



**IN THE HIGH COURT OF NAMIBIA**

**CASE NO: I 3329/2010**

In the matter between:

**ANDRIES PETRUS VELDMAN**

**FIRST PLAINTIFF**

**LEONORA VELDMAN**

**SECOND PLAINTIFF**

and

**MURRAY HENDRIK BESTER**

**FIRST DEFENDANT**

**CORAM:** Geier, AJ

---

## SUMMARY

Practice – Irregular Proceedings – Rule 30(2) of Rules of High Court providing for interlocutory application on ‘notice’ - such application does not require a supporting affidavit unless the particular circumstances so require -

Practice – Irregular Proceedings – Rule 30(2) of Rules of High Court providing for interlocutory application on ‘notice’ - should circumstances require supporting

affidavits - such Rule 30 application should be brought on Notice of Motion, utilising the 'short form', Form 2(a),

Practice – Irregular Proceedings – Rule 30(1) of Rules of High Court providing that a party to a cause in which an irregular step has been brought may, within 15 days of becoming aware of the irregularity, apply to court to set aside the step or proceeding - entitles any party to any judicial proceedings, (*a cause*), - subject to the further requirements set by the rule, and the requirement of prejudice - to utilise the mechanisms provided for by Rule 30 at any stage of the judicial proceedings to which it is a party.

Practice – Irregular Proceedings – Rule 30(1) of Rules of High Court - neither the provisions of Rules 20 and 30 nor those contained in Rule 26 pose a bar to a party to a cause to resort to Rule 30 prior to the filing of a declaration - such party does not have to await the filing of a declaration – rule not precluding any party to a cause from attacking an irregular step or proceeding immediately and at any stage of judicial proceedings

Practice – pleadings – simple summons - for a 'debt or liquidated demand' in terms of High Court Rule 17 (2) (b), has to be 'as nearly as possible' in accordance with Form 9 of the First Schedule' to the Rules – has to set out the plaintiff's cause of action in concise terms with sufficient particularity to enable a Court to decide whether judgment should/can be granted and for the defendant to be made aware of what is being claimed from him - simple summons must be able 'to stand on its own feet' and not amount to a nullity - The object of the summons is not merely to

bring the defendant before Court; it must also inform the defendant sufficiently of the nature of the claim or demand he is required to meet - it need do no more than that - it need not go into 'minute particulars' and it need not comply with Rule 18(4) and (6).

Practice – summary judgment – simple summons - for a 'debt or liquidated demand' in terms of High Court Rule 17 (2) (b) – as verified in terms of Rule 32(2) - must contain sufficient particularity to enable defendant to formulate *bona fide* defence to such action in an affidavit resisting summary judgement in terms of Rule 32 (3) (b) of the Rules of High Court.

Constitutional law – right to fair civil trial - simple summons - for a 'debt or liquidated demand' in terms of High Court Rule 17 (2) (b) - defendant entitled to be appraised with sufficient particularity of the claim he or she has to meet – whether claim formulation is sufficient or it is not and whether such claim formulation amounts to an infringement of a party's fair trial rights or not – ultimately a question depending on the degree of particularity supplied.

Constitutional law – right to fair civil trial – summary judgement on simple summons - for a 'debt or liquidated demand' in terms of High Court Rule 17 (2) (b) - defendant entitled to be appraised with sufficient particularity of the claim he or she has to meet in such summons, as verified in terms of Rule 32(2), to enable defendant to formulate an affidavit in terms of Rule 32(3)(b) in opposition thereto – whether claim formulation is sufficient for summary judgement purposes or not and whether such

claim formulation amounts to an infringement of a party's fair trial rights or not – ultimately a question depending on the degree of particularity supplied.

## HEADNOTE

First and second plaintiff had instituted action against defendant for payment of the sum of N\$ 127 265.00 together with ancillary relief. The matter was defended and an application for summary judgment was launched. Instead of resisting summary judgment in one of the modes prescribed by Rule 32(3) of the Rules of High Court, the defendant brought an application in terms of Rule 30 of the Rules of High Court seeking the setting aside of the plaintiffs' summons as a irregular step. First and second Plaintiffs in turn, and also in terms of Rule 30, applied for the setting aside of the defendant's application in terms of Rule 30.

Defendant contended that first and second plaintiffs' 'notice of application' was irregular and liable to be set aside in terms of Rule 30 as it did not comply with Form 2(b) of the Rules of Court in that no affidavits had been annexed in support hereof as was required by the Form and Rule 6(11) and that it was not permissible to set out the grounds of irregularity in such 'notice'.

Plaintiffs' contended that defendant's application in terms of Rule 30 was premature and irregular as defendant had to await the filing of an Declaration by the plaintiffs in terms of Rule 20, alternatively to serve a Notice of Bar to the plaintiffs should the Declaration not be filed timeously in terms of the Rules of Court.

Defendant in turn contended plaintiffs' simple summons was irregular in that it failed to inform the defendant of the case he had to meet and as the plaintiffs' claims were based in contract, the provisions of Rule 18 (6) of the Rules of High Court should have been complied with. This lack of particularity and the non-compliance with the provisions of Rule 18 also undermined the defendants fair trial rights, as entrenched by the provisions of Article 12 of the Namibian Constitution

*Held that* an application in terms of Rule 30 is an interlocutory application to be brought 'on notice' to all parties. Such application is governed by Rule 6 (11). Such application does not require supporting affidavits unless the particular circumstances require it. Should the circumstances however require supporting affidavits such application would have to be brought on 'Notice of Motion', utilising the 'short form', Form 2(a) to the Rules of High Court, to ensure a fair procedure.

*The decisions of Swartz v Van der Walt t/a Sentraten* 1998 (1) SA 53 (WLD) and *Ondjava Construction CC & Others v HAW Retailers* 2008(1) NR 45 (HC) reconciled and confirmed; the decisions *Scott and Another v Ninza* 1999 (4) SA 820 (ECD) and *Chelsea Estates & Contractors CC v Speed -O-Rama* 1993 (1) SA 198 (SE) qualified and confirmed.

*Held that* a party to any judicial proceedings, (*a cause*), such as the defendant, in the present instance, and subject to the further requirements set by the rule, and the requirement of prejudice, would be entitled to utilise the mechanisms provided for by Rule 30 at any stage of the judicial proceedings to which it is a party.

*Held* that the neither provisions of Rules 20, 30 nor those contained in Rule 26 pose a bar to a party to a cause to resort to Rule 30 prior to the filing of a declaration.

*Held* that a plaintiff's simple summons for a 'debt or liquidated demand' in terms of High Court Rule 17 (2) (b), has to be 'as nearly as possible' in accordance with Form 9 of the First Schedule' to the Rules. The plaintiff's cause of action has to be set out in concise terms which sets out the claim with sufficient particularity to enable a Court to decide whether judgment should/can be granted and for the defendant to be made aware of what is being claimed from him'. In this regard the simple summons must be able 'to stand on its own feet' and not amount to a nullity. 'The object of the summons is not merely to bring the defendant before Court; it must also inform the defendant sufficiently of the nature of the claim or demand he is required to meet. But it need do no more than that. It need not go into 'minute particulars' and it need not comply with Rule 18(4) and (6).

The decisions of *Standard Bank of South Africa Ltd v Oneanate Investment (Pty) Ltd (in liquidation)* 1998 (1) SA 811 (SCA), *Volkscas Bank Ltd v Wilkinson and Three Similar Cases* 1992 (2) SA 388 (C) *B W Kuttle & Association Inc v O'Connell Manthe and Partners Inc* 1984 (2) SA 665 (C), *Namibia Beverages v Amupolo* 1999 NR 303 (HC) approved and confirmed

*Held* that a plaintiff's simple summons for a 'debt or liquidated demand' in terms of High Court Rule 17 (2) (b), has to be set out the claim with sufficient particularity to

enable a defendant to formulate a *bona fide* defence to such action in an affidavit resisting summary judgement in terms of Rule 32 (3) (b) of the Rules of High Court.

*Held* that also in accordance with a defendant's right to a fair civil trial, a defendant is entitled in such summons to be appraised with sufficient particularity of the claim he or she has to meet, and as verified in terms of Rule 32(2), to enable defendant to formulate an affidavit in terms of Rule 32(3)(b) in opposition thereto. Insufficient particularity in a simple summons may infringe on a defendant's fair trial rights. Whether or not a defendant has been appraised with sufficient particularity of the claim he or she has to meet, is a question of degree, or rather of particularity, as either a claim formulation is constitutionally sufficient or it is not.