

30A Non-compliance with Rules and Court Orders

RS 23, 2024, D1 Rule 30A-1

[Heading substituted by GN R2133 of 3 June 2022.]

(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order —

- (a) that such rule, notice, request, order or direction be complied with; or
- (b) that the claim or defence be struck out.

[Subrule (1) substituted by GN R2133 of 3 June 2022.]

(2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.

[Rule 30A inserted by GN R881 of 26 June 1998 and substituted by GN R842 of 31 May 2019.]

Commentary

General. Rule 30(5) used to provide a remedy where a party failed to comply timeously with a request made or notice given pursuant to the rules. The subrule was deleted by GN R2407 of 13 December 1996. The reason for the deletion was probably because the rest of rule 30 deals with the situation where an *irregular step* has been taken by a party to proceedings. Prior to its repeal, the subrule was the source of some controversy. There was difference of opinion as to whether it was intended to apply in all cases where a particular rule did not itself provide for a special sanction for non-compliance with a notice or request, as for example in rules 14(5), 14(9), 36(2) and 37(1), but not in cases where such a special sanction was provided for, as for example in rules 21(6) (prior to the substitution of rule 21 in 1987) and 35(7). ¹ This rule now provides a general remedy for non-compliance with the rules. It follows the wording of the repealed subrule (5) of rule 30, except that it is applicable to any failure to comply with these rules, or with a request made or notice given pursuant to the rules, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A.

The purpose of rule 30A is to avoid excessive formality and point-taking and to enable the parties to get on with the litigation by, for example, curing between themselves any prejudice caused by an irregularity. ²

The cases are not harmonious as to whether or not, to the extent that the provisions of this rule may be in conflict with a provision in another rule which provides a specific remedy for non-compliance with that rule, a party need only follow the provisions of the other rule, without first having to give notice in terms of this rule or follow the provisions of this rule. ³

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The court has an inherent power to dismiss an action on account of a delay in its prosecution by the plaintiff. The circumstances under which the court may do so will depend on the period of the delay, the reasons therefor and the prejudice suffered by the other party. ⁴

For the proper approach to an application under rule 30A to compel the production of documents under rule 35(12), see the notes to that rule s v 'Any party failing to comply with such notice' below.

Subrule (1): 'An order or direction made by a court or in a judicial case management process referred to in rule 37A.'

In terms of rule 1 'court' means, in relation to civil matters, the High Court as referred to in [s 6](#) of the Superior Courts [Act 10 of 2013](#). The subrule applies to orders and directions made under rule 37A. It does not apply to directions made by a judge in terms of rule 37(8)(c) at or after a pre-trial conference before a judge in chambers under rule 37. ⁵ It therefore does not apply to a direction in terms of rule 37(8) as contemplated in rule 36(8). This seems to be a *lacuna* in the subrule.

'After the lapse of 10 days.' The period of ten days affords the defaulting party an opportunity to comply with the rule, request, notice, order or direction concerned.

'To apply.' In view of subrule (2), this means an application on notice. See further the notes to subrule (2) s v 'The court may make such order thereon as it deems fit' below.

Subrule (1)(b): 'The claim or defence be struck out.' This includes, it is submitted, a claim and defence in reconvention and a third party notice under rule 13 and a defence thereto.

Subrule (2): 'Fails to comply within the period of ten days.' The question whether there has been compliance as contemplated in rule 30A(1) does not give rise to the exercise of a discretion by the court hearing the application. The court must determine, as an objective question of law or fact, whether there has been non-compliance. ⁶ On that question, a court of appeal therefore makes the simple determination whether the lower court was right or wrong in its finding on compliance; the discretion of the lower court under rule 30A(2) does not feature at all. ⁷ See further the notes to rule 30A(2) s v 'The court may make such order thereon as it deems fit' below.

'The court.' This means a 'court' as defined in rule 1 and does not include a 'judge', i.e. a judge in chambers. See the definitions of 'court' and 'judge' in rule 1 and the notes thereto above.

'The court may make such order thereon as it deems fit.' This subrule confers a discretion on the court ⁸ which, it is submitted, must be exercised judicially on a proper consideration of all the relevant circumstances. Striking out a claim or defence is a drastic remedy and, accordingly, the court must be appraised of sufficient facts on the basis of which it could exercise its discretion in favour of such an order. Consequently, the necessary affidavits in support

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of and opposing such relief should be delivered. Relevant factors will include (a) the reasons for non-compliance with the rules, request, notice, order or direction concerned and, in this regard, whether the defaulting party has recklessly disregarded his obligations; (b) whether the defaulting party's case appears to be hopeless; and (c) whether the defaulting party does not seriously intend to proceed. ⁹ In addition, prejudice to either party is a relevant factor. This view was endorsed in *Ndhlovu v Phoshoko*. ¹⁰

Costs. Rule 67A(2)(a) provides that in considering all relevant factors in awarding costs, the court may have regard to the failure by any party or such party's legal representative to comply with the provisions of rule 30A.

¹ See *Norman & Co (Pty) Ltd v Hansella Construction Co (Pty) Ltd* [1968 \(1\) SA 503 \(T\)](#) at 504E; *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis* [1979 \(2\) SA 457 \(W\)](#) at 459-60; *Khunou v M Fihrrer & Son (Pty) Ltd* [1982 \(3\) SA 353 \(W\)](#) at 360H-361A; *Universal City Studios v Movie Time* [1983 \(4\) SA 736 \(D\)](#) at 746A and 748A-D; *Gehle v McLoughlin* [1986 \(4\) SA 543 \(W\)](#).

² *RVRN Crushing (Pty) Ltd v GDF Incorporated Consultants (Pty) Ltd* [2024 \(1\) SA 269 \(GJ\)](#) at paragraphs [7]-[12], following *Biologicals and*

Vaccines Institute of Southern Africa (Pty) Ltd v Guardrisk Insurance Company Ltd (unreported, GJ case no 11323/2022 dated 27 June 2023) at paragraph [4].

³ On the one hand, it has been held that a party need only follow the provisions of the rule which provides a specific remedy (*ABSA Bank Ltd v The Farm Klippan 490 CC* [2000 \(2\) SA 211 \(W\)](#) at 215A–B; *Minister of Police v Bacela* (unreported, ECB case no 275/2019 dated 8 September 2020) at paragraphs [17]–[18]; *M and M Quantity Surveyors CC v Orvall Corporate Designs (Pty) Ltd* (unreported, GP case no 84202/19 dated 27 May 2021) at paragraphs [22]–[33]). On the other hand, it has been held that it is sound practice that the provisions of rule 30A must first be complied with (*GN obo KN v MEC, Department of Health, Eastern Cape Province* [2024 \(1\) SA 258 \(ECM\)](#) at paragraphs [25]–[30]; and see *Szedlacsek v Szedlacsek*; *Van der Walt v Van der Walt*; *Warner v Warner* [2000 \(4\) SA 147 \(E\)](#) at 150E–F). In *Lot 38 Bizana Properties CC v Tiador 119 CC (in liquidation)* (unreported, ECMk case no 2278/2022 dated 10 January 2024) the court observed (at paragraph [6]) that rules 30A and 35(7) are similar and that no condonation is necessary where a party applies rule 30A and not rule 35(7).

⁴ *Molala v Minister of Law and Order* [1993 \(1\) SA 673 \(W\)](#); *Gopaul v Subbamah* [2002 \(6\) SA 551 \(D\)](#) at 558A–B.

⁵ This position was affirmed in *Katlou Boerdery v Matsepe N.O.* (unreported, WCC case no A79/21 dated 19 April 2022 — a decision of the full court) at paragraph [24].

⁶ *Helen Suzman Foundation v Judicial Service Commission* [2018 \(4\) SA 1 \(CC\)](#) at 31F–G; and see *Katlou Boerdery v Matsepe N.O.* (unreported, WCC case no A79/21 dated 19 April 2022 — a decision of the full court) at paragraph [19].

⁷ *Helen Suzman Foundation v Judicial Service Commission* [2018 \(4\) SA 1 \(CC\)](#) at 31G–H; and see *Katlou Boerdery v Matsepe N.O.* (unreported, WCC case no A79/21 dated 19 April 2022 — a decision of the full court) at paragraph [19].

⁸ *Helen Suzman Foundation v Judicial Service Commission* [2018 \(4\) SA 1 \(CC\)](#) at 31F.

⁹ See *Ford v South African Mine Workers' Union* 1925 TPD 405 at 406; *Harrison v Harrison* 1942 WLD 16; *Smith NO v Brummer NO* [1954 \(3\) SA 352 \(O\)](#) at 357; *Van Aswegen v McDonald Forman & Co Ltd* [1963 \(3\) SA 197 \(O\)](#) at 201; *SA Scottish Finance Corporation Ltd v Smit* [1966 \(3\) SA 629 \(T\)](#) at 634; *Evander Caterers (Pty) Ltd v Potgieter* [1970 \(3\) SA 312 \(T\)](#) at 317; *Thornhill v Gerhardt* [1979 \(2\) SA 1092 \(T\)](#) at 1096–7; *Ndhlovu v Phoshoko* (unreported, GP case no 11908/2020 dated 2 March 2023) at paragraph [21].

¹⁰ Unreported, GP case no 11908/2020 dated 2 March 2023 at paragraph [21].