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.

[Subrule (1) substituted by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R1883 of 3 July 1992.]

(2) An application in terms of subrule (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;

(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 days;

(c) the application is delivered within fifteen days after the expiry of the second period mentioned in paragraph *(b)* of subrule (2).

[Subrule (2) substituted by GN R1883 of 3 July 1992 and amended by GN R2047 of 13 December 1996.]

(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.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(5) . . .

[Subrule (5) deleted by GN R2047 of 13 December 1996.]

Commentary

General. In *SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO* [1] Flemming J stated the object of rule 30(1) as follows:

> 'I have no doubt that Rule 30(1) was intended as a procedure whereby a hindrance to the future conducting of the litigation, whether it is created by a non-observance of what the Rules of Court intended or otherwise, is removed.'

Rule 30 applies only to irregularities of form and not to matters of substance. [2]

In terms of rules 18(12), 22(5) and 24(5) the pleadings referred to in these subrules are, on non-compliance with the provisions of the rule concerned, deemed to be an irregular step and the opposite party 'shall be entitled to act in accordance with rule 30'. [3] In terms

of rule 28(8) any party affected by an amendment may, within the time stipulated in the subrule, *inter alia*, take the steps contemplated in rule 30.

A party is not obliged to invoke the rule in order to have proceedings set aside on the ground of irregularity, but may avail himself of any other remedy available to him under the rules. [4] Thus, it has been held that an objection *in limine* that a notice of the hearing of an application for summary judgment did not comply with rule 32(2) need not be raised by way of formal application under rule 30(1); [5] a plaintiff may in terms of rule 31(2)*(a)* apply for judgment by default without first making application to have an irregular notice of intention to defend set aside; [6] an objection of non-joinder or misjoinder may be raised under this rule but the more usual practice is to raise it by way of special plea. [7] If a pleading both fails to comply with rule 18 and is vague and embarrassing, the defendant has a choice of remedies: he may either bring an application in terms of rule 30 or raise an exception in terms of rule 23(1). [8]

Subrule (1): 'A party to a cause.' Prior to the amendment of the subrule in 1987 the phrase 'any cause' was used and it was held that the words were used in the widest possible sense and referred to any judicial proceeding of whatsoever nature. [9] It is submitted that the phrase 'a cause' in the present subrule has a similar wide meaning. [10] It follows that rule 30 also applies to application proceedings. [11]

'An irregular step has been taken.' The irregular step contemplated by this subrule must be a step which advances the proceedings one stage nearer completion. [12] The subrule does not apply to omissions, but to positive steps or proceedings. [13] The annexure of an unsworn

statement to an affidavit is not an irregular proceeding under the subrule, [14] nor is a notice in respect of furnishing security. [15] Rule 30 has found application where, for example —

(a) a proper power of attorney had not been filed; [16]

(b) proper service of a summons had not been effected; [17]

(c) an address for service of documents was not set out in a summons; [18]

(d) pleadings were not signed in accordance with the rules or did not comply with the rules as to form; [19]

(e) particulars of claim in an action for damages failed to comply with the provisions of rule 18(10); [20]

(f) an application was brought on the grounds of urgency but no reasons of urgency were set out in the supporting affidavits; [21]

(g) there had been premature set-down; [22]

(h) review proceedings were brought by way of action and not in terms of rule 53; [23]

(i) an irregular notice of bar had been served in provisional sentence proceedings; [24]

(j) an irregular notice of bar had been served in summary judgment proceedings; [25]

(k) lengthy affidavits were filed in proceedings under rule 43; [26]

(l) proper notice of taxation had not been given; [27]

(m) a notice of appeal was defective; [28]

(n) a notice of intention to amend a plea so as to introduce a claim in reconvention was delivered without the procedure in rule 24(1) having been followed; [29]

(o) a notice of objection to the taxation of a bill of costs which is filed out of time; [30]

(p) a notice under rule 23(1)*(a)* that particulars of claim were vague and embarrassing and delivered out of time; [31]

(q) an application for leave to appeal was made against an order granted in the applicant's absence (the order being rescindable and not appealable). [32]

Rule 30 is not the appropriate procedural mechanism to address complaints that affidavits supporting summary judgment

applications exceed the ambit of what is the permissible content of such affidavits. [33]

'May apply to court to set it aside.' A party's proper course where any proceeding in a cause is irregular is not to proceed as if there had been no such proceeding at all but to apply to court under this subrule for an order setting it aside. [34]

Proof of prejudice is a prerequisite to success in an application in terms of rule 30(1). [35] To this extent an application under the subrule needs to be supported by an affidavit. [36]

Subrule (2): 'Specifying particulars of the irregularity or impropriety alleged.' See the notes to subrule (1) s v 'May apply to court to set it aside' above.

A party is not entitled to file a notice in terms of rule 30(2)*(b)* alleging certain causes of complaint and then launch an application in which different irregularities are alleged. [37]

Paragraph *(a)*: 'Taken a further step in the cause.' This paragraph is intended to deal with the situation where a party has taken a further step in the cause and thereafter seeks to make application to set aside an irregular or improper step. [38] A further step in the cause is some act which advances the proceedings one stage nearer completion. [39] Notice of intention to defend

is not a further step in that sense but is merely an act done with the object of qualifying the defendant to put forward his defence. [40] A party takes a further step in the cause by the filing of a declaration, [41] a notice of bar, [42] a plea in response to an irregular notice of bar, [43] a replication, [44] or an answering affidavit, [45] but not by filing a notice in respect of furnishing security. [46] Steps taken in preparation of trial, such as requesting particulars for trial, serving a notice to produce, and convening and attending a pre-trial conference, are further steps in the cause. [47]

It has previously been held that a notice of exception amounts to a further step as contemplated in this rule. [48] This approach has been rejected and it has been held [49] that an excipient is concerned merely to make full use of the remedies that the rules provide, for an attack on a defective pleading. Where the grounds for the exception and the rule 30 application were the same, it was held [50] that it could not be said that the filing of the exception either *(a)* advanced the proceedings one step nearer completion or *(b)* manifested an intention to pursue the cause despite the irregularity. The fact that the exception and the rule 30 notice were contained on two different documents and that relief was not claimed in the alternative was irrelevant. [51]

In *Monumental Art Co v Kenston Pharmacy (Pty) Ltd* [52] it was said that subrule (2) does not apply when the irregular step complained of in the proceedings amounts to a nullity or the defect is such that the opposing party cannot cure the defect even though he were to waive his right to object thereto by taking a further step in the cause. The validity of any distinction between an irregular proceeding (which can be condoned) and one that is a nullity or void (which cannot be condoned) has, however, been doubted: see the notes to subrule (3) below and to rule 27(3) s v 'Condone any non-compliance with these rules' above.

'With knowledge of the irregularity.' It is submitted that knowledge of the irregularity means knowledge of the fact which constitutes the irregularity and not consciousness that the fact constitutes an irregularity. [53] See the notes to paragraph *(b)* s v 'Within ten days of becoming aware of the step' below.

Paragraph *(b)*: 'Within ten days of becoming aware of the step.' This paragraph in its amended form now makes it clear that a party must give notice to his opponent to remove

the cause of complaint within ten days of becoming aware of the fact that the step concerned had been taken, and not within ten days of becoming aware of the irregularity of the step. [54]

'Opportunity of removing the cause of complaint.' This is an innovation introduced by the amendment of the subrule in 1992; previously a party was entitled to bring an application under the subrule without affording his opponent an opportunity of removing the cause of complaint. It is submitted that the purpose of the subrule is to prevent unnecessary applications being brought and to put a defaulting party on notice as to the consequences of his default. [55] In an appropriate case the court can condone non-compliance with this requirement. [56]

There is no obligation on a litigant who cures the irregularity before an application to set it aside becomes necessary, to tender the costs occasioned by the irregular step. Those costs will be costs in the main proceedings. [57]

Paragraph *(c)*: 'The application is delivered within fifteen days.' The period may be extended by the court under the provisions of rule 27(1). [58] In such a case it would be appropriate if the application for the extension of time and the application for relief under this subrule were brought on the same papers at the same time. [59]

Subrule (3): 'May set it aside . . . or make any such order as to it seems meet.' This subrule gives a court very wide powers once it is satisfied that the proceeding or step is irregular or improper, powers which might enable the court to set the proceeding aside in its entirety or in part, grant a plaintiff the opportunity to amend a summons which is so defective as to constitute a nullity or make any order as it deems fit. [60]

The court has a discretion and it is not intended that an irregular step should necessarily be set aside. [61] The discretion must be exercised judicially on a consideration of the

circumstances and what is fair to both sides. [62] The court is entitled to overlook in proper cases any irregularity which does not work any substantial prejudice to the other party. [63]

The court may refuse the costs of a technical application to set aside an irregular proceeding which could not be expected to yield any real advantage to the applicant. [64]

The court may dismiss an application which in fact is little but a stratagem to get the main matter postponed at the other party's costs. [65] In such an event the applicant will be ordered to pay the costs of the application. [66]

There is no need for a litigant who took an irregular step and then, upon notice under rule 30A, timeously cured it, to tender the costs occasioned by the irregular step. Those costs would be costs in the main proceeding. This view is underpinned by two policy considerations, namely (i) that litigants who committed irregularities had to be encouraged to cure them quickly and cheaply, without running the risk of an adverse costs order; and (ii) that the purpose of rule 30A was to avoid excessive formality and point-taking and to enable the parties to get on with the litigation by curing between themselves any prejudice caused by an irregularity. [67]

See further the notes to rule 27(3) above.

Subrule (4): 'Apply for an extension of time.' See rule 27(1) and (2), and the notes thereto, above.

1 1981 (4) SA 329 (O) at 333G–H. See also *Malebye Business Enterprises CC v Bela-Bela Local Municipality* (unreported, LP case no 4134/2018 dated 18 June 2020) at paragraph [6]; *Sasol South Africa Ltd t/a Sasol Chemicals v Penkin* 2024 (1) SA 272 (GJ) at paragraph [46].

2 *Singh v Vorkel* 1947 (3) SA 400 (C) at 406; *Odendaal v De Jager* 1961 (4) SA 307 (O) at 310F–G; *Nyaniso v Head of the Department of Sports, Recreation, Arts and Culture, Eastern Cape Province* (unreported, ECB case no 643/2014 dated 27 September 2016) at paragraph [11]; *Hennie Ehlers Boerdery CC v APL Cartons (Pty) Ltd* 2024 (1) SA 149 (ECGq) at paragraph [18]. In *Deputy Minister of Tribal Authorities v Kekana* 1983 (3) SA 492 (B) it was held *obiter* (at 495H–496B) that a defect going to the root of a claim may be attacked under the rule. In view of the provisions of rule 18(12), which were inserted on 27 November 1987, it is doubtful whether the *obiter* judgment is still applicable.

3 Rule 18(12) and rule 30 have their own remedies for non-compliance with their provisions. These remedies cannot be bypassed by utilizing rule 30A (*Minister of Police v Bacela* (unreported, ECB case no 275/2019 dated 8 September 2020) at paragraphs [7]–[20]; *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]).

4 *Stockdale Motors Ltd v Mostert* 1958 (1) SA 270 (O); *Burger v De Vos* 1967 (3) SA 63 (O); *Papenfus v Nichas & Son (Pty) Ltd* 1969 (4) SA 234 (O) at 237A; *KDL Motorcycles (Pty) Ltd v Pretorius Motors* 1972 (1) SA 505 (O) at 508G.

5 *Papenfus v Nichas & Son (Pty) Ltd* 1969 (4) SA 234 (O).

6 *KDL Motorcycles (Pty) Ltd v Pretorius Motors* 1972 (1) SA 505 (O); *Ladybrand Koöperatiewe Landboumaatskappy Bpk v Finlay* 1975 (1) SA 784 (O); *Swart v Flugel* 1978 (3) SA 265 (E).

7 *Skyline Hotel v Nickloes* 1973 (4) SA 170 (W).

8 *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen* 1992 (4) SA 466 (W) at 469F–J.

9 *Participation Bond Nominees (Pty) Ltd v Mouton (3)* 1978 (4) SA 508 (W) at 515D; *Olgar v Minister of Safety and Security* 2012 (4) SA 127 (ECG) at 134A–B .

10 See also *Ioannides NO v Master of the High Court* (unreported, ECPE case no 74/2020 dated 20 October 2020) at paragraph [16].

11 *Seeletso v Ntefeng* (unreported, NWM case no UM 170/23 dated 6 September 2023) at paragraphs [30]–[33].

12 *Cyril Smiedt (Pty) Ltd v Lourens* 1966 (1) SA 150 (O) at 152E; *Market Dynamics (Pty) Ltd t/a Brian Ferris v Grögor* 1984 (1) SA 152 (W) at 153C; *Malebye Business Enterprises CC v Bela-Bela Local Municipality* (unreported, LP case no 4134/2018 dated 18 June 2020) at paragraph [6].

13 *Jyoti Structures Africa (Pty) Ltd v KRB Electrical Engineers/Masana Mavuthani Electrical and Plumbing Services (Pty) Ltd t/a KRB Masana* 2011 (3) SA 231 (GSJ) at 235A–B; *Nyaniso v Head of the Department of Sports, Recreation, Arts and Culture, Eastern Cape Province* (unreported, ECB case no 643/2014 dated 27 September 2016) at paragraph [11]. In the *Masana* case (*supra*) the appellant had filed copies of the record on appeal, but without providing security. The respondent notified the appellant that its proceedings were irregular steps as intended in rule 30 because the record of appeal had been lodged without entering good and sufficient security for the respondent's costs, as required by rule 49(13). The respondent's notice invited the appellant to remove the cause of the complaint within ten days, in terms of rule 30(2)*(b)*. The appellant thereupon paid an amount of R1,000.00 as security. The respondent, contending that the amount was insufficient security, proceeded to apply under rule 30(1) to have the appellant's filing of the record and application for appeal set aside, and for an order declaring that the appeal had lapsed. It was held (at 234C and 234H) that the respondent's notice contained an invitation to cure the cause of the complaint. If security were thereafter furnished, the amount could be disputed, and rule 49(13)*(b)* provided the remedy, which was that the registrar had to be approached. If the appellant did not approach the registrar, it at best amounted to an omission and not a 'step' or 'proceeding'. The respondent could therefore not use rule 30 for purposes of complaining about the appellant's failure to approach the registrar, nor could it rely on the original rule 30 notice, because the cause of complaint stated therein had been removed. The respondent's remedy concerning the inadequacy of the amount was therefore to approach the registrar itself (the obvious route), or possibly to proceed in terms of rule 30A (non-compliance with the rules), or to seek a mandamus to direct the appellant to approach the registrar. Its remedy did not lie in proceeding with a rule 30 application (at 234I–235B).

14 *Cyril Smiedt (Pty) Ltd v Lourens* 1966 (1) SA 150 (O) at 152E.

15 *Market Dynamics (Pty) Ltd t/a Brian Ferris v Grögor* 1984 (1) SA 152 (W).

16 *Distins Seed Cleaning and Packing Co (Pty) Ltd v Stuart Wholesalers* 1954 (1) SA 283 (N); *Employers' Liability Assurance Corporation Ltd v Potgieter* 1959 (1) SA 850 (W); *Oos-Randse Bantoesake Administrasieraad v Santam Versekeringsmaatskappy Bpk (1)* 1978 (1) SA 160 (W); *Carlkim (Pty) Ltd v Shaffer* 1986 (3) SA 619 (N).

17 *SA Instrumentation (Pty) Ltd v Smithchem (Pty) Ltd* 1977 (3) SA 703 (D); *BMW South Africa (Pty) Ltd v William* (unreported, GP case no 31587/21 dated 27 June 2022) at paragraphs [18] and [23]. See also *Van Loggerenberg v Lydenburg Municipal Council* 1939 TPD 180; *O'Donoghue v Human* 1969 (4) SA 35 (E); *Protea Assurance Co Ltd v Vinger* 1970 (4) SA 663 (O); *Wiehahn Konstruksie Toerustingmaatskappy (Edms) Bpk v Potgieter* 1974 (3) SA 191 (T). If proper service had not been effected, the court, in the exercise of its discretion, could treat the service as good service (*SA Instrumentation (Pty) Ltd v Smithchem (Pty) Ltd* 1977 (3) SA 703 (D) at 705H–706F and the cases there referred to; *Prism Payment Technologies (Pty) Ltd v Altech Information Technologies (Pty) Ltd (t/a Altech Card Solutions)* 2012 (5) SA 267 (GSJ) at 270I–271C and 272H–273A). In such instance rule 30 is not the proper procedure to follow (*Prism Payment Technologies (Pty) Ltd v Altech Information Technologies (Pty) Ltd (t/a Altech Card Solutions)* 2012 (5) SA 267 (GSJ) at 272H–273A). See also *Investec Property Fund Limited v Viker X (Pty) Limited* (unreported, GJ case no 2016/07492 dated 10 May 2016) at paragraphs [7]–[19].

18 *Minister of Prisons v Jongilanga* 1983 (3) SA 47 (E) and 1985 (3) SA 117 (A).

19 *Suliman v Karodia* 1926 WLD 102; *Union & SWA Salt Snoek Corporation (Pty) Ltd v Lancashire Agencies* 1959 (2) SA 52 (N); *Bredenkamp v Dart* 1960 (3) SA 106 (O).

20 *Minister of Law and Order v Taylor NO* 1990 (1) SA 165 (E); *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen* 1992 (4) SA 466 (W) at 471F–472C.

21 *Eniram (Pty) Ltd v New Woodholme Hotel (Pty) Ltd* 1967 (2) SA 491 (E).

22 *Santam Versekeringsmaatskappy Bpk v Leibrandt* 1969 (1) SA 604 (C).

23 *Secretary for the Interior v Scholtz* 1971 (1) SA 633 (C); *Deputy Minister of Tribal Authorities v Kekana* 1983 (3) SA 492 (B). See also *Adfin (Pty) Ltd v Durable Engineering Works (Pty) Ltd* 1991 (2) SA 366 (C).

24 *Participation Bond Nominees (Pty) Ltd v Mouton* (3) 1978 (4) SA 508 (W).

25 *Dass and Others NNO v Lowewest Trading (Pty) Ltd* 2011 (1) SA 48 (KZD) at 52I–J.

26 *Zoutendijk v Zoutendijk* 1975 (3) SA 490 (T).

27 *Brenner's Service Station and Garage (Pty) Ltd v Milne* 1983 (4) SA 233 (W).

28 *D & H (Pty) Ltd v Sinclaire* 1971 (2) SA 157 (W); *South African Druggists Ltd v Beecham Group plc* 1987 (4) SA 876 (T).

29 *Shell SA Marketing (Pty) Ltd v Wasserman t/a Wasserman Transport* 2009 (5) SA 212 (O).

30 *Olgar v Minister of Safety and Security* 2012 (4) SA 127 (ECG) at 134B–C and 135A–B.

31 *Hill NO v Brown* (unreported, WCC case no 3069/20 dated 3 July 2020) at paragraphs [4]–[11] and [12]–[13]; *Van den Heever NO v Potgieter NO* 2022 (6) SA 315 (FB) at paragraphs [21]–[26].

32 *Lee v Road Accident Fund* 2024 (1) SA 183 (GJ) at paragraph [24].

33 *Hennie Ehlers Boerdery CC v APL Cartons (Pty) Ltd* 2024 (1) SA 149 (ECGq) at paragraph [18].

34 *Schewe v Schewe* 1909 TH 149; *Gibson & Jones (Pty) Ltd v Smith* 1952 (4) SA 87 (T); *Creux & Sons (Pty) Ltd v Groenewald* 1953 (3) SA 726 (T); *Stoermer v Stoermer* 1959 (3) SA 922 (SWA); *Brümmer v Brümmer* 1962 (3) SA 101 (O); *Theron v Coetzee* 1970 (4) SA 37 (T).

35 *SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO* 1981 (4) SA 329 (O) at 333G–334G; *De Klerk v De Klerk* 1986 (4) SA 424 (W) at 426I; *Consani Engineering (Pty) Ltd v Anton Steinecker Maschinenfabrik GmbH* 1991 (1) SA 823 (T) at 824G–H; *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen* 1992 (4) SA 466 (W) at 469G; *Gardiner v Survey Engineering (Pty) Ltd* 1993 (3) SA 549 (SE) at 551C; *Malebye Business Enterprises CC v Bela-Bela Local Municipality* (unreported, LP case no 4134/2018 dated 18 June 2020) at paragraph [6]; *Hill NO v Brown* (unreported, WCC case no 3069/20 dated 3 July 2020) at paragraphs [12]–[13]; *Doornhoek Equestrian Estate Home Owners Association v Community Schemes Ombud Service* (unreported, GP case no 32190/21 dated 8 March 2022) at paragraph 14; *Van den Heever NO v Potgieter NO* 2022 (6) SA 315 (FB) at paragraphs [23]–[26]; *Sasol South Africa Ltd t/a Sasol Chemicals v Penkin* 2024 (1) SA 272 (GJ) at paragraphs [44]–[50].

36 *M and M Quantity Surveyors CC v Orvall Corporate Designs (Pty) Ltd* (unreported, GP case no 84202/19 dated 27 May 2021) at paragraphs [17]–[19]. In *Chelsea Estates & Contractors CC v Speed-O-Rama* 1993 (1) SA 198 (E) at 202E–F and *Scott v Ninza* 1999 (4) SA 820 (E) at 823A–C it was held that an application under subrule (2) need not be supported by an affidavit and that all that the subrule requires is that the notice must specify the particulars of the irregularity or impropriety complained of, although, in the latter case, the court took note of the facts mentioned in the affidavits in support of and opposing the application. These decisions, obviously, lost sight of the fact that proof of prejudice is required in the affidavit in support of the application and can be rebutted by evidence in the affidavit opposing the application.

37 *TJ v TA* (unreported, GJ case no 2019/22224 dated 31 March 2021) at paragraph [12].

38 *Zoutendijk v Zoutendijk* 1975 (3) SA 490 (T).

39 *Pettersen v Burnside* 1940 NPD 403 at 406; *Market Dynamics (Pty) Ltd t/a Brian Ferris v Grögor* 1984 (1) SA 152 (W) at 153C; *BMW South Africa (Pty) Ltd v William* (unreported, GP case no 31587/21 dated 27 June 2022) at paragraph [17]; *Katekani Investment v MEC of Human Settlement, Gauten*g (unreported, GJ case no 2021/14457 dated 1 September 2023) at paragraph [11]; and see *Cyril Smiedt (Pty) Ltd v Lourens* 1966 (1) SA 150 (O) at 152E; *Kopari v Moeti* 1993 (4) SA 184 (BGD) at 188H.

40 *Winship NO v Jonsson's Executors* (1926) 47 NPD 43; *Oosterlak v Union Art Co (Pty) Ltd* 1931 WLD 101; *Pettersen v Burnside* 1940 NPD 403 at 406; *African Guarantee & Indemnity Co Ltd v Mills NO* 1955 (2) SA 522 (T); *Singh v Vorkel* 1947 (3) SA 400 (C) at 407; *Killarney of Durban (Pty) Ltd v Lomax* 1961 (4) SA 93 (D); *Western Bank Bpk v De Beer* 1975 (3) SA 772 (T) at 775A; and see rule 19(4) above.

41 *Chase & Sons (Pty) Ltd v Tecklenburg* 1957 (3) SA 51 (T) at 55A.

42 *Chase & Sons (Pty) Ltd v Tecklenburg* 1957 (3) SA 51 (T) at 55A.

43 *Dass and Others NNO v Lowewest Trading (Pty) Ltd* 2011 (1) SA 48 (KZD) at 53A.

44 *Odendaal v De Jager* 1961 (4) SA 307 (O) at 310D.

45 Cf *Graham v Law Society, Northern Provinces* 2016 (1) SA 279 (GP) at 287E–F.

46 *Market Dynamics (Pty) Ltd t/a Brian Ferris v Grögor* 1984 (1) SA 152 (W).

47 *Klein v Klein* 1993 (2) SA 648 (BG); *Katekani Investment v MEC of Human Settlement, Gauteng* (unreported, GJ case no 2021/14457 dated 1 September 2023) at paragraph [11], where the text to this footnote is referred to with approval.

48 *Pounasamy v Moonsamy* 1934 NPD 180 at 182; *Killarney of Durban (Pty) Ltd v Lomax* 1961 (4) SA 93 (D) at 96A–F.

49 *Jowell v Bramwell-Jones* 1998 (1) SA 836 (W) at 904F–H, approved and followed in *BMW South Africa (Pty) Ltd v William* (unreported, GP case no 31587/21 dated 27 June 2022) at paragraphs [15]–[18].

50 *Nasionale Aartappel Koöperasie Bpk v Price Waterhouse Coopers Ing* 2001 (2) SA 790 (T) at 796F–797B.

51 *Gunston v Gunston* 1976 (3) SA 179 (W); Hahlo *Husband and Wife* 237.

52 1974 (2) SA 376 (C) at 379F.

53 The point was left open in *Wiehahn Konstruksie Toerustingmaatskappy (Edms) Bpk v Potgieter* 1974 (3) SA 191 (T) at 203E–G.

54 See *Minister of Law and Order v Taylor NO* 1990 (1) SA 165 (E) (which was decided before the 1992 amendment of the rule); *MEC for Health, The Kwazulu-Natal Province v Medical Information Technology SA (Pty) Ltd* (unreported, KZP case no 7535/19P dated 8 June 2022) at paragraph [20]. See also *Klein v Klein* 1993 (2) SA 648 (BG) at 651F.

55 See *Khunou v M Fihrer & Son (Pty) Ltd* 1982 (3) SA 353 (W) at 361A with reference to the similar provision in subrule (5) of this rule.

56 See *Khunou v M Fihrer & Son (Pty) Ltd* 1982 (3) SA 353 (W) at 360H with reference to the similar provision in subrule (5) of this rule.

57 *RVRN Crushing (Pty) Ltd v GDF Incorporated Consultants (Pty) Ltd* 2024 (1) SA 269 (GJ) at paragraphs 10–13.

58 See *Santam Versekeringsmaatskappy Bpk v Leibrandt* 1969 (1) SA 604 (C) at 608H–609A.

59 *Brenner's Service Station and Garage (Pty) Ltd v Milne* 1983 (4) SA 233 (W) at 238A.

60 *Afrocentrics Projects and Services (Pty) Ltd t/a Innovative Distribution v State Information Technology Agency (SITA) SOC Ltd* 2023 (4) BCLR 361 (CC) at paragraph [26]. See also the *obiter* remarks of Cloete J in *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen* 1992 (4) SA 466 (W) at 473B–D; *Rabie v De Wit* 2013 (5) SA 219 (WCC) at 233H–I.

61 *Northern Assurance Co Ltd v Somdaka* 1960 (1) SA 588 (A) at 595. See also *Singh v Vorkel* 1947 (3) SA 400 (C) at 406; *Distins Seed Cleaning and Packing Co (Pty) Ltd v Stuart Wholesalers* 1954 (1) SA 283 (N); *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A); *Feit v Bienz* 1962 (4) SA 377 (T); *Louwrens v Amery* 1965 (1) SA 477 (W) at 481B; *O'Donoghue v Human* 1969 (4) SA 35 (E) at 39H; *Protea Assurance Co Ltd v Vinger* 1970 (4) SA 663 (O); *National Union of South African Students v Meyer; Curtis v Meyer* 1973 (1) SA 363 (T) at 367F; *Wiehahn Konstruksie Toerustingmaatskappy (Edms) Bpk v Potgieter* 1974 (3) SA 191 (T) at 200D; *Uitenhage Municipality v Uys* 1974 (3) SA 800 (E) at 805E; *Minister of Prisons v Jongilanga* 1985 (3) SA 117 (A) at 123; *Carlkim (Pty) Ltd v Shaffer* 1986 (3) SA 619 (N) at 620C; *Minister van Wet en Orde v Jacobs* 1999 (1) SA 944 (O) at 958F–I; *Rabie v De Wit* 2013 (5) SA 219 (WCC) at 224B–225A; *Doornhoek Equestrian Estate Home Owners Association v Community Schemes Ombud Service* (unreported, GP case no 32190/21 dated 8 March 2022) at paragraph 14; *Van den Heever NO v Potgieter NO* 2022 (6) SA 315 (FB) at paragraph [23].

62 *Northern Assurance Co Ltd v Somdaka* 1960 (1) SA 588 (A) at 596A; *Dreyer v Naidoo* 1958 (2) SA 628 (N) at 629F; *SA Instrumentation (Pty) Ltd v Smithchem (Pty) Ltd* 1977 (3) SA 703 (D) at 705H–706A; *Van den Heever NO v Potgieter NO* 2022 (6) SA 315 (FB) at paragraph [23]; and see the other cases referred to in the preceding footnote.

63 *Foster v Carlis and Houthakker* 1924 TPD 247 at 251–2; *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 276F–H; *Uitenhage Municipality v Uys* 1974 (3) SA 800 (E) at 803B, 805E; *Brenner's Service Station and Garage (Pty) Ltd v Milne* 1983 (4) SA 233 (W) at 237G; *Carlkim (Pty) Ltd v Shaffer* 1986 (3) SA 619 (N) at 621H; *Soundprops 1160 CC v Karlshavn Farm Partnership* 1996 (3) SA 1026 (N) at 1034A–D; *Van den Heever NO v Potgieter NO* 2022 (6) SA 315 (FB) at paragraph [23].

64 *Oos-Randse Bantoesake Administrasieraad v Santam Versekeringsmaatskappy Bpk (1)* 1978 (1) SA 160 (W) at 164D; *Gardiner v Survey Engineering (Pty) Ltd* 1993 (3) SA 549 (SE) at 552C.

65 *Kmatt Properties (Pty) Ltd v Sandton Square Portion 8 (Pty) Ltd* 2007 (5) SA 475 (W) at 490B–E; *Doornhoek Equestrian Estate Home Owners Association v Community Schemes Ombud Service* (unreported, GP case no 32190/21 dated 8 March 2022) at paragraph 14.

66 *Kmatt Properties (Pty) Ltd v Sandton Square Portion 8 (Pty) Ltd* 2007 (5) SA 475 (W) at 490B–E.

67 *RVRN Crushing (Pty) Ltd v GDF Incorporated Consultants (Pty) Ltd* 2024 (1) SA 269 (GJ) at paragraphs [7]–[12]. In this case the court, in dismissing the application to set aside the irregular step with costs on the basis as between attorney and client, pointed out that if every withdrawal of an irregular step gave rise to a subsidiary claim for costs, litigation would soon descend into absurdity (at paragraphs [13]–[15]).