



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

CASE NO: 2586/2020

In the matter between:

JOHANNES WILHEM CHRISTIAAN BOOYSEN

Applicant

And

NGWATHE LOCAL MUNICIPALITY

Respondent

HEARD ON: 01 AUGUST 2024

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 24 DECEMBER 2024

[1] This is an application to compel in terms of the Uniform Rule of Court 30A in which the following orders are sought:

- "1. Directing the Respondent to reply comprehensively in writing to all issues raised/requests made at the pre-trial conference convened between the parties as recorded in the minute thereof and in paragraph 5 of the Founding Affidavit hereto, within 10 (TEN) days from the service of this Court Order, and furnish the Applicant's attorneys of record therewith, together with the signed pre-trial minute either electronically or by hand;
2. That should the Respondent fail and/or refuse to comply with the order granted in terms of 1 above, either timeously, in full or at all in respect of one or more of the requests/issues raised in the pre-trial minute as recorded in paragraph 5 of the Founding Affidavit hereto, the Respondent's defence shall be automatically struck out and the Applicant shall be

entitled to proceed to apply for judgment against the Respondent on a default judgment basis;

3. *Directing the Respondent to pay the costs of this application on the attorney and client scale;*
4. *Further and/or alternative relief."*

[2] As the plaintiff, the applicant instituted an action against the defendant for certain relief. On 12 December 2024, a Rule 37 pre-trial conference was convened, and a pre-trial minute was prepared and furnished to the respondent's attorneys for signature. The respondent undertook, in terms of the draft minute, to provide the following information by no later than 18 December 2023:

- '5.1 The Respondent's version of events (paragraph 1.4 of the pre-trial minute);
- 5.2 The Respondent's stance regarding the entire content of paragraph 8 of the previous minute and whether it persists with its responses thereto dated 31 October 2022 (paragraph 9 of the pre-trial minute);
- 5.3 A list of admissions sought by the Respondent (paragraph 10 of the pre-trial minute);
- 5.4 The Respondent's stance about the proposals made regarding documents (paragraph 11 of a pre-trial minute);
- 5.5 The number of witnesses the Respondent wishes to call in the matter (paragraph 12 of the pre-trial minute).¹

[3] On 31 January 2024, the applicant's attorneys sent a letter to the respondent's attorneys dated 24 January 2024 requesting a response to the information requested before 16h00 on Friday, 2 February 2024, upon failure of which an application to compel would be launched. On 6 February 2024, another letter was addressed to the respondent to respond before 16h00 on Friday, 9 February 2024 to comply with the requests, failing which an application to compel would be filed. On 4 March 2024, the applicant served the respondent with a notice in terms of Rule 30A that he would apply for an order after the lapse of ten days

¹ Para 5 on page 10 of the Index.

compelling the respondent to furnish its responses to the pre-trial minute, failing which the respondent's defence would be struck out.

- [4] On 10 April 2024, the applicant served the respondent with an application to compel in terms of Rule 30A seeking the orders set out in the notice of motion. The respondent opposed the application and raised two preliminary points: the pre-trial questions are, in substance, a request for further particulars, and its amendment of pleadings renders the application to compel moot.
- [5] The respondent submitted that the plaintiff should have approached the Judge President for the allocation of a Judge to hold a pre-trial conference in chambers if the plaintiff held the view that the defendant was not willing to bind itself on pre-trial questions. The practical consequences of the application are to compel the defendant to admit factual issues that should be left for the trial court. The court was not entitled to bind the defendant as this would violate the defendant's right to a fair trial. The questions were impermissible and should only be ventilated at the trial. The applicant's solution was to be found in the provisions of Rule 37(8)(a) of the Uniform Rules of Court.
- [6] In support of its contentions, the respondent referred me to *Fransch v Premier, Gauteng, and Another*² and argued that any party that is frustrated by a lack of cooperation or bona fides on the part of an opponent is to request that the conference be held before the judge in chambers. The respondent contended that the application to compel is not the method or approach the plaintiff should have followed.
- [7] The applicant pointed out that the respondent accepted the undertaking to provide the requested information in the pre-trial minute of 12 December 2023. The plea was never amended, and the annexure to the respondent's answering affidavit was only an intention to amend. The applicant submitted that the information sought by him was highly relevant because:

² 2019(1) SA 247 (GJ).

- 7.1 The draft pre-trial minute was aimed at obtaining the respondent's version as the parties are compelled to outline and limit the issues in the case;
- 7.2 The draft pre-trial minute was aimed at parties exploring the making of admissions, agreeing on the status of documents and the preparation of a trial bundle, and agreeing on the issue of expert witnesses.
- [8] The applicant contended that the requested information was required to get the matter trial ready, and the respondent had undertaken to provide the requested information.
- [9] Pre-trial conferences are regulated by Rule 37 of the Uniform Rules of Court. Rule 37(4) provides that each party shall, not later than 10 days before the pre-trial conference, furnish every other party with a list of —
- (a) the admissions which such party requires;
 - (b) the enquiries which such party will direct and which are not included in a request for particulars for trial; and
 - (c) other matters regarding preparation for trial which such party will raise for discussion.
- [10] Rule 37(8)(a) provides that a judge, who need not be the judge presiding at the trial, may, if such judge deems it advisable, at any time at the request of a party or own accord, call upon the attorneys or advocates for the parties to hold or to continue with a conference before a judge in chambers and may direct a party to be available personally at such conference.
- [11] Erasmus: Superior Court Practice states that the purpose of rule 37 is to promote the effective disposal of the litigation, investigate ways of avoiding costs at a stage when it can still be avoided, and is intended to expedite the trial and to limit the issues before the court.³ The rule is intended primarily to curtail the duration of a trial, narrow down issues, cut costs, and facilitate settlements

³ Erasmus Superior Court Practice: RS 22, 2023, D1 Rule 37-3; MEC for Economic Affairs, Environment and Tourism, Eastern Cape v Kruizenga and Another 2010 (4) SA 122 (SCA).

- [12] A party cannot be compelled to agree to anything during the Rule 37 proceedings. Rule 37(8)(c) provides that, even in a case where a conference had been convened before a judge in chambers, the judge may give directions that might promote the effective conclusion of the matter, but only with the parties' consent.⁴ The remedy for any party frustrated by the lack of cooperation from the other party during the Rule 37 proceedings appears to be to request that a conference before a judge in chambers be held in terms of Rule 37(8).⁵ The directions given by consent of the parties in terms of rule 37(8) are, however, not covered by rule 30A, and that rule cannot be invoked to compel compliance with any such direction.⁶
- [13] It was held in *Filta-Matix (PTY) Ltd v Freudenberg and Others*,⁷ that to allow a party, without special circumstances, to resile from an agreement deliberately reached at a pre-trial conference, would be to negate the object of Rule 37, which is to limit issues and to curtail the scope of the litigation.
- [14] In *Fransch v Premier*,⁸ the applicant had raised a number of queries and directed questions to the respondents in terms of rule 37(4). The respondents replied to all the questions. The applicant was not content with the replies given and believed that the respondents did not reply to the questions truthfully. The applicant was particularly aggrieved by the fact that the respondents alleged that they were unable to reply to certain questions because the hospital records had not been located. The respondents also refused to answer other enquiries on the basis that those related to matters of evidence. The respondents opposed the application on the basis that they had replied to the rule 37(4) questions and that the applicant could rely on rule 30A to extract replies she believed appropriate. This case is distinguishable from the one at hand.
- [15] The respondent does not deny the undertakings to provide the requested information in the pre-trial minute dated 12 December 2023. The defences raised

⁴ *Katlou Boerdery v Matsepe N.O. and Another* (A79/21) [2022] ZAWCHC 49 (19 April 2022) paras 23 and 24.

⁵ *Kriel v Bowens* 2012(2) SA45 (ECP).

⁶ *Katlou*, supra.

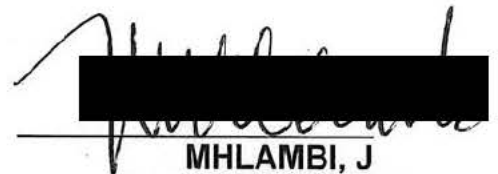
⁷ 1998(1) SA 606 SCA.

⁸ Supra.

by the respondent to the relief sought are without merit and stand to be rejected.
Consequently, I make the following order:

ORDER:

1. The Respondent is directed to reply comprehensively in writing to all issues raised/requests made at the pre-trial conference convened between the parties as recorded in the minute and paragraph 5 of the Founding Affidavit, within 10 (TEN) days from the service of this Court Order, and furnish the Applicant's attorneys of record therewith, together with the signed pre-trial minute either electronically or by hand;
2. Should the Respondent fail and/or refuse to comply with the order granted in terms of 1 above, either timeously, in full, or at all in respect of one or more of the requests/issues raised in the pre-trial minute as recorded in paragraph 5 of the Founding Affidavit hereto, the Respondent's defence shall be automatically struck out, and the Applicant shall be entitled to proceed to apply for judgment against the Respondent on a default judgment basis;
3. Directing the Respondent to pay the costs of this application on the attorney and client scale and counsel's fees on scale C.


MHLAMBI, J

On behalf of Plaintiff: Adv. HJ Cilliers SC,
Instructed by: Honey Attorneys
Kenneth Kaunda Street
Helicon Heights
Bloemfontein

On behalf of the Defendant: Adv. M Ramaili SC

Instructed by: Thebe Attorneys
65 Kellner Street Incorporated
Westdene
Bloemfontein