondents contend that Rule 28 ought to have been the subject matter of the notice and not Rule 6(11). This is an overly technical and spurious ground of objection. (See *Pangbourne Properties Ltd v Pulse Moving CC and Another* 2013 (3) SA 140(GSJ) at [17]) The content of the notice makes it clear that the applicant intends to amend its notice of motion, giving the respondents the necessary notice contemplated in Rule 28, as it applies to applications.
- [10] Second, the respondents suggest that the delivery of this notice somehow fatally undermines or has the effect of removing the applicant's reliance on the 21 July 2022 affidavit. However this too is unjustified as the notice does not record that the applicant intends to delete any of the existing relief sought in the notice of motion. Moreover, the notice invites the respondents to "*supplement your answering affidavit consequent on the applicant's supplementary replying affidavit*". This clearly shows that the amendment is to add additional grounds of relief and rely on the 21 July affidavit, not to delete anything from the existing notice of motion.
- [11] The third element is an objection to the attempt by the applicant to join the first respondent in her capacity as executor of her husband's deceased estate. This, however, forms part of the substance of the 21 July 2022 interlocutory application, the merits of which are yet to be ventilated. As I have held that the respondent is precluded from relying on Rule 30(2) to object to the 21 July 2022 application affidavit and because of the further steps taken, this finding precludes me from dealing with the merits of the objection at this stage. The

Court hearing the interlocutory application will need to decide whether the application for joinder is competent and should be granted.

Costs

[12] The applicant sought an order for punitive costs, asking that the respondents be held liable to pay the applicants costs on the scale as between attorney and client. However, recognising that much of the factual material on which the applicant relies for this costs order is set out in the main application on which no finding has yet been made, Mr Moreno recognised that I could not make the factual findings necessary to support such a punitive costs order. In the circumstances, Mr Moreno asked that I grant an order for costs but reserve the scale of those costs to be determined by a future court when determining the main application.

Order

[13] In the circumstances, I grant the following order:

- (1) The first and second respondents' application in terms of Rule 30 is dismissed, with costs.
- (2) The scale on which the costs are to be paid by the first and second respondents to the applicant, is reserved.

TURNER AJ

Counsel for the applicants: Adv CJ Moreno

Instructed by: Mark Anthony Beyl Attorneys

Counsel for the respondent: Adv Salani (on postponement only)

Instructed by: Rossouws Lesie Inc