

14 Proceedings by and against partnerships, firms and associations

RS 22, 2023, D1 Rule 14-1

(1) In this rule—

'**Association**' means any unincorporated body of persons, not being a partnership.

'**Firm**' means a business, including a business carried on by a body corporate, carried on by the sole proprietor thereof under a name other than his own.

[Definition of 'firm' substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

'**Plaintiff**' and '**Defendant**' include applicant and respondent.

'**Relevant date**' means the date of accrual of the cause of action.

'**Sue**' and '**sued**' are used in relation to actions and applications.

(2) A partnership, a firm or an association may sue or be sued in its name.

(3) A plaintiff suing a partnership need not allege the names of the partners. If he does, any error of omission or inclusion shall not afford a defence to the partnership.

(4) The previous subrule shall apply *mutatis mutandis* to a plaintiff suing a firm.

(5)(a) A plaintiff suing a firm or a partnership may at any time before or after judgment deliver to the defendant a notice calling for particulars as to the full name and residential address of the proprietor or of each partner, as the case may be, as at the relevant date.

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

(b) The defendant shall within 10 days deliver a notice containing such information.

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

(c) Concurrently with the said statement the defendant shall serve upon the persons referred to in paragraph (a) a notice as near as may be *mutatis mutandis*, in accordance with Form 8 of the First Schedule and deliver proof by affidavit of such service.

(d) A plaintiff suing a firm or a partnership and alleging in the summons or notice of motion that any person was at the relevant date the proprietor or a partner, shall notify such person accordingly by delivering a notice as near as may be, *mutatis mutandis*, in accordance with Form 8 of the First Schedule.

(e) Any person served with a notice in terms of paragraph (c) or (d) shall be deemed to be a party to the proceedings, with the rights and duties of a defendant.

(f) Any party to such proceedings may aver in the pleadings or affidavits that such person was at the relevant date the proprietor or a partner, or that he is estopped from denying such status.

(g) If any party to such proceedings disputes such status, the court may at the hearing decide that issue *in limine*.

(h) Execution in respect of a judgment against a partnership shall first be levied against the assets thereof, and, after such excuson, against the private assets of any person held to be, or held to be estopped from denying his status as, a partner, as if judgment had been entered against him.

(6) The preceding subrule shall apply *mutatis mutandis* to a defendant sued by a firm or a partnership.

(7) If a partnership is sued and it appears that since the relevant date it has been dissolved, the proceedings shall nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners, as if sued individually.

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(8) The preceding subrule shall apply *mutatis mutandis* where it appears that a firm has been discontinued.

(9)(a) A plaintiff suing an association may at any time before or after judgment deliver a notice to the defendant calling for a true copy of its current constitution and a list of the names and addresses of the officebearers and their respective offices as at the relevant date.

[Paragraph (9) (a) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(b) Such notice shall be complied with within 10 days.

[Paragraph (9) (b) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(c) Paragraphs (a) and (b) shall apply *mutatis mutandis* to a defendant sued by an association.

(10) Paragraphs (d) to (h) of subrule (5) shall apply *mutatis mutandis* when—

(a) a plaintiff alleges that any member, servant or agent of the defendant association is liable in law for its alleged debt;

(b) a defendant alleges that any member, servant or agent of the plaintiff association will be responsible in law for the payment of any costs which may be awarded against the association.

(11) Subrule (7) shall apply *mutatis mutandis* in regard to the continuance of the proceedings against any member, servant or agent referred to in paragraph (a) of subrule (10).

(12) Subrule (4) of rule 21 shall apply *mutatis mutandis* in the circumstances set out in paragraphs (a) and (b) of subrule (5) and in subrule (9) hereof.

[Subrule (12) amended by GN R1262 of 1991.]

Commentary

Form. Notice to alleged partner, 8.

General. The common-law position is that, unless each individual forming part of an unincorporated body of persons is joined and cited by name, the summons is bad for misjoinder.¹ It has been held that this rule is a procedural aid assisting a plaintiff to cite certain legal entities that do not have any existence separate from their members or owners.² The rule simplifies the method of citation by enabling such a body of persons to be sued in the name which it normally bears and which is descriptive of it.³ The rule ensures that a plaintiff's claim is

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not defeated by technical defences regarding the citing of a defendant⁴ or non-joinder.⁵ The earlier decisions in regard to the Supreme Court procedure in actions by or against partnerships, firms and associations must now be regarded with considerable reserve; and for this reason they are not referred to here at any length. The rule provides procedural machinery only⁶ and cannot as such make inroads upon the substantive law relating to partnerships and unincorporated associations.⁷ It does not operate to constitute a partnership, firm or an unincorporated association a *persona in law*⁸ or vest it with *locus standi* where none exists.⁹ The rule also does not create rights or liabilities that would otherwise not have existed¹⁰ or render an otherwise unauthorized act *intra vires*.¹¹

The rule does not override other rules of more basic and general application. For instance, legal proceedings cannot commence against any party unless that party is notified by means of an initiating process; if not, the proceedings are null and void.¹² The rule is obscurely worded and gives rise to a number of difficulties.¹³ The difficulties and the causes thereof are discussed in *Ex-TRTC United Workers Front v Premier, Eastern Cape Province*.¹⁴

Subrule (1): 'Any unincorporated body.' This phrase refers to nothing more than a collection of individuals who are bound to one another by contract and who act jointly in pursuit of a common purpose.¹⁵ An unincorporated body has no existence on its own, cannot own property and has no *locus standi* to sue or be sued in its own name. In legal proceedings by or against it, every member must as a result be cited as plaintiff or defendant, as the case may be.¹⁶ See further the notes s v 'General' above.

By contrast, a *universitas personarum* is a separate legal entity that has perpetual succession with rights and duties

separate and independent from the rights and duties of its members.¹⁷ Being a legal *persona*, a *universitas* has the capacity to own property and to sue and be sued in its own name. It derives these characteristics from the common law and it is not necessary

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for it to be created by or registered in terms of a statute.¹⁸ In *Ex-TRTC United Workers Front v Premier, Eastern Cape*¹⁹ it has been held that rule 14 does not apply to a *universitas*, or for that matter, to any artificial or juristic person constituting a legal entity with perpetual succession and the capacity to acquire rights and incur obligations and own property apart from its members. The reason for this was stated as follows in that case:²⁰

'Rule 14 is therefore nothing more than a procedural aid assisting a plaintiff to cite certain legal entities that do not have any existence separate from their members or owners. It does not apply to an artificial or juristic person constituting a legal entity with perpetual succession and the capacity to acquire rights and incur obligations and own property apart from its members. The reason for this is simply that a juristic person may in any event sue or be sued in its own name. It does not need the procedural assistance of rule 14.'

In any proceedings instituted by or against an association²¹ the logical point of departure is the question whether it is a *universitas* at common law or an unincorporated body as contemplated in rule 14. The ability of an association to sue or be sued as envisaged in rule 14 is subject to two considerations: first, the nature of the relationship between the members of the association *inter se*; and, secondly, whether there exists a sufficient nexus between the individual members in their capacities as members of the association and the right that forms the subject matter of the litigation.²² This subrule and subrule (2) must also be read with rule 17(4)(b), the object of which is to require every plaintiff to furnish sufficient details to enable the court and the defendant to establish whether or not the plaintiff has the requisite *locus standi* to sue.²³

If the constitution of an unincorporated body provides that the association shall not institute any action, the provisions of rule 14 do not give the association the power to do so.²⁴ The provisions of the rule apply to a trust which conducts its business under a name other than by which the trust is known.²⁵

'Partnership.' A partnership at common law is not a legal entity distinct from the individual partners who constitute it. The individual partners are the owners of partnership property in undivided shares and the rights and duties of the partnership are the rights and duties of the partners.²⁶ A rule of practice had developed which was to the effect that, during the subsistence of the partnership, a plaintiff who instituted action to enforce a partnership obligation, had to cite and join all partners otherwise the action would be bad for non-joinder.²⁷ The

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effect of a judgment obtained against a partner that was not cited was considered a nullity *vis-à-vis* that partner. It is in this context that rule 14 was introduced. In effect the rule says this:

'The common-law procedure of suing each individual member . . . need not be followed . . .'²⁸

'By the sole proprietor . . . under a name other than his own.' The firm name is really the *alias* of its sole proprietor.²⁹ When the business is sold the firm becomes the *alter ego* of the new proprietor.³⁰

In terms of the definition a firm includes a business carried on under a trade name by a body corporate, as sole proprietor. This subrule and subrule (2) must also be read with rule 17(4)(b), the object of which is to require every plaintiff to furnish sufficient details to enable the court and the defendant to establish whether or not the plaintiff has the requisite *locus standi* to sue.³¹

'"Sue" and "sued" are used in relation to actions and applications.' See the definitions of 'action' and 'application' in rule 1 above.

Subrule (2): 'May sue or be sued in its own name.' It has been held that rule 14 is nothing more than a procedural aid assisting a plaintiff to cite certain legal entities that do not have any existence separate from their members or owners.³² Its purpose is to simplify the method of citation by enabling, *inter alia*, an aggregate of persons to be sued in the name which is descriptive of it.³³ See further the notes s v 'General' above.

The provisions of this subrule are supplemented by rule 4(1)(a)(vii) which provides that where a partnership, firm or association is to be served, service may be effected at the place of business of the partnership,³⁴ firm or association, or if there be none such, then on any member of the partnership, the proprietor of a firm or the chairman or secretary of the committee of an association.

Subrule (3): 'Need not allege the names of the partners.' In terms of subrule (2) a partnership may sue in its own name. Subrule (5) provides the plaintiff with a means of obtaining the names and addresses of all the partners simply by delivering a notice to disclose.

'Any error of omission or inclusions shall not afford a defence.' This provision may give rise to difficulties. If a business belonging to A and B has been sold to X and Y and the plaintiff's claim arose while A and B were the proprietors, but he sues X and Y, this would be an error of inclusion which, on the wording of the subrule, shall not afford a defence to the partnership. It is submitted that this was not the intention of the subrule (compare subrules (5)(f) and (g)) and that it is to be given a restricted interpretation, as meaning only that the mere fact of a misdescription or incomplete description of the partners in a partnership shall not of itself

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give rise to any defence.³⁵ The safest course to adopt may be to omit the names of the partners altogether, as the subrule in fact contemplates.

Subrule (4): 'Shall apply mutatis mutandis to a plaintiff suing a firm.' In this subrule and in subrule (8), rules which deal with partnerships are *mutatis mutandis* made applicable to firms. There is a fundamental distinction between a partnership and a firm which should be kept in mind in the application of the various subrules. A partnership arises from an agreement between the partners and the partnership lasts as long as the agreement lasts: when a new partner is admitted a new partnership is constituted.³⁶ A firm is a business carried on by the sole proprietor thereof under a trade name; in other words, a firm name is really the *alias* of its sole proprietor.³⁷ When the business is sold the firm becomes the *alter ego* of the new proprietor.³⁸

Subrule (5)(a): 'At any time before or after judgment.' Prior to the amendment of the subrule in 1987,³⁹ the notice formed part of the summons. Under the subrule in its amended form the notice may be delivered to the defendant at any time before or after judgment. The decision in *Jacobs v T J Daly & Sons (Pty) Ltd: In re T J Daly & Sons (Pty) Ltd v Engineering and Financial Services*,⁴⁰ in which it was held that the notice in terms of the subrule could not be issued after judgment, is therefore no longer applicable. The failure to make consequential amendments to the rest of the subrule, which belongs to the 'contextual scene' of a pending action,⁴¹ might create difficulties. For example, paragraph (g) of the subrule provides that

where a person disputes the allegation that he was a proprietor or partner, the court may at the hearing decide that issue *in limine*. When the notice is delivered to the defendant after judgment, a defendant who wants to dispute the status attributed to him in the notice would have no alternative but to bring a substantive application to have the notice set aside. Consequential amendment of Form 8 also seems to be called for. See, in this regard, the notes to subrule (5)(c) s v 'A notice . . . in accordance with Form 8' below.'

'Deliver . . . a notice calling for particulars.' This subrule provides the plaintiff with a means of obtaining, for purposes of execution, the names and addresses of the proprietor of a firm or of all the partners of a partnership he had sued in the name of the firm or partnership.⁴² Although under rule 14 judgment can be given against a partnership as such, and although execution can be levied against partnership property⁴³ and the partnership estate can even be sequestered as such,⁴⁴ execution can also be levied against the private assets of the individual members of the partnership.⁴⁵

Subrule (5)(b): 'Shall within 10 days deliver a notice.' Subrule (12) provides that failure to comply timeously or sufficiently with the requirements of this subrule would expose the defendant to the sanction provided in rule 21(4).

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Where in response to a notice in terms of subrule (5)(a) or otherwise the true identity of the owner of the firm becomes known, judgment cannot be delivered against a person who was not the owner when the cause of action accrued nor against the firm if the owner at the time of judgment is a different person.⁴⁶

It has been held that, where there is no response to a notice in terms of subrule (5)(a), or even where the information has not been called for, nothing prevents judgment from being given against the firm as cited.⁴⁷ However, this may result in a judgment being given against a party who cannot in law be held liable on the cause of action alleged in the summons.⁴⁸

Subrule (5)(c): 'A notice . . . in accordance with Form 8.' The notice in accordance with Form 8 must be served concurrently with the defendant's reaction to the plaintiff's notice under paragraph (a) of the subrule. The plaintiff's notice may be delivered to the defendant at any time before or after judgment; hence the defendant's notice in accordance with Form 8 may be served after judgment. The wording of Form 8 is, however, not suited to a notice delivered after judgment: it calls upon the alleged partner to give notice of his intention to defend and to file a plea within prescribed periods. The form further provides that if the alleged partner gives notice of intention to defend a copy of the summons will be served upon him, but it is nowhere made clear by whom. It is submitted that the wording of Form 8 is appropriate only to a notice given by a plaintiff under subrule (5)(d) and that adaptation of the wording will be necessary in order to fit the notice given by a defendant under this subrule.

No provision is made for what is to happen if the defendant should fail to give notice in terms of Form 8 to a person whom he has, under the subrule, alleged to be a partner.

Subrule (5)(d): 'A plaintiff . . . shall notify.' This subrule clearly envisages that a plaintiff, who alleges in his summons or notice of motion that any person was at the 'relevant date' a partner or proprietor, shall concurrently with his summons deliver the notice in accordance with Form 8 so as to enable the person concerned to participate in the proceedings as a defendant. It is submitted that a plaintiff may be mulcted in costs if failure on his part to utilize the machinery provided in this subrule leads to delay or an increase in costs.

By not reacting to a notice delivered upon him in terms of this subrule, a person is prohibited from disputing that he was a partner at the relevant time or that the defendant is liable to the plaintiff. His assets can therefore be excused in terms of subrule (5)(h) as if judgment had been entered against him.⁴⁹

Subrule (5)(e): 'With the rights and duties of a defendant.' These rights would include the right to enter appearance to defend the action, to file a plea and to oppose the plaintiff at the trial.⁵⁰

In the normal course the notices in terms of paragraphs (c) or (d) will be delivered in time for the person concerned to participate in the proceedings as a defendant. However, where the plaintiff's notice to the defendant in terms of paragraph (a) is delivered after judgment, any person affected by the defendant's notice in terms of paragraph (c) will obviously not be able to take his place as a defendant in the proceedings. If such a person should wish to dispute the status attributed to him in the notice, he would have no alternative but to bring a substantive application to have the notice set aside.

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Subrule (5)(h): 'As if judgment had been entered against him.' The words 'as if' mean that the liability of the person concerned can be excused as if judgment had been entered against him whereas in fact it had not.⁵¹ It has been held that this phrase connotes 'judgment against him as if he is a party to the action at the time when judgment is granted'.⁵² It is submitted that, in view of the fact that the notice under paragraph (a) of this subrule can now be issued at any time before or after judgment,⁵³ the subrule applies to any person who had been a partner at the 'relevant date' irrespective of when the notice in accordance with Form 8 was served upon him. Moreover, in terms of paragraph (e) of this subrule a person served with a notice in terms of paragraphs (c) or (d) is deemed to be a party to the proceedings, and the notice in terms of paragraph (c) may be served after judgment. It will, therefore, be possible to sue out a writ of execution against such a partner even if the relevant notices were served upon him after judgment.⁵⁴

Subrule (6): 'To a defendant sued by a firm or partnership.' The probable object of this subrule is to afford a defendant a means of ascertaining the identity of the parties who are suing him, so that he may, if successful, recover his costs from them. Compare subrules (9)(c) and (10)(b). Subrule (12) provides a remedy for failure to deliver the notice requested under subrules (5) and (9) but is silent in regard to subrule (6). This appears to be a *casus omissus*.

Subrule (7): 'Since the relevant date it has been dissolved.' A partnership that had been dissolved after the accrual of the cause of action may nevertheless be sued in its name at the date of the accrual of the cause of action and the action continues, in terms of this subrule, against the persons alleged by the plaintiff or stated by the partnership to be partners, as if sued individually.⁵⁵

'As if.' These words mean that the proceedings, i.e. the main action/application, continue against the persons alleged by the plaintiff/applicant or stated by the partnership to be partners as if they had been sued individually whereas in fact they had not been sued individually.⁵⁶

Subrule (8): 'The preceding subrule shall apply mutatis mutandis.' See the notes to subrule (4) s v 'Shall apply mutatis mutandis to a plaintiff suing a firm' above.

'A firm has been discontinued.' If a firm has been discontinued after the accrual of the cause of action, the action continues, in terms of this subrule, against the person alleged by the plaintiff or stated by the firm to be the proprietor, as if sued individually.

If a person becomes the sole proprietor of a firm after the accrual of the cause of action, he cannot under the rule be held liable on that cause of action because a firm is not a legal persona and the firm name is only the *alias* of its sole proprietor.⁵⁸ When the business is sold the firm becomes the *alter ego* of the new proprietor.⁵⁹

Subrule (9)(a): 'May at any time before or after judgment.' See the notes to subrule (5)(a) s v 'At any time before or after judgment' above.

'Calling for a true copy . . . and a list of names.' This procedure falls within the principles enunciated in *Stuart v Ismail*.⁶⁰ A party is clearly not entitled to elicit by a notice in terms of the subrule any information other than that expressly provided for in this paragraph.

Subrule (10): 'Any member, servant or agent . . . is liable in law.' This subrule clearly cannot render a servant or agent liable where he would not be liable at common law.

Subrule (12): 'Subrule (4) of rule 21 shall apply.' Although rule 21(4) entitles a party to apply to court to order timeous or sufficient compliance with a notice under rule 14(5)(a), (b) and (9), and if no compliance is made, thereafter to enter a default judgment, the value of such a procedure may well be trifling, for if the names of the individual partners are not on record, who is to be ordered to comply with the request, and against whose property can execution be levied if the partnership property is exhausted?⁶¹

¹ *Press v Barker* 1919 CPD 243; *Du Toit v African Dairies Ltd* 1922 TPD 245; *Sliom v Wallach's Printing and Publishing Co Ltd* 1925 TPD 650 at 655; *Mahomed v Karp Bros* 1938 TPD 112; *Turkstra v Goldberg* 1960 (1) SA 512 (T); *Standard Bank of SA Ltd v Pearson* 1961 (3) SA 721 (E); *Vrystaatse Lewendehawe Ko-op Bpk v Van Jaarsveld* 1970 (4) SA 292 (NC); *Cupido v Kings Lodge Hotel* 1999 (4) SA 257 (E) at 261A-C and 264B-C; *Trust Bank Bpk v Dittrich* 1997 (3) SA 740 (C) at 747D; *Burger v Rand Water Board* 2007 (1) SA 30 (SCA) at 34C-E; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 120D-125B; *Lephalela Local Municipality v Nanza Amamiya Ndlovu Joint Venture* (unreported, LP case no HCAA02/2022 dated 26 May 2022 — a decision of the full court) at paragraphs [15]-[16]. This principle applies equally in contractual and delictual actions (*Mdletshe v Liteye* 1994 (3) SA 874 (E)).

² *DF Scott (Pty) Ltd v Golden Valley Supermarket* 2002 (6) SA 297 (SCA) at 301H-I; *Burger v Rand Water Board* 2007 (1) SA 30 (SCA) at 34E; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 125C and the authorities there referred to. See also the notes to subrule (1) s v 'Any unincorporated body' below.

³ *De Meillon v Montclair Society of the Methodist Church of Southern Africa* 1979 (3) SA 1365 (D) at 1369D; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 124D-125B and the authorities there referred to. See also *Stein Brothers Ltd v Dawood* 1980 (3) SA 275 (W) at 281C; *Cupido v Kings Lodge Hotel* 1999 (4) SA 257 (E) at 263B-C.

⁴ *Cupido v Kings Lodge Hotel* 1999 (4) SA 257 (E) at 264B.

⁵ *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 124C-E.

⁶ *Bantu Callies Football Club (also known as Pretoria Callies Football Club) v Motlamme* 1978 (4) SA 486 (T) at 490A; *Simpson's Motors v Flamingo Motors* 1989 (4) SA 797 (W) at 798H; *Ahmed v Belmont Supermarket* 1991 (3) SA 809 (N) at 811B; *P K Stores (Pty) Ltd t/a Eric's Spar v Mike's Kitchen* 1994 (2) SA 322 (O) at 323E; *Burger v Rand Water Board* 2007 (1) SA 30 (SCA) at 34E; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 126A-B.

⁷ See, for example, *Parker v Rand Motor Transport Co* 1930 AD 351 at 358; *Cupido v Kings Lodge Hotel* 1999 (4) SA 257 (E) at 263C-D; *Burger v Rand Water Board* 2007 (1) SA 30 (SCA) at 34E; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 126A-B.

⁸ *Burger v Rand Water Board* 2007 (1) SA 30 (SCA) at 34E; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 126A-B and the authorities there referred to.

⁹ *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 126B.

¹⁰ *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 126B and the authorities there referred to.

¹¹ *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 126B and the authorities there referred to.

¹² Cf *DF Scott (Pty) Ltd v Golden Valley Supermarket* 2002 (6) SA 297 (SCA) at 301I-302A; and see *Transnet Soc Limited t/a Transnet Freight Rail v Tanker Services Fuel and Gas (Pty) Ltd* (unreported, GJ case no 33982/2019 dated 6 March 2023) at paragraph [16]).

¹³ *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 118H.

¹⁴ 2010 (2) SA 114 (ECB) at 118G-126B.

¹⁵ *Ex-TRTC United Workers Front v Premier, Eastern Cape* 2010 (2) SA 114 (ECB) at 123E-124B and the authorities there referred to.

¹⁶ *Ex-TRTC United Workers Front v Premier, Eastern Cape* 2010 (2) SA 114 (ECB) at 124A-B and the authorities there referred to.

¹⁷ *Webb & Co Ltd v Northern Rifles; Hobson & Sons v Northern Rifles* 1908 TS 462 at 464-5. See also *Ex-TRTC United Workers Front v Premier, Eastern Cape* 2010 (2) SA 114 (ECB) at 123B-C and the further authorities there referred to. See further the excursus to rule 17 s v 'Parties — Voluntary associations' below.

¹⁸ *Ex parte Johannesburg Congregation of the Apostolic Church* 1968 (3) SA 377 (W) at 377E; *Ex-TRTC United Workers Front v Premier, Eastern Cape* 2010 (2) SA 114 (ECB) at 123D-E. See further the excursus to rule 17 s v 'Parties — Voluntary associations' below.

¹⁹ 2010 (2) SA 114 (ECB).

²⁰ At 125D-E.

²¹ As defined in rule 14(1).

²² *Ex-TRTC United Workers Front v Premier, Eastern Cape* 2010 (2) SA 114 (ECB) at 126C-D and 126E-133A. See further the excursus to rule 17 s v 'Parties — Voluntary associations' below. It lies outside the scope of this work to deal extensively with the relevant substantive law.

²³ See *Spoornet v Watson* 1994 (1) SA 513 (W) at 514E-H; *Absa Bank Ltd v Blignault* 1996 (4) SA 100 (O) at 102E.

²⁴ *Bantu Callies Football Club (also known as Pretoria Callies Football Club) v Motlamme* 1978 (4) SA 486 (T) at 489H-490A.

²⁵ *Cupido v Kings Lodge Hotel* 1999 (4) SA 257 (E) at 265B-H.

²⁶ *Michalow NO v Premier Milling Co Ltd* 1960 (2) SA 59 (W) at 61D-F; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 120D-121E and the authorities there referred to.

²⁷ *Press v Barker* 1919 CPD 243; *Du Toit v African Dairies Ltd* 1922 TPD 245; *Turkstra v Goldberg* 1960 (1) SA 512 (T) at 513E-F; *Standard Bank of South Africa Ltd v Pearson* 1961 (3) SA 721 (E) at 723A; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 121F-G and the further authorities referred to.

²⁸ Cf *Vorster v John Jack Ltd* 1925 TPD 793 at 796; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 124E-125A.

²⁹ *Simpson's Motors v Flamingo Motors* 1989 (4) SA 797 (W) at 798F; *Ahmed v Belmont Supermarket* 1991 (3) SA 809 (N) at 811H; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 122C-D and the authorities there referred to.

³⁰ *Simpson's Motors v Flamingo Motors* 1989 (4) SA 797 (W) at 798F.

³¹ See *Spoornet v Watson* 1994 (1) SA 513 (W) at 514E-H; *Absa Bank Ltd v Blignault* 1996 (4) SA 100 (O) at 102E.

³² *DF Scott (Pty) Ltd v Golden Valley Supermarket* 2002 (6) SA 297 (SCA) at 301H-I; *Burger v Rand Water Board* 2007 (1) SA 30 (SCA) at 34E; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 125C.

³³ *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* 2010 (2) SA 114 (ECB) at 124D-E.

³⁴ Such service is apparently regarded as equivalent to service on each partner (*Parker v Rand Motor Transport Co* 1930 AD 351 at 358).

³⁵ See *Stein Brothers Ltd v Dawood* 1980 (3) SA 275 (W) at 280H.

³⁶ See, for example, *Kirsh Industries Ltd v Vosloo and Lindeque* 1982 (3) SA 479 (W) at 481H-482A.

37 See, for example, *Simpson's Motors v Flamingo Motors* [1989 \(4\) SA 797 \(W\)](#) at 798F; *Ahmed v Belmont Supermarket* [1991 \(3\) SA 809 \(N\)](#) at 811H; *P K Stores (Pty) Ltd t/a Eric's Spar v Mikes Kitchen* [1994 \(2\) SA 322 \(O\)](#) at 324E; *Ex-TRTC United Workers Front v Premier, Eastern Cape Province* [2010 \(2\) SA 114 \(ECB\)](#) at 122C-D.

38 *Simpson's Motors v Flamingo Motors* [1989 \(4\) SA 797 \(W\)](#) at 798F.

39 By GN R2164 of October 1987 and GN R2642 of November 1987.

40 [1977 \(4\) SA 140 \(T\)](#).

41 *Jacobs v T J Daly & Sons (Pty) Ltd: In re T J Daly & Sons (Pty) Ltd v Engineering and Financial Services* [1977 \(4\) SA 140 \(T\)](#) at 142A.

42 *Stein Brothers Ltd v Dewood* [1980 \(3\) SA 275 \(W\)](#) at 281C.

43 See paragraph (h) of this subrule.

44 [Section 13](#) of the Insolvency [Act 24 of 1936](#).

45 See paragraph (h) of this subrule.

46 *Ahmed v Belmont Supermarket* [1991 \(3\) SA 809 \(N\)](#) at 811G; *P K Stores (Pty) Ltd t/a Eric's Spar v Mikes Kitchen* [1994 \(2\) SA 322 \(O\)](#) at 324E.

47 *Farm Fare (Pty) Ltd v Fairwood Supermarket* [1986 \(4\) SA 258 \(C\)](#) at 262C; *Ahmed v Belmont Supermarket* [1991 \(3\) SA 809 \(N\)](#) at 811E.

48 See *Simpson's Motors v Flamingo Motors* [1989 \(4\) SA 797 \(W\)](#) at 798G-799A.

49 *Engelbrecht v Visentin: in re Visentin v Clensatron South Africa* [1997 \(2\) SA 241 \(W\)](#) at 245E-H.

50 *Engelbrecht v Visentin: in re Visentin v Clensatron South Africa* [1997 \(2\) SA 241 \(W\)](#) at 245C.

51 *Engelbrecht v Visentin: in re Visentin v Clensatron South Africa* [1997 \(2\) SA 241 \(W\)](#) at 246B.

52 In *Jacobs v T J Daly & Sons (Pty) Ltd* [1977 \(4\) SA 140 \(T\)](#) at 141H-142A, in which it was further held that the machinery provided for in the subrule can only be used prior to the granting of a judgment against a defendant firm or partnership.

53 See further the notes to subrule (5)(a) s v 'At any time before or after judgment' above.

54 Despite the general rule that the name in a writ or warrant of execution must correspond with the name in the summons (*Rees v Feldman* 1927 TPD 884; *Xakana v Elliot Brothers (Queenstown) (Pty) Ltd* [1967 \(4\) SA 724 \(E\)](#)).

55 *Spie Batignolles Société Anonyme v Van Niekerk: In re Van Niekerk v SA Yster en Staal Industriële Korporasie Bpk* [1980 \(2\) SA 441 \(NC\)](#); *Kirsh Industries Ltd v Vosloo and Lindeque* [1982 \(3\) SA 479 \(W\)](#).

56 *Engelbrecht v Visentin: in re Visentin v Clensatron South Africa* [1997 \(2\) SA 241 \(W\)](#) at 246A.

57 See *M Rauff (Pty) Ltd v Pietersburg Coal Agency* [1974 \(1\) SA 811 \(T\)](#). The observation (at 812E) that this can be done only where the procedure in subrule (5) had been utilized before judgment is probably no longer valid in view of the fact that a notice in terms of subrule (5)(a) can now be issued after judgment.

58 *Simpson's Motors v Flamingo Motors* [1989 \(4\) SA 797 \(W\)](#) at 798F, not following the decision to the contrary in *Farm Fare (Pty) Ltd v Fairwood Supermarket* [1986 \(4\) SA 258 \(C\)](#). See also *Ahmed v Belmont Supermarket* [1991 \(3\) SA 809 \(N\)](#).

59 *Simpson's Motors v Flamingo Motors* [1989 \(4\) SA 797 \(W\)](#) at 798F.

60 [1942 AD 327](#). See also *Roamer Watch Co SA v African Textile Distributors also t/a M K Patel Wholesale Merchants and Direct Importers* [1980 \(2\) SA 254 \(W\)](#) at 266G-267D.

61 In *Farm Fare (Pty) Ltd v Fairwood Supermarket* [1986 \(4\) SA 258 \(C\)](#) at 262C Munnik JP, speaking for a full court, remarked that 'in all our years on the bench none of us can recall ever having seen a reply filed in terms of Supreme Court rule 14(5)(b), furnishing the information called for by a plaintiff in terms of rule 14(5)(a)'.