



**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 967/2009**

**In the matter between:**

**LIMA AGRIPREP (PTY) LIMITED**

**PLAINTIFF**

**AND**

**MAPHOBENI FARMERS ASSOCIATION**

**DEFENDANT**

**Neutral Citation;** Lima Agriprep (Pty) Ltd and Maphobeni Farmers Association (967/2009) [2011] SZHC 45 (26<sup>th</sup> October 2011)

**CORAM:**

**SEY J.**

**For the Plaintiff  
Appearance**

**No**

**For the Defendant  
Appearance**

**No**

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**JUDGMENT  
26<sup>th</sup> OCTOBER 2011**

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**SEY J.**

[1] This is a notice in terms of Rule 30 (1) of the Rules of this Court. The facts briefly stated, are that the Plaintiff instituted proceedings against the Defendant by way of simple summons. The Defendant gave notice of its intention to defend and thereafter, the Plaintiff filed its Declaration. Aggrieved by the Declaration, the Defendant commenced the application instant in terms of Rule 30 (1) for an order:-

“1. Setting aside Plaintiff’s Summons and Declaration as an irregular step in terms of Rule 18 (12) on the following grounds:

- (a) The Plaintiff’s cause of action in the Summons and Declaration is based on an oral agreement entered into between the parties and the Plaintiff has failed to state:-
  - (i) by whom was the contract concluded; and
  - (ii) where was the agreement concluded in terms of Rule 18 (6) of the Rules of this Honourable Court.
- (b) The Plaintiff has failed to state with sufficient particularity the area or land which was the subject of agreement to enable the Defendant to reply thereto as envisaged by Rule 18(4) of the Rules of this Honourable Court.

WHEREFORE the Plaintiff’s Summons and Declaration ought to be set aside.

- 2) Costs of suit
- 3) Further and/or alternative relief.”

[2] The parties filed their respective heads of argument and followed same up with oral arguments on the 5<sup>th</sup> of July 2011.

Plaintiff’s counsel, both in the Plaintiff’s heads of argument as well

as oral argument, sought to defeat the notice in terms of Rule 30 (1) by points in *limine*. The Plaintiff's contention is that the Defendant failed to file the notice within 14 days after becoming aware of the irregularity as is provided for by that rule. Plaintiff contends that the Defendant filed its notice of intention to defend on the 8<sup>th</sup> of April 2009, which means by that time it was aware of the irregular step, but failed to file its notice until the 27<sup>th</sup> of August 2009, a space of more than four months. The Plaintiff further contends that the Defendant has failed to seek for condonation of the late filing of the notice, therefore the notice ought to be dismissed with costs. Plaintiff's counsel relied on **Minister of Law and Order v Taylor NO 1990 (1) SA 165E and Uitenhage Municipality v Uys 1974 (3) SA 800 (E) at 802D**, in contending this issue.

[3] It was contended replicando by the Defendant's counsel that, the Defendant filed the notice when it became aware of the irregularity which was after it had filed the notice of intention to defend. That the Defendant did not waive any rights by merely filing the notice of intention to defend.

[4] Now, Rule 30 (1) of the Rules of this Court provides as follows:-

*“ A party to a cause in which an irregular step or proceeding has been taken by any other party may, within fourteen days after becoming aware of the irregularity, apply to Court to set aside the step or proceeding”*

- [5] The nature of the point in *limine* to my mind, requires that I first ascertain what construction to give to the phrase “*within fourteen days after becoming aware of the irregularity*” , before dabbling into the substantiality of the Plaintiff’s objection to the Defendant’s notice.
- [6] We are very fortunate that this question has been canvassed and settled in the neighbouring Republic of South Africa. A country whose laws are largely in *pari materia* with our own, and whose case law is of high persuasive authority in this jurisdiction. I will therefore approach the jurisprudence of that country for guidance in resolving this matter.
- [7] Now in the case of **Minister of Law and Order v Taylor NO** (supra) the Court of the Eastern Cape Division, per **Kannermeyer JP**, had occasion to interpret the phrase “*after becoming aware of the irregularity*” as appears in Rule 30 (1) of the Uniform Rules of Court in South Africa, a legislation which is in *pari materia* with our own Rule 30 (1)
- [8] The facts of that case briefly stated is that the Plaintiff’s particulars of claim in an action for damages failed to particularize the damages as required by Rule 18 (10) of the Uniform Rules of Court. The combined summons had been sued out on the 5<sup>th</sup> January 1988, but Applicant became aware of the irregularity of the summons only

after being advised thereof by counsel on 10<sup>th</sup> February 1988. Applicant sought by notice of motion served on Respondent on 22<sup>nd</sup> February 1988, to have the proceedings set aside in terms of Rule 30 (1) of the Uniform Rules of Court as being irregular. The application would have been brought within the 15 days period specified in the relevant Rule, if it were to be calculated from the date on which the Defendant had become aware that the step taken by the Plaintiff was irregular, but not if it were calculated from the date on which the Defendant had become aware of the step without appreciating its irregularity.

[9] The Court held that the word irregularity used in Rule 30 (1) was merely a reference to a “*step or proceeding*” which was irregular and once a party had become aware that a step or proceeding had been taken, and not when the party appreciated the irregularity of the step, the 15 day period started to run against that party. That accordingly the application was out of time and, in the absence of an application for condonation, fell to be dismissed .

[10] Similarly, in the case of **Uitenhage Municipality V Uys** (supra), which was a case decided pursuant to the old Uniform Rules of Court in South Africa, wherein the statutorily prescribed time frame for bringing such an application was within 14 days of becoming aware of the irregularity, the Court stated as follows:-

“ *where in motion proceedings a respondent delivers a notice of objection in limine in terms of Rule 30 (1) of the Uniform*

*Rules of Court, such Respondent, having chosen to give notice of the objection, is required to give notice according to the Rule of Court which is applicable namely Rule 30(1), and he is not entitled simply to ignore the provisions of the Rule and, by not referring to it, to seek to take his procedure outside the ambit of its requirements. The Respondent cannot conceive and apply his own procedure where there is an appropriate Rule which governs the position. The procedure in giving notice must be governed by the appropriate Rule 30 (1). Having elected to bring his application in this form he must stand or fall by the Rules of Court which govern it. Accordingly where such notice of objection in limine is delivered after the expiry of the 14 days laid down by Rule 30 (1), the Court is on that ground alone justified in dismissing the objection in limine''*

- [11] It is inexorably apparent from the authorities paraded ante that the phrase “*after becoming aware of the irregularity*” simply refers to after becoming aware that an irregular step or proceedings has been taken, whether or not the party appreciated the irregularity in the proceedings. I am persuaded by these authorities. It follows therefore that the 14 days time limit to raise an objection to an irregular proceedings pursuant to Rule 30 (1) of our Rules, begins to run when the party becomes aware that a step or proceeding which is irregular has been taken, whether or not he is at that time aware of the irregularity. It is also beyond dispute from the case law

(supra) that an application brought outside the 14 days period statutorily prescribed, and in the absence of an application for condonation of the late filing of the application, is liable to be dismissed.

[12] In casu, the Defendant's notice complains of both the summons and the declaration. I do not think that time began to run in this case from the date the notice of intention to defend was filed by the Defendant as is contended by the Plaintiff. I say this because this action was instituted by way of simple summons and the notice of intention to defend was filed before the declaration. The declaration embodies the grounds upon which the Plaintiff premised his claim as contained in his summons. In other words the declaration is the particulars of claim i.e. the pleadings. Objection by way of Rule 30 (1) is taken to the particulars of claim which have fallen short of the required standards of pleading, as is embodied in Rule 18 (4) which provides as follows

*“ every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to the opposite party to reply therefore”*

[13] Therefore, Rule 30 (1) is invoked where the pleadings as contained in the particulars of claim in the case of combined summons, or declaration in the case of simple summons, falls short of the

requisite standards of pleadings.

- [14] In casu, the interest of justice demands that since the declaration was filed after the notice of intention to defend, that time began to run from the date the declaration was served on the Defendant. That is the date the defendant became aware that an irregular step or proceeding had been taken.
- [15] Now the record demonstrates that the declaration was received by the Defendant's Attorneys on the 1<sup>st</sup> of July 2009. (See page 9 of the book of pleadings). Therefore the Defendant became aware that an irregular step or proceedings had been taken from the 1<sup>st</sup> of July 2009. The record also demonstrates that the Defendant's notice in terms of Rule 30 (1) was filed on the 11<sup>th</sup> of August 2009 (see page 11 of the book of pleadings). It follows therefore, that the notice was filed 40 days after the Defendant became aware of the irregular step or proceedings. The Defendant's contention that it filed the notice when it became aware of the irregularity in the proceedings and that time began to run from then, is clearly misconceived, in the face of the clear position of case law on this matter, as hereinbefore elucidated.
- [16] In the light of the totality of the foregoing, the Defendants Notice is clearly out of the 14 days period statutorily prescribed for such notice. In the absence of an application for condonation, the notice is therefore liable to be dismissed.



[17] In the circumstances, I hereby order as follows:-

- 1) That the Defendant's notice in terms of Rule 30 (1) be and is hereby dismissed.
- 2) Costs to follow the event.

DELIVERED IN OPEN COURT IN MBABANE ON THIS THE .....DAY OF  
..... 2011

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*M. M. SEY (MRS)*

JUDGE OF THE HIGH COURT