



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION: PRETORIA)**

Case number: 37875//2011

In the matter between:-

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

21 November 2022

Inkosi Muziwenkosi Johannes Radebe

First Applicant

(LANGALIBALELE II)

AM AHLUBI ROYAL COUNCIL

Second Applicant

and

Commission on Traditional Leadership

First Respondent

Disputes and Claims

The President of the Republic of South Africa

Second Respondent

His Majesty King Goodwill Zwelithini Zulu

Third Respondent

Zulu Royal Family

Fourth Respondent

Minister of Co-operative Government and
Traditional Affairs

Fifth Respondent

Premier For Kwa-Zulu Natal Province

Sixth Respondent

Chairperson of the National House of

Seventh Respondent

Traditional Leaders

JUDGMENT

KHWINANA AJ

INTRODUCTION

[1] This is an application in terms of Rule 30(2) (c)¹ of the Uniform Rules of the Court by the first, second and fifth respondent for an order

1.1 That applicant's supplementary affidavit on the 15 December 2021 constitutes an irregular step; and

1.2 That the applicants failed to comply with the Notice in terms of Rule 30(2)(b) of the Uniform Rules by failing and or refusing to withdraw the applicants' supplementary affidavit dated 15 December 2021.

1.3 That the respondents hereby bring an application for setting aside and/or striking out of the said supplementary affidavit as an irregular step as contemplated by Rule 30 of the Rules of Court.

¹ See Rule 30 that reads as follows: "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 sub Rule (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;

1.4 That the respondents intend to apply for the award of adverse costs order on an attorney and client scale (including costs of two counsel in the event that this Order is granted).

[2] The applicant has opposed this application on the following points

2.1 That the application on both grounds is wrong in that the supplementary affidavit incorporated averments in support of seeking condonation for its late filing.

2.2 That it lacks merit as the court has a wide discretion in terms of Rule 27 to condone any non-compliance with the rules and extend the time limits in the rules.

2.3 That the supplementary affidavit is not only a necessary step as it draws on the review record to bolster the grounds for review which could be exercised after the applicant meaningful receipt and engagement with the review record which is guaranteed by Rule 53(4).

The applicant applied for the dismissal of the application with costs.

[3] I am therefore ceased with the determination of whether Rule 30² application finds its application herein.

² (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 day; (c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) and 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. 5) . . . " 2 Hereinafter referred to as the main action.

BACKGROUND

- [4] The respondent's attorney has deposed to an affidavit in support of Rule 30(2)(b) and or Rule 30A(1) of the Uniform Rules of Court. The affidavit states that the supplementary affidavit filed by the applicants on 15 December 2021 without seeking condonation for its late filing and without seeking leave of court constitutes an irregular step.
- [5] The notice requested that the cause of the complaint be removed and the applicant was afforded ten days to comply. The notice was served on the 25th of January 2022 to remove the cause of complaint within ten days. As a result of failure to remove cause of complaint the respondents filed an application in terms of Rule 30(2) (c) of the Uniform Rules of Court.
- [6] The applicant submits that the trite overarching principle of procedure that while parties and their legal representatives should not be encouraged to slack in observance of rules, technical objections to less perfect procedural steps such as late filing of supplementary affidavit should not be permitted in absence of prejudice to interfere with proper determination of the case on its real merits. The applicant submits thus the point *in limine* for inordinate delay however, no real prejudice has been alluded to by the delivery of the supplementary affidavit.
- [7] The applicant submits that both grounds are wrong in that the supplementary affidavit incorporated averments in support of seeking condonation for its late filing. Secondly that it lacks merit as the court

has a wide discretion in terms of Rule 27 to condone any non-compliance with the rules and extend the time limits in the rules. The supplementary affidavit is not only a necessary step as it draws on the review record to bolster the grounds for review which could be exercised after the applicants' meaningful receipt and engagement with the review record which is guaranteed by Rule 53(4).

The respondent says no issue was raised of an outstanding record. The applicant mentions in their supplementary affidavit that the record is incomplete at pages 131, 132, 133 and 145.

[8] The applicant says that Seanego Attorneys being his current attorneys of record sought the record and only received same on the 01 July 2021. The respondent states that Poswa attorneys were given the record. The said attorneys had indicated their intention to supplement, and the respondent had advised that condonation application was necessary.

[9] The applicants submit that the erstwhile attorneys Mahodi were served on the 26th day of January 2012. The applicant states that they only received the missing documents on the 28th July 2021. The respondent now brings an application to strike out or set aside the supplementary affidavit. The respondent says he has been advised that subrule (4) gives an applicant a clear right to amend, add to or vary the notice of motion and to supplement the founding affidavit without consent of the opposite party or leave of the court.

[10] The applicant further states that he has been advised that his right to receive a record of decision and consequently supplement their grounds of review is fundamental to their right to just administrative action. The applicant admits that the affidavit is out of time and says the explanation for the late delivery of the affidavit is explained in his affidavit.

[11] The respondent says the applicant harp on that the “complete record of the transcript of the proceedings and notification to the applicants to file their supplementary affidavit was given timeously. Counsel for the applicant submits that this contention is belied firstly no proof of service on the applicant’s erstwhile attorneys as the document appears incomplete and record was never received until recently when the current attorneys obtained it on 01 July 2021. The respondent further do not concede that the record is complete. The applicant states that The Amahlubi Royal Council has never had a proper opportunity to exercise their right in terms of Rule 53(4).

LEGAL MATRIX

[12] Rule 53(4)³ provides that “The applicant may within ten days after the registrar has made the record available to him or her, by delivery of a notice and accompanying affidavit, amend, add or vary the terms of his or her notice of motion and supplement the supporting affidavit.” In the Superior Court Practice second edition by Erasmus Van

³ Uniform High Court Rules

Loggerenberg vol 2 at page D1-710D it has been stated that this subrule gives an applicant for review a clear right to amend, add to or vary the notice of motion and to supplement the founding affidavit without the consent of the opposite party or the leave of the court.⁴

[13] Erasmus further states that “A respondent is not entitled to circumvent the applicant’s right to the record by giving an undertaking and any talk of relief being conceded, etc would be premature. The applicant is entitled to sight of the record and to evaluate his position in the light of its contents”.⁵

ANALYSIS

[14] The main matter herein is that of Review in terms of Rule 53 of the Uniform Rules of High Court. In terms of Rule 53(4) it is so that the applicant has the right to vary or amend his review application provided that he/she is in possession of a complete record of the proceedings that are subject to review. The respondent has the right to supplement upon receipt of the entire record of the proceedings under review.

[15] In *casu* what is evident is that the applicant has changed his legal representation several times. The respondent upon being confronted with the incomplete record has failed to confirm that the complete record was furnished. The respondent proceeded to furnish the record. The fact that the current attorneys have been furnished

⁴ Pieters v Administrateur, Suidwes-Afrika 1972(2) SA 220 (SWA) 225(G) FiziK Investments (Pty) Ltd t/a Umkhombe Security Services v Nelson Mandela Metropolitan University 2009 (5) SA 441 (SE) at 444F-445A

⁵ FiziK Investments (Pty) Ltd t/a Umkhombe Security Services v Nelson Mandela Metropolitan University 2009 (5) SA 441 (SE) at 441I-445A.

another record in itself entitles the applicant to invoke the provisions of Rule 53(4).

[16] The provisions of Rule 53(4) however depict a period of ten days which is the period within which the applicant is to file his amended documents. The fact that the applicant in *casu* has delayed in filling the supplementary affidavit must be dealt with in the said affidavit. The delay does not automatically deny the applicant the right to the provisions of Rule 53(4). In *casu* the applicant has dealt with the reasons for the delay and again the fact that the respondent resubmitted the record without saying same has been done and having proof thereof has opened the door for the applicant.

[17] The submissions advanced for the need of a supplementary affidavit are indeed undeniable. The applicant has been through a number of practitioners whom were privy to the record submitted. The respondent does not dispute that some of the parts of the record are missing. In terms of Rule 27(1)⁶ this court has a wide discretion to condone a party's non-compliance with the timeframes irrespective of the form which the request for condonation⁷.

[18] The respondents have failed to observe the provisions on rule 30 in that firstly the period that lapsed since their notice to remove the cause of complaint. Secondly the respondents have taken a further step. In order for the respondents to rely on the provisions of Rule 30

⁶ Uniform High Court Rules

⁷ "It is trite law that the Court has a discretion and is entitled in a proper case to overlook an irregularity in procedure that does not cause substantial prejudice to the party complaining of it." Page J Said in Sandprops 1160 CC v Karlshavn Farm Partnership.

they must make out a case that they have suffered prejudice by the delayed delivery of the supplementary affidavit. In *casu* the respondents have taken a further step in that they have furnished the record to the applicant which is indicative that no prejudice has been suffered by the respondents. In fact it would seem it would be in the interest of justice that the applicant be allowed to supplement its papers.

[19] The respondents as a result of the filing of the supplementary affidavit will still have an opportunity to file a further affidavit in terms of Rule 53(5). It is imperative to note the delay in this matter in so far as the failure to furnish the complete record. There are therefore lots of imperfections⁸ in the matter which unfortunately seems to delay the proceedings of this matter. In the supplementary affidavit of the applicant what is evident is that without the complete record the review proceedings were being stalled. However, the failure to adhere to timeframes in so far as the submission of the supplementary affidavit is informed by the receipt of a complete record.

[20] The real prejudice is suffered by the applicant who must be furnished with the complete record. I am inclined to agree with the applicant that Rule 53(4) finds application *in casu*.

[21] The application in terms of Rule 30 has delayed the main application further. The court is entitled to protect itself and other litigants against

⁸ In *Trans-African Insurance Ltd v Maluleka* 1956 (2) SA 273 (A) the court held: "Technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits."

abuse of court processes. In *casu* the respondent took a further step and also Rule 53(4) allows the applicant in review proceedings to act in the manner herein.

ORDER

[18] The application is dismissed with costs on attorney and client scale including costs of two counsels. I have considered the draft order filed and I have amended it and marked it, X.

**ENB KHWINANA
ACTING JUDGE OF NORTH GAUTENG
HIGH COURT, PRETORIA**

APPEARANCES:

APPEARANCES For the Applicants: Advocate Norman Arendse SC
Instructed by: Bhadrish Daya Attorneys
Tel: (012) 342 9815 / 082 441 6897

For the Respondents: Advocate Bright Shabalala
(with him Advocate Sechaba Mohapi)
Instructed Seanego Inc
Tel: (011) 466 0442 / 065 571 664

Date of Hearing

06 September 2022

Date of Judgment

21 November 2022

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 37875/2011

BEFORE THE HONOURABLE KHWINANA AJ ON 6 SEPTEMBER 2022

In the Rule 30 Application between:

COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES

AND CLAIMS

First Applicant

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Applicant

MINISTER OF COOPERATIVE GOVERNMENT

AND TRADITIONAL AFFAIRS

Third Applicant

and

INKOSI MUZIWENKOSI JOHANNES (LANGALIBALELELE II) First Respondent

AMAHLUBI ROYAL COUNCIL

Second Respondent

HIS MAJESTY KING GOODWILL ZWELITHINI ZULU

Third

Respondent

ZULU ROYAL COUNCIL

Fourth Respondent

PREMIER OF KWA-ZULU NATAL PROVINCE

Fifth Respondent

CHAIRPERSON OF THE NATIONAL HOUSE OF

TRADITIONAL LEADERS

Sixth Respondent

In re: INKOSI MUZIWENKOSI JOHANNES

(LANGALIBALELELE II)

First Applicant

AMAHLUBI ROYAL COUNCIL

Second Applicant

and

COMMISSION ON TRADITIONAL LEADERSHIP

DISPUTES AND CLAIMS	First Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
HIS MAJESTY KING GOODWILL ZWELITHINI ZULU Respondent	Third
ZULU ROYAL COUNCIL	Fourth Respondent
MINISTER OF COOPERATIVE GOVERNMENT AND TRADITIONAL AFFAIRS	Fifth Respondent
PREMIER OF KWA-ZULU NATAL PROVINCE	Sixth Respondent
CHAIRPERSON OF THE NATIONAL HOUSE OF TRADITIONAL LEADERS	Seventh Respondent

DRAFT COURT ORDER

HAVING heard read the papers filed of record, heard counsel and considered the matter

IT IS HEREBY ORDERED THAT:

1. The first, second and third applicants' rule 30 application is dismissed.
2. The first, second and third applicants are ordered to pay the respondents' costs on attorney and client.

BY ORDER OF COURT

REGISTRAR

APPEARANCES For the Applicants: Advocate Norman Arendse SC

Instructed by: Bhadrish Daya Attorneys

Tel: (012) 342 9815 / 082 441 6897

For the Respondents: Advocate Bright Shabalala

(with him Advocate Sechaba Mohapi)

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