

## 10 Joinder of parties and causes of action

RS 24, 2024, D1 Rule 10-1

(1) Any number of persons, each of whom has a claim, whether jointly, jointly and severally, separately or in the alternative, may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of such persons proposing to join as plaintiffs would, if he brought a separate action, be entitled to bring such action, provided that the right to relief of the persons proposing to join as plaintiffs depends upon the determination of substantially the same question of law or fact which, if separate actions were instituted, would arise on such action, and provided that there may be a joinder conditionally upon the claim of any other plaintiff failing.

(2) A plaintiff may join several causes of action in the same action.

(3) Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action.

(4) In any action in which any causes of action or parties have been joined in accordance with this rule, the court at the conclusion of the trial shall give such judgment in favour of such of the parties as shall be entitled to relief or grant absolution from the instance, and shall make such order as to costs as shall to it seem to be just, provided that without limiting the discretion of the court in any way —

(a) the court may order that any plaintiff who is unsuccessful shall be liable to any other party, whether plaintiff or defendant, for any costs occasioned by his joining in the action as plaintiff;

(b) if judgment is given in favour of any defendant or if any defendant is absolved from the instance, the court may order:

(i) the plaintiff to pay such defendant's costs, or

(ii) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the successful defendant, he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess, and the court may further order that, if the successful defendant is unable to recover the whole or any part of his costs from the unsuccessful defendants, he shall be entitled to recover from the plaintiff such part of his costs as he cannot recover from the other unsuccessful defendants;

(c) if judgment is given in favour of the plaintiff against more than one of the defendants, the court may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the plaintiff he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess.

(5) Where there has been a joinder of causes of action or of parties, the court may on the application of any party at any time order that separate trials be held either in respect of some or all of the causes of action or some or all of the parties; and the court may on such application make such order as to it seems meet.

RS 24, 2024, D1 Rule 10-2

### Commentary

**General.** The provisions of this rule are applicable to applications by virtue of the provisions of rule 6(14).

In *Hoffman NO v Livewell Devco 1 (Pty) Ltd* <sup>1</sup> Cloete J, with reference to rule 10, observed that the rule 'is silent on the procedure to be followed, and accordingly rule 6(1) applies, namely that every application must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief'. Presumably this was intended to be a reference to rule 10(1), (2) and (3), but it is not clear under what circumstances an application under any of these subrules will be required.

The rule does not deal with, nor does its provisions affect, the common-law rules relating to the obligatory joinder of parties and, in this regard, non-joinder and misjoinder. The position under the common law is discussed in the notes that follow.

#### Non-joinder and misjoinder

Non-joinder is the failure of a plaintiff to join a particular defendant with another whom he is suing, in circumstances in which the law requires that both should be sued together, or the failure by a plaintiff to join with himself as co-plaintiff another person whom the law requires should be joined when suing a particular defendant or defendants.

Misjoinder is the joining of several plaintiffs or defendants in one action in circumstances which the law does not sanction; i.e. the objection is that the wrong plaintiffs are suing or the wrong defendants are being sued. The general principles applicable to non-joinder are applicable to misjoinder as well. <sup>2</sup>

The general principles upon which a plea of non-joinder will be upheld are the same whether in respect of plaintiffs or defendants. If a necessary party who should be a co-plaintiff refuses to join the plaintiff(s) already in the field, the latter must join him as a co-defendant. <sup>3</sup>

Though it was said in *Morgan v Salisbury Municipality* <sup>4</sup> that the right of a defendant to demand the joinder of another party is limited to the cases of joint owners, joint contractors and partners, the question as to whether all necessary parties had been joined does not depend upon the nature of the subject matter of the suit, but upon the manner in which, and the extent to which, the court's order may affect the interests of third parties. <sup>5</sup> The test is whether or not a party has a 'direct and substantial interest' in the subject matter of the action, that is, a legal interest in the subject matter of the litigation which may be affected

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prejudicially by the judgment of the court. <sup>6</sup> A mere financial interest is an indirect interest and may not require joinder of a person having such interest. <sup>7</sup> The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. <sup>8</sup> The rule is that any person is a necessary party and should be joined if such person has a direct

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and substantial interest in any order the court might make, or if such an order cannot be sustained or carried into effect without prejudicing that party, <sup>9</sup> unless the court is satisfied that he has waived his right to be joined. <sup>10</sup>

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The rules on obligatory joinder at common law seek to prevent a third party who has not been joined, and against whom the order of the court would not be *res judicata*, from approaching the courts again in respect of the same subject matter and possibly obtaining an order irreconcilable with the order that was made in the first instance. <sup>11</sup>

In *Insamcor (Pty) Ltd v Dorbyl Light & General Engineering ((Pty) Ltd; Dorbyl Light & General Engineering ((Pty) Ltd v Insamcor (Pty) Ltd* <sup>12</sup> the Supreme Court of Appeal applied the mechanism of a rule *nisi* as an alternative to actual joinder of all necessary parties. <sup>13</sup> Since failure to react to the rule *nisi* would give rise to deemed consent, it was held <sup>14</sup> that where a particular third party could be identified, service of the rule *nisi* on that party should be directed, while service upon unknown potentially interested third parties could be ensured by publication.

In *Road Accident Fund v Legal Practice Council*<sup>15</sup> the non-joinder of interested parties was at issue. The RAF and the LPC took various steps to give notice of the relief sought by the RAF to possible necessary parties.<sup>16</sup> The court, in finding that it was unnecessary to join many thousands of parties, stated (*per Meyer J*):<sup>17</sup>

'This matter, in my view, is one where the joinder of the many thousands of parties, that could be affected by the order of this court, is unnecessary in the light of the steps taken by the RAF to notify as many parties of its application as possible. The steps taken are adequate. The number of affected parties is substantial, and the steps taken by the RAF to notify the sheer volume of parties that could be affected were sufficient to effect their joinder. Only the seventeenth to twenty-third respondents responded and were joined in these proceedings. The failure to respond by those who were notified can be taken to equate to a waiver of the right to be joined.'

The failure to join a necessary party may also be cured if an informal notice asking such party whether it wished to intervene is met by an unequivocal response that it would abide by the decision of the court.<sup>18</sup> The rules on obligatory joinder at common law seek to prevent a third party who has not been joined, and against whom the order of the court would not be *res judicata*, from approaching the courts again in respect of the same subject matter and possibly obtaining an order irreconcilable with the order that was made in the first instance.<sup>19</sup>

Divergent views have been expressed as to whether or not the court has a discretion once it is shown that a party is a necessary party in this sense. In *Marais v Pongola Sugar Milling Co Ltd*<sup>20</sup> it was held that once this has been shown, the court proceeds to determine the matter of joinder 'in accordance with the requirements of convenience and common sense'.

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This view was explicitly rejected in *Khumalo v Wilkins*,<sup>21</sup> it being held that 'no question of discretion nor of convenience arises'. In the Transvaal a full court has held, without reference to the foregoing cases, that the rule is not a mechanical or technical one which 'must be ritually applied', regardless of the circumstances of the case.<sup>22</sup> Compliance should not be insisted on if it would be impractical.<sup>23</sup>

In regard to intervention of persons as plaintiffs or defendants in legal proceedings, the Constitutional Court has stated the position to be as follows in *SA Riding for the Disabled Association v Regional Land Claims Commissioner*:<sup>24</sup>

[10] If the applicant shows that it has some right which is affected by the order issued, permission to intervene must be granted. For it is a basic principle of our law that no order should be granted against a party without affording such party a predecision hearing. This is so fundamental that an order is generally taken to be binding only on parties to the litigation.

[11] Once the applicant for intervention shows a direct and substantial interest in the subject matter of the case, the court ought to grant leave to intervene. In *Greyvenouw CC*<sup>25</sup> this principle was formulated in these terms:

"In addition, when, as in this matter, the applicants base their claim to intervene on a direct and substantial interest in the subject matter of the dispute, the Court has no discretion: it must allow them to intervene because it should not proceed in the absence of parties having such legally recognised interests."

It is submitted that the position set out in the *SA Riding* case should also apply to the obligatory joinder of a party who has a direct and substantial interest in the subject matter of the litigation.<sup>26</sup>

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Apart from the obligatory joinder of a party who has a direct and substantial interest in the subject matter of the litigation, a defendant may be joined under the common law on grounds of convenience, equity, the saving of costs and the avoidance of multiplicity of actions.<sup>27</sup> Under the common law the court has the inherent power to order the joinder of further parties in an action which has already begun in order to ensure that persons interested in the subject matter of the dispute and whose rights may be affected by the judgment are before the court.<sup>28</sup> A court, including a court of appeal, is entitled *mero motu* to raise the question of non-joinder to safeguard the interests of third parties.<sup>29</sup> It is, however, important to distinguish between necessary joinder, where the failure to join a party amounted to a non-joinder, on the one hand, and joinder as a matter of convenience, where the joinder of the party was permissible and would not give rise to misjoinder, on the other hand.<sup>30</sup> In cases of joinder of necessity a court could, even on appeal, *mero motu* raise the question of joinder to safeguard the interests of third parties and decline to hear a matter until such joinder had been effected or the court was satisfied that the third parties had consented to be bound by the judgment or waived their right to be joined.<sup>31</sup> A court of appeal has held<sup>32</sup> in circumstances where a party had not been joined and it would be inappropriate to make inferences as to its rights without giving such party an opportunity of being heard, that the appeal should be postponed in order to afford such party the opportunity of stating its position.

The fact that the two parties before court desire the case to proceed in the absence of a third party cannot relieve the court from inquiring into the question whether the order it is

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asked to make may affect the third party.<sup>33</sup>

The usual procedure by which to raise a question of joinder, whether it be misjoinder or non-joinder, is by way of plea in abatement,<sup>34</sup> though an exception is competent when the declaration discloses *ex facie* that another party should have been joined.<sup>35</sup> The objection on the ground of misjoinder should be taken *in limine* and if not then taken it cannot be ordinarily raised subsequently.<sup>36</sup> It is competent to raise misjoinder by way of exception where separate plaintiffs have instituted actions against the same defendant and where the actions are in no way related to each other.<sup>37</sup>

A notice of joinder, issued in terms of rule 10(3), is not a process as intended in s 15(1) of the Prescription Act 68 of 1969, and its service will not interrupt the running of prescription against the party in question.<sup>38</sup>

As to class actions, see *Children's Resource Centre Trust v Pioneer Food (Pty) Ltd*,<sup>39</sup> *Mukaddam v Pioneer Foods (Pty) Ltd*,<sup>40</sup> *Nkala v Harmony Gold Mining Co Ltd*,<sup>41</sup> and, in general, s 38 of the Constitution of the Republic of South Africa, 1996, and the notes thereto in Volume 1 third edition, Part A.

**Subrule (1): 'Any number of persons . . . may join as plaintiffs in one action.'** In *Alberts v Minister of Justice and Correctional Services*<sup>42</sup> the Supreme Court of Appeal, after an analysis<sup>43</sup> of *Estate De Beer v Botha*<sup>44</sup> and *Sieff v Wilhelmina*,<sup>45</sup> concluded that at common law the default position might have been that plaintiffs could not join together to sue a defendant on separate causes of action but that convenience was a factor by which a court could determine whether they should be heard together, and that the default position was a recognition that high courts had inherent jurisdiction to decide matters of procedure. The Roman-Dutch practice was, however, clear that a number of plaintiffs should not join in one summons against a plurality of defendants,<sup>46</sup> but it would seem that if the court considered it

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convenient to do so, it would allow such a citation.<sup>47</sup> Thus, where convenience is the main consideration several plaintiffs may join in the alternative in one summons in suing the same defendant where it is not clear which plaintiff is entitled to sue

and where such joinder will not prejudice the defendant; <sup>48</sup> or may issue one summons disclosing identical causes of action jointly against several defendants who have acted in concert to injure the plaintiffs in some way <sup>49</sup> (in the last-mentioned case the plurality of plaintiffs may also do this in different capacities, for example, as individuals and as trustees); <sup>50</sup> or may, *semble*, join even though they have dissimilar causes of action.

In *Vitorakis v Wolf* <sup>51</sup> it was pointed out that the subrule, which constitutes 'a radical departure from the common law', is so explicit that there is 'hardly anything left of the basic common-law approach to joinder and intervention'. However, in *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd* <sup>52</sup> it was held that as regards the joinder of defendants, the common law has been preserved notwithstanding subrule (3) of this rule. In pursuance of this judgment the question whether the common law has also been preserved in respect of the joinder of plaintiffs was raised, but not decided, in *Dreyer v Tuckers Land and Development Corporation (Pty) Ltd*. <sup>53</sup> In *Ex parte Sudurhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd* <sup>54</sup> it is said, in the context of an application for leave to intervene under rule 12, that the rules have widened the scope of the common-law principles but have not abolished them: if a matter cannot be resolved by recourse to the rules, resort can be made to common-law principles.

**'Or in the alternative.'** The fact that the rule allows more than one plaintiff to sue a defendant in the alternative shows that a situation where the identity of the person who is entitled to the proceeds of the claim was uncertain, was contemplated. <sup>55</sup> The subrule therefore contemplates a joinder of a plaintiff who has a claim which is conditional on the failure of the claim of a co-plaintiff. <sup>56</sup> It does not contemplate a joinder in the alternative where judgment has already been given against the party with whom it is sought to join. <sup>57</sup>

**'Depends upon the determination of substantially the same question of law or fact.'** Joinder as plaintiffs under the subrule is permissible where each of the proposed plaintiffs has the right to bring a separate action against the defendant or defendants, provided that in such separate action substantially the same question of law or fact would arise as will arise in an action in which the proposed plaintiffs join. <sup>58</sup> The subrule serves to narrow an otherwise all-encompassing provision allowing multiple plaintiffs. <sup>59</sup>

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The use of the word 'substantially' seems to indicate that the subrule is concerned with the essential features of the right to relief that the joint plaintiffs claim. The questions of law and fact must, 'in the main' or in their 'principal essentials' be essentially the same. <sup>60</sup> The fact that a defendant may have special defences that he can raise against certain of the plaintiffs is not a bar to the joinder of plaintiffs in one action. <sup>61</sup>

**Subrule (2): 'May join several causes of action in the same action.'** This subrule must be read with subrules (1) and (3). For example, where there is a joinder of defendants, it would not be permissible under subrule (3) to claim relief A, B and C from the first and second defendants and relief X and Y (having nothing to do with A, B and C) from the second defendant as well.

If the several causes of action sought to be joined in the same action are inconsistent, they must be pleaded in the alternative. <sup>62</sup>

**Subrule (3): 'Several defendants may be sued in one action.'** Under the common law a number of defendants may be joined on grounds of convenience, equity, the saving of costs and the avoidance of multiplicity of actions. <sup>63</sup> In *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd* <sup>64</sup> it was held that as regards the joinder of defendants, the common law has been preserved notwithstanding the provisions of this subrule. <sup>65</sup> The subrule permits the joinder of parties in the same proceedings but it does not direct the hearing of evidence as between all defendants, so that the extent of liability is determined between the parties. <sup>66</sup>

**'Substantially the same question of law or fact.'** This means that the questions of law and fact must 'in the main' or in their 'principal essentials' be 'essentially' the same. <sup>67</sup>

Under the subrule a bank may join the drawer and the payee of a cheque where the bank is not in a position to know which of the drawer or the payee has been unjustifiably enriched at the expense of the banker as a result of the mistaken payment to the payee of the amount of a cheque after the drawer had stopped payment. <sup>68</sup>

It is in principle undesirable that two or more persons, whether natural or juristic, should be joined in an application for their sequestration or liquidation, as the case may be, as respondents in one application. Such joinder cannot, therefore, be allowed, except possibly by the consent of all interested persons, or in a case where there is a complete identity of interests. <sup>69</sup>

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**Subrule (4): 'Grant absolution from the instance.'** On the grant of absolution in a case with multiple defendants, see the notes to rule 39(6) s v 'Apply for absolution from the instance' below.

**'Without limiting the discretion of the court.'** This subrule makes it clear that its provisions are not designed to limit in any way the overall discretion which a court has in the matter of costs. <sup>70</sup> The court's discretion extends to its decision whether or not to make a special order as to costs under paragraphs (a) and (b) of the subrule. <sup>71</sup>

**Subrule (4)(b)(i): 'The plaintiff to pay such defendant's costs.'** If there are more plaintiffs than one, they may be ordered to pay the costs of the successful defendant jointly and severally. <sup>72</sup>

**Subrule (4)(b)(ii): 'The unsuccessful defendants to pay the costs of the successful defendant.'** The principle embodied in this subrule has long been recognized by our courts. <sup>73</sup> In exercising its discretion under the subrule the court should have regard both to the reasonableness of the plaintiff in having joined the successful defendant in the action and to the reasonableness, in the light of the particular circumstances of the case, of directing the unsuccessful defendant to pay the whole, or any portion, of the successful defendant's costs. <sup>74</sup> It is submitted that in the event of the court directing more than one unsuccessful defendant to pay the costs of the successful defendant jointly and severally, the one paying the other(s) to be absolved, the court should, as a matter of course, make an order that if one of the unsuccessful defendants pays more than his pro rata share of the costs of the successful defendant, the unsuccessful defendant making payment shall be entitled to recover from the other unsuccessful defendants their pro rata share of such excess.

**Subrule (4)(c): 'To pay the plaintiff's costs jointly and severally.'** In *Standard Credit Corporation Ltd v Strydom*, <sup>75</sup> where actions had been consolidated by consent, the court in the exercise of its discretion in terms of this subrule ordered the unsuccessful defendants to pay the costs of the successful plaintiff jointly and severally. It is submitted that if the court orders more than one of the defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other(s) to be absolved, the court should, as a matter of course, order that if one of the unsuccessful defendants pays more than his pro rata share of the costs of the plaintiff, such defendant shall be entitled to recover from the

other unsuccessful defendants their pro rata share of such excess.

**Subrule (5): 'Order that separate trials be held.'** This subrule confers a discretion, the exercise of which will vary from case to case and depend in a large measure on the circumstances of the case and the matter in respect of which a discretion is to be judicially exercised. <sup>76</sup> Factors that may be taken into consideration in the exercise of the discretion include: <sup>77</sup>

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- (i) the interests of the applicant in seeking to enforce his remedy;
- (ii) the prejudice to the opposite party if a separation of trials is ordered;
- (iii) the possibility of lengthy delay if the separation is refused, compared with the probable minimal delay if a separation is ordered;
- (iv) the question of costs, including the salvage of costs already incurred in the matter, as well as the additional costs that may be occasioned by a separation of trials;
- (v) the conduct of the parties, including the bona fides of the applicant;
- (vi) the balance of convenience (although this may already be covered by other items in the preceding catalogue).

<sup>1</sup> Unreported, WCC case no 20317/2017 dated 28 October 2022 at paragraph [23].

<sup>2</sup> *Van der Lith v Alberts* 1944 TPD 17 at 22. See also *YB v SB* [2016 \(1\) SA 47 \(WCC\)](#) at 53G-H.

<sup>3</sup> *Bezuidenhout v Goldberg* 1905 TS 127; *Loxton v Turner* 1912 CPD 176; *Amos Legane v Webb* 1917 TPD 650; *Dawson v Rossouw* 1918 CPD 490; *Berger v Law Union & Rock Insurance Co Ltd* 1927 CPD 157; *Hopewell NO v Kajee* 1942 NPD 126; *Mahomed v Lockhat Bros & Co Ltd* [1944 AD 230](#) at 240.

<sup>4</sup> [1935 AD 167](#) at 171; and see *Rosebank Mall (Pty) Ltd v Cradock Heights (Pty) Ltd* [2004 \(2\) SA 353 \(W\)](#) at 366H; *Burger v Rand Water Board* [2007 \(1\) SA 30 \(SCA\)](#) at 33A-B; *115 Electrical Solutions (Pty) Ltd v City of Johannesburg Metropolitan Council* (unreported, GP case no 86870/19 dated 16 March 2021) at paragraph [76]. See also, in general, the notes to s 42 s v 'Non-joinder and misjoinder' in Jones & Buckle Civil Practice vol 1.

<sup>5</sup> *Amalgamated Engineering Union v Minister of Labour* [1949 \(3\) SA 637 \(A\)](#) at 657. See also *Collin v Toffie* [1944 AD 456](#) at 464; *Tshandu v Swan* [1946 AD 10](#) at 24-5; *Home Sites (Pty) Ltd v Senekal* [1948 \(3\) SA 514 \(A\)](#) at 521; *Benson v Joelson* [1985 \(3\) SA 566 \(C\)](#) at 569F-570B; *Segal v Segil* [1992 \(3\) SA 136 \(C\)](#) at 141A-C; *New Garden Cities Incorporated Association Not for Gain v Adhikarie* [1998 \(3\) SA 626 \(C\)](#) at 631C; *Transvaal Agricultural Union v Minister of Agriculture and Land Affairs* [2005 \(4\) SA 212 \(SCA\)](#) at 226F-227F; *Davids v Van Straaten* [2005 \(4\) SA 468 \(C\)](#) at 487B-C; *Sikutshwa v MEC for Social Development, Eastern Cape* [2009 \(3\) SA 47 \(TKHC\)](#) at 561-57A; *115 Electrical Solutions (Pty) Ltd v City of Johannesburg Metropolitan Council* (unreported, GP case no 86870/19 dated 16 March 2021) at paragraph [76]; *Baptista N.O. v Quickstep 684 (Pty) Ltd* (unreported, GP case no 38204/2022 dated 1 March 2023) at paragraph [9]; *De Beers Consolidated Mines (Pty) Ltd v Regional Manager, Limpopo: The Department of Mineral Resources & Energy* (unreported, GP case no 66559/2020 dated 8 September 2023) at paragraph [112]; *Njuguna v Minister of Home Affairs* (unreported, ECM case no 3088/2024 dated 27 August 2024) at paragraph [14].

<sup>6</sup> *Henri Viljoen (Pty) Ltd v Awerbuch Bros* [1953 \(2\) SA 151 \(O\)](#) at 168-70. This view of what constitutes a direct and substantial interest has been referred to and adopted in a number of subsequent decisions. See, for example, *Brauer v Cape Liquor Licensing Board* [1953 \(3\) SA 752 \(C\)](#) at 760; *Abrahamsen v Cape Town City Council* [1953 \(3\) SA 855 \(C\)](#); *Chase & Sons (Pty) Ltd v Tecklenburg* [1957 \(3\) SA 51 \(T\)](#) at 54; *Anderson v Gordik Organisation* [1962 \(2\) SA 68 \(N\)](#) at 71-2; *Vrystaat Lewende Hawe Koop Bpk v Oldewage* [1965 \(4\) SA 16 \(O\)](#); *Ex parte Pearson and Hutton NNO* [1967 \(1\) SA 103 \(E\)](#) at 107C; *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* [1972 \(4\) SA 409 \(C\)](#) at 415H; *Ex parte Moosa: In re Hassim v Harrop-Allin* [1974 \(4\) SA 412 \(T\)](#) at 414B; *Wassung v Simmons* [1980 \(4\) SA 753 \(N\)](#) at 759E-H; *P E Bosman Transport Works Committee v Piet Bosman Transport (Pty) Ltd* [1980 \(4\) SA 794 \(A\)](#) at 804B-E; *Standard General Insurance Co Ltd v Gutman NO* [1981 \(2\) SA 426 \(C\)](#) at 434D; *Agriplas (Pty) Ltd v Andrag & Sons (Pty) Ltd* [1981 \(4\) SA 873 \(C\)](#) at 890A; *Ahmadiyya Anjuman Ishaati-Islam Lahore (South Africa) v Muslim Judicial Council (Cape)* [1983 \(4\) SA 855 \(C\)](#) at 863H-864B; *South African Optometric Association v Frames Distributors (Pty) Ltd t/a Frames Unlimited* [1985 \(3\) SA 100 \(O\)](#) at 103I-104A; *Wistyn Enterprises (Pty) Ltd v Levi Strauss & Co* [1986 \(4\) SA 796 \(T\)](#) at 802B-D and 804E; *Aquatatr (Pty) Ltd v Sacks* [1989 \(1\) SA 56 \(A\)](#) at 62A-E; *Natal Fresh Produce Growers' Association v Agroservce (Pty) Ltd* [1990 \(4\) SA 749 \(N\)](#); *Aucamp v Nel NO* [1991 \(1\) SA 220 \(O\)](#) at 234E; *Minister of Local Government and Land Tenure v Sizwe Development* [1991 \(1\) SA 677 \(TK\)](#) at 679B; *Segal v Segil* [1992 \(3\) SA 136 \(C\)](#) at 141D-E; *Ex parte Sudurhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd* [1993 \(2\) SA 737 \(Nm\)](#) at 741I-742D; *Nonkenge v Gwiji* [1993 \(4\) SA 393 \(TKGD\)](#) at 395C-G; *Steel and Engineering Industries Federation v National Union of Metalworkers of South Africa (1)* [1993 \(4\) SA 190 \(T\)](#) at 194D-G; *Congress of Traditional Leaders of South Africa v Minister of the Executive Council for Local Government and Housing, Eastern Cape Province, and Others* [1996 \(2\) SA 898 \(TKS\)](#) at 904A-905D; *Jenkins v Government of the Republic of South Africa* [1996 \(3\) SA 1083 \(TKSC\)](#) at 1088D-E; *Melamed NO v Munnikhuis* [1996 \(4\) SA 126 \(W\)](#) at 132B-C; *Boholokong Black Taxi Association v Interstate Bus Lines (Edms) Bpk* [1997 \(4\) SA 635 \(O\)](#) at 641J-642C; *Pick 'n Pay Stores Ltd v Teasers Comedy and Revue CC* [2000 \(3\) SA 645 \(W\)](#) at 651C-D; *Hartland Implemente (Edms) Bpk v Enal Eindomme BK* [2002 \(3\) SA 653 \(NC\)](#) at 663F-G; *Rosebank Mall (Pty) Ltd v Cradock Heights (Pty) Ltd* [2004 \(2\) SA 353 \(W\)](#) at 371A-373D; *Old Mutual Life Assurance Co (SA) Ltd v Swemmer* [2004 \(5\) SA 373 \(SCA\)](#) at 381C-D; *Transvaal Agricultural Union v Minister of Agriculture and Land Affairs* [2005 \(4\) SA 212 \(SCA\)](#) at 226F-227F; *Davids v Van Straaten* [2005 \(4\) SA 468 \(C\)](#) at 487B-C; *Roelofse NO v Bothma NO* [2007 \(2\) SA 257 \(C\)](#) at 268H-269A; *Bowring NO v Vrededorp Properties CC* [2007 \(5\) SA 391 \(SCA\)](#) at 398F-H; *Gordon v Department of Health, KwaZulu-Natal* [2008 \(6\) SA 522 \(SCA\)](#) at 529C-F; *Sikutshwa v MEC for Social Development, Eastern Cape* [2009 \(3\) SA 47 \(TKHC\)](#) at 57B; *Investec Bank Ltd v Mutemeri* [2010 \(1\) SA 265 \(GSJ\)](#) at 278A-F; *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* [2011 \(4\) SA 337 \(SCA\)](#) at 359D; *Standard Bank of SA Ltd v Swartland Municipality* [2011 \(5\) SA 257 \(SCA\)](#) at 259E-260A; *City of Johannesburg v Changing Tides 74 (Pty) Ltd* [2012 \(6\) SA 294 \(SCA\)](#) at 317A; *Judicial Service Commission v Cape Bar Council* [2013 \(1\) SA 170 \(SCA\)](#) at 176H-I; *In re BOE Trust Ltd and Others NNO* [2013 \(3\) SA 236 \(SCA\)](#) at 241H-I; *YB v SB* [2016 \(1\) SA 47 \(WCC\)](#) at 53D-G; *Absa Bank Ltd v Naude NO* [2016 \(6\) SA 540 \(SCA\)](#) at 542I-543C; *South African History Archive Trust v South African Reserve Bank* [2020 \(6\) SA 127 \(SCA\)](#) at paragraph [30]; *115 Electrical Solutions (Pty) Ltd v City of Johannesburg Metropolitan Council* (unreported, GP case no 86870/19 dated 16 March 2021) at paragraph [76]; *Legemaat NO v Arplorox (Pty) Ltd* (unreported, GP case no 60278/2019 dated 30 August 2021) at paragraph [14]; *Hlophe v Freedom Under Law, and Other Matters* [2022 \(2\) SA 523 \(GJ\)](#) (a decision of the full court) at paragraph [35]; *Zingwazi Contractors CC v Eastern Cape Department of Human Settlements* [2021 \(6\) SA 557 \(ECG\)](#) at paragraph [62]; *Council for the Advancement of the SA Constitution v Ingonyama Trust* [2022 \(1\) SA 251 \(KZP\)](#) at paragraph [63]; *Baptista N.O. v Quickstep 684 (Pty) Ltd* (unreported, GP case no 38204/2022 dated 1 March 2023) at paragraph [9]; *De Beers Consolidated Mines (Pty) Ltd v Regional Manager, Limpopo: The Department of Mineral Resources & Energy* (unreported, GP case no 66559/2020 dated 8 September 2023) at paragraph [112].

<sup>7</sup> *Hartland Implemente (Edms) Bpk v Enal Eindomme BK* [2002 \(3\) SA 653 \(NC\)](#) at 663E-H; *Standard Bank of South Africa Ltd v Swartland Municipality* [2010 \(5\) SA 479 \(WCC\)](#) at 482F-483A; *Xantha Properties 18 (Pty) Ltd v Home Builders Registration Council* [2018 \(6\) SA 320 \(WCC\)](#) at 327H-I; *115 Electrical Solutions (Pty) Ltd v City of Johannesburg Metropolitan Council* (unreported, GP case no 86870/19 dated 16 March 2021) at paragraph [76].

<sup>8</sup> *Judicial Service Commission v Cape Bar Council* [2013 \(1\) SA 170 \(SCA\)](#) at 176I-177A; *Lawrence v Magistrates Commission* [2020 \(2\) SA 526 \(FB\)](#) at paragraph [27]; *115 Electrical Solutions (Pty) Ltd v City of Johannesburg Metropolitan Council* (unreported, GP case no 86870/19 dated 16 March 2021) at paragraph [76].

<sup>9</sup> *Bekker v Meyring, Bekker's Executor* (1844) 2 Menz 436; *Amalgamated Engineering Union v Minister of Labour* [1949 \(3\) SA 637 \(A\)](#) at 659. The rule has on numerous occasions been affirmed and applied; see, for example: *Kethel v Kethel's Estate* [1949 \(3\) SA 598 \(A\)](#) at 610; *City Deep Ltd v Silicosis Board* [1950 \(1\) SA 696 \(A\)](#) at 709A; *Associated Manganese Mines of SA Ltd v Claassens* [1954 \(3\) SA 768 \(A\)](#) at 776G; *Kock & Schmidt v Alma Modehuis (Edms) Bpk* [1959 \(3\) SA 308 \(A\)](#) at 318F; *Pillay v Harry* [1966 \(1\) SA 801 \(D\)](#) at 804D; *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality* [1969 \(2\) SA 256 \(C\)](#) at 265A; *Selborne Furniture Store (Pty) Ltd v Steyn NO* [1970 \(3\) SA 774 \(A\)](#) at 779G and [1970 \(4\) SA 422 \(A\)](#); *Toekies Butchery (Edms) Bpk v Stassen* [1974 \(4\) SA 771 \(T\)](#) at 774; *Moleko v Minister of Plural Relations and Development* [1979 \(1\) SA 125 \(T\)](#) at 130; *Aramugam v Johannesburg City Council* [1979 \(1\) SA 972 \(W\)](#) at 974D; *Fisheries Development Corporation of SA Ltd v Jorgensen* [1979 \(3\) SA 1331 \(W\)](#) at 1336H-1337C; *Smith v Conelect* [1987 \(3\) SA 689 \(W\)](#) at 690E-691D; *Segal v Segil* [1992 \(3\) SA 136 \(C\)](#) at 140H; *Pick 'n Pay Stores Ltd v Teasers Comedy and Revue CC* [2000 \(3\) SA 645 \(W\)](#) at 651C-D; *Rosebank Mall (Pty) Ltd v Cradock Heights (Pty) Ltd* [2004 \(2\) SA 353 \(W\)](#) at 366E; *Transvaal Agricultural Union v Minister of Agriculture and*

*Land Affairs* [2005 \(4\) SA 212 \(SCA\)](#) at 226F-G; *Roeloffze NO v Bothma NO* [2007 \(2\) SA 257 \(C\)](#) at 268H-269A; *Chairman of the Board of the Sanlam Pensioenfonds (Kantoorpersoneel) v Registrar of Pension Funds* [2007 \(3\) SA 41 \(T\)](#) at 49A; *University of Pretoria v South Africans for the Abolition of Vivisection* [2007 \(3\) SA 395 \(O\)](#) at 399I-J; *Gordon v Department of Health, KwaZulu-Natal* [2008 \(6\) SA 522 \(SCA\)](#) at 529E-F; *Sikutshwa v MEC for Social Development, Eastern Cape* [2009 \(3\) SA 47 \(TKHC\)](#) at 561-57A; *Standard Bank of South Africa Ltd v Swartland Municipality* [2010 \(5\) SA 479 \(WCC\)](#) at 482F-H; *2011 (5) SA 257 (SCA)* at 259F-G; *YB v SB* [2016 \(1\) SA 47 \(WCC\)](#) at 53E-G; *One South Africa Movement v President of the RSA* [2020 \(5\) SA 576 \(GP\)](#) at paragraph [22]; *115 Electrical Solutions (Pty) Ltd v City of Johannesburg Metropolitan Council* (unreported, GP case no 86870/19 dated 16 March 2021) at paragraph [76]; *Watson NO v Ngonyama* [2021 \(5\) SA 559 \(SCA\)](#) at paragraph [51]; *Council for the Advancement of the SA Constitution v Ingonyama Trust* [2022 \(1\) SA 251 \(KZP\)](#) at paragraph [64]; *Shine Africa Financial Services (Pty) Ltd v Buffalo City Metropolitan Municipality* (unreported, EL case no 1056/2022 dated 8 November 2022) at paragraph [16]; *De Wet v Gambeno* (unreported, EL case no 434/2022 dated 22 November 2022) at paragraph [44]; *De Beers Consolidated Mines (Pty) Ltd v Regional Manager, Limpopo: The Department of Mineral Resources & Energy* (unreported, GP case no 66559/2020 dated 8 September 2023) at paragraph [112].

[10 Kethel Kethel's Estate](#) [1949 \(3\) SA 598 \(A\)](#) at 610; *Amalgamated Engineering Union v Minister of Labour* [1949 \(3\) SA 637 \(A\)](#) at 659; *City Deep Ltd v Silicosis Board* [1950 \(1\) SA 696 \(A\)](#) at 709A; *Bright v Triumph Garage (Pty) Ltd* [1949 \(3\) SA 352 \(C\)](#) at 358-9; *Associated Manganese Mines of SA Ltd v Claassens* [1954 \(3\) SA 768 \(A\)](#) at 776G; *Kock & Schmidt v Alma Modehuis (Edms) Bpk* [1959 \(3\) SA 308 \(A\)](#) at 318F; *Pillay v Harry* [1966 \(1\) SA 801 \(D\)](#) at 804D; *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality* [1969 \(2\) SA 256 \(C\)](#) at 265A; *Selborne Furniture Store (Pty) Ltd v Steyn NO* [1970 \(3\) SA 774 \(A\)](#) at 779G and [1970 \(4\) SA 422 \(A\)](#); *Toekies Butchery (Edms) Bpk v Stassen* [1974 \(4\) SA 771 \(T\)](#) at 774; *Moleko v Minister of Plural Relations and Development* [1979 \(1\) SA 125 \(T\)](#) at 130; *Aramugam v Johannesburg City Council* [1979 \(1\) SA 972 \(W\)](#) at 974D; *Fisheries Development Corporation of SA Ltd v Jorgensen* [1979 \(3\) SA 1331 \(W\)](#) at 1336H-1337C; *Smith v Conelect* [1987 \(3\) SA 689 \(W\)](#) at 690E-691D; *Wholesale Provision Supplies CC v Exim International CC* [1995 \(1\) SA 150 \(T\)](#) at 157H-158I; *Harding v Basson* [1995 \(4\) SA 499 \(C\)](#) at 501H-I; *Chairman of the Board of the Sanlam Pensioenfonds (Kantoorpersoneel) v Registrar of Pension Funds* [2007 \(3\) SA 41 \(T\)](#) at 49A; *University of Pretoria v South Africans for the Abolition of Vivisection* [2007 \(3\) SA 395 \(O\)](#) at 399I-J; *Gordon v Department of Health, KwaZulu-Natal* [2008 \(6\) SA 522 \(SCA\)](#) at 529E-F; *Sikutshwa v MEC for Social Development, Eastern Cape* [2009 \(3\) SA 47 \(TKHC\)](#) at 561-57A; *Standard Bank of South Africa Ltd v Swartland Municipality* [2010 \(5\) SA 479 \(WCC\)](#) at 482F-H; [2011 \(5\) SA 257 \(SCA\)](#) at 259F-G; *Fluxmans Incorporated v Lithos Corporation of South Africa (Pty) Ltd and Another (No 2)* [2015 \(2\) SA 322 \(GJ\)](#) at 328F-G; *Xantha Properties 18 (Pty) Ltd v Home Builders Registration Council* [2018 \(6\) SA 320 \(WCC\)](#) at 327G-I; *Neves v Neves NO* (unreported, MM case no 2108/2017 dated 8 April 2021) at paragraph [9]; *115 Electrical Solutions (Pty) Ltd v City of Johannesburg Metropolitan Council* (unreported, GP case no 86870/19 dated 16 March 2021) at paragraph [76]; *Watson NO v Ngonyama* [2021 \(5\) SA 559 \(SCA\)](#) at paragraph [52] (where it was reiterated that even were it to be averred that a third party had waived its right, it should nevertheless be heard on that aspect as well as on whether it would submit to the court's judgment); *Booysen v Followers of Christ Church* (unreported, WCC case no 22079/2016 dated 19 August 2021) at paragraph [62]; *Shine Africa Financial Services (Pty) Ltd v Buffalo City Metropolitan Municipality* (unreported, EL case no 1056/2022 dated 8 November 2022) at paragraph [16]; *De Wet v Gambeno* (unreported, EL case no 434/2022 dated 22 November 2022) at paragraph [44]; *De Beers Consolidated Mines (Pty) Ltd v Regional Manager, Limpopo: The Department of Mineral Resources & Energy* (unreported, GP case no 66559/2020 dated 8 September 2023) at paragraph [112]. In a majority judgment of the Court of Appeal of Lesotho in *Phakisi v Tlapana* (unreported, Court of Appeal for Lesotho case no C of A (Civ)/50/2014 dated 21 April 2016) it was held, with reference to *Bright v Triumph Garage (Pty) Ltd* [1949 \(3\) SA 352 \(C\)](#), that in an action where the eviction of the buyer of property is sought, and the entitlement of the seller to sell the property is attacked, the seller is a necessary party and should be joined. Farlam AP (Moiloa AJA concurring), however, held (at paragraph [6]) that this rule is subject to an important exception: Where the seller has notice of the suit and does not intervene to protect the buyer's title (which the seller is obliged to do under the contract of sale), and the buyer is evicted (because the court holds that the seller was not entitled to sell), the seller will be bound by the judgment on the basis of *res judicata* (Voet 44 2 5; *Paarl Pretoria Gold Mining Co v Donovan and Wolff NNO* (1889) 3 SAR 56; *Amalgamated Engineering Union v Minister of Labour* [1949 \(3\) SA 637 \(A\)](#) at 653-4 and 660). In such circumstances the seller is not a necessary party and a plea/point of non-joinder will therefore fail.

[11 Watson NO v Ngonyama](#) [2021 \(5\) SA 559 \(SCA\)](#) at paragraph [53].

[12 2007 \(4\) SA 467 \(SCA\).](#)

[13 At paragraphs \[24\]-\[29\].](#)

[14 At paragraph \[29\].](#)

[15 2021 \(6\) SA 230 \(GP\).](#)

[16 At paragraph \[8\].](#)

[17 At paragraph \[10\]. See also General Council of the Bar of South Africa v Minister of Finance](#) (unreported, GP case no 2023/132695 dated 28 June 2024) at paragraphs [11]-[22].

[18 In re BOE Trust Ltd and Others NNO](#) [2013 \(3\) SA 236 \(SCA\)](#) at 242A-C.

[19 Watson NO v Ngonyama](#) [2021 \(5\) SA 559 \(SCA\)](#) at paragraph [53].

[20 1961 \(2\) SA 698 \(N\)](#) at 702F.

[21 1972 \(4\) SA 470 \(N\)](#) at 475A.

[22 Wholesale Provision Supplies CC v Exim International CC](#) [1995 \(1\) SA 150 \(T\)](#) at 158D-E; and see *Rosebank Mall (Pty) Ltd v Cradock Heights (Pty) Ltd* [2004 \(2\) SA 353 \(W\)](#) at 368C-E. See also *Leibowitz v Schwartz* [1974 \(2\) SA 661 \(T\)](#); *Benson v Joelson* [1985 \(3\) SA 566 \(C\)](#) at 570; *Harding v Basson* [1995 \(4\) SA 499 \(C\)](#) at 501H-I; *Road Accident Fund v Legal Practice Council* [2021 \(6\) SA 230 \(GP\)](#) (a decision of the full court) at paragraphs [9]-[10]; *Bester NO v Mirror Trading International (Pty) Ltd t/a MTI (in Liquidation)* [2024 \(1\) SA 112 \(WCC\)](#) at paragraph [24].

[23 Leibowitz v Schwartz](#) [1974 \(2\) SA 661 \(T\)](#). See also *Benson v Joelson* [1985 \(3\) SA 566 \(C\)](#) at 570; *Transvaal Agricultural Union v Minister of Agriculture and Land Affairs* [2005 \(4\) SA 212 \(SCA\)](#) at 226H-J; *Road Accident Fund v Legal Practice Council* [2021 \(6\) SA 230 \(GP\)](#) (a decision of the full court) at paragraphs [9]-[10]; *Bester NO v Mirror Trading International (Pty) Ltd t/a MTI (in Liquidation)* [2024 \(1\) SA 112 \(WCC\)](#) at paragraph [24].

[24 2017 \(5\) SA 1 \(CC\)](#) at 5A-D, approving *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* [2004 \(2\) SA 81 \(SE\)](#) at 89B-C; *Hlophe v Freedom Under Law, and Other Matters* [2022 \(2\) SA 523 \(GJ\)](#) (a decision of the full court) at paragraph [34]; *Body Corporate, Marsh Rose v Steinmuller* [2024 \(2\) SA 270 \(SCA\)](#) at paragraph [11]. See also *National Director of Public Prosecutions v Zuma* [2009 \(2\) SA 277 \(SCA\)](#) at paragraph [85]; *Siyangena Technologies (Pty) Ltd v Passenger Rail Agency of South Africa* [2023 \(2\) SA 51 \(SCA\)](#) at paragraphs [24]-[27]; *Lebea v Menye* [2023 \(3\) BCLR 257 \(CC\)](#) at paragraph [28].

[25 Author's note: Nelson Mandela Metropolitan Municipality v Greyvenouw CC](#) [2004 \(2\) SA 81 \(SE\)](#) at 89B-C.

[26 See Matjhabeng Local Municipality v Eskom Holdings Ltd](#) [2018 \(1\) SA 1 \(CC\)](#) where the Constitutional Court stated (at 33E-F): 'The law on joinder is well settled. No court can make findings adverse to any person's interests, without that person first being a party to the proceedings before it.'

See also *Hlophe v Freedom Under Law, and Other Matters* [2022 \(2\) SA 523 \(GJ\)](#) (a decision of the full court) at paragraphs [34]-[47].

In *Philippi Horticultural Area Food and Farming Campaign v MEC for Local Government, Western Cape* [2020 \(3\) SA 486 \(WCC\)](#) it was reiterated (at paragraph [29]) that an order sought (e.g. a declaratory order) ought not ordinarily to be granted where any other person's interests may be directly affected without formal judicial notice of the proceedings having first been given to such person and, where an order may be binding on all parties whose interests its terms affect, and not just some of them, it may be mandatory for a party that institutes proceedings to join every person who has a direct and substantial interest in the relief sought. If the parties do not themselves raise a point of non-joinder when it is indicated, the court should do so *mero motu*.

[27 Etting v Schiff](#) (1887) 5 SC 131 at 133; *Morgan v Salisbury Municipality* [1935 AD 167](#) at 171; *Van der Lith v Alberts* 1944 TPD 17 at 22; *Sheshe v Vereeniging Municipality* [1951 \(3\) SA 661 \(A\)](#) at 666H; *Roberts Construction Co Ltd v Verhoef* [1952 \(2\) SA 300 \(W\)](#) at 308H-309A; *Marais v Pongola Sugar Milling Co Ltd* [1961 \(2\) SA 698 \(N\)](#) at 702D; *Vitorakis v Wolf* [1973 \(3\) SA 928 \(W\)](#) at 932E; *Gemeenskapontwikkelingsraad v Williams* (2) [1977 \(3\) SA 955 \(W\)](#) at 971H; *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd* [1980 \(3\) SA 415 \(W\)](#) at 419E; *Ploughman NO v Pauw* [2006 \(6\) SA 334 \(C\)](#) at 341E-F. The decision in *Fluxmans Incorporated v Lithos Corporation of South Africa (Pty) Ltd and Another (No 2)* [2015 \(2\) SA 322 \(GJ\)](#) at 324C, that parties may only be joined as a matter of necessity and not convenience, appears to be based on an incorrect reading of *Judicial Service Commission v Cape Bar Council* [2013 \(1\) SA 170 \(SCA\)](#).

[28 SA Steel Equipment Co \(Pty\) Ltd v Lurelk \(Pty\) Ltd](#) [1951 \(4\) SA 167 \(T\)](#) at 172F-H; *Harding v Basson* [1995 \(4\) SA 499 \(C\)](#) at 501C; *Ploughman NO v Pauw* [2006 \(6\) SA 334 \(C\)](#) at 341E-F. In *Matjhabeng Local Municipality v Eskom Holdings Ltd* [2018 \(1\) SA 1 \(CC\)](#), the Constitutional Court stated (at 33D-E):

'At common law courts have an inherent power to order joinder of parties where it is necessary to do so even when there is no substantive application for joinder. A court could, *mero motu*, raise a question of joinder to safeguard the interest of a necessary party and decline to hear a matter until joinder has been effected. This is consistent with the Constitution.'

[29 Blake v Commissioner of Mines](#) 1903 TS 784; *Aaron v Johannesburg Municipality* 1904 TS 696 at 701; *Amalgamated Engineering Union v Minister of Labour* [1949 \(3\) SA 637 \(A\)](#) at 649 and 653; *Roberts Construction Co Ltd v Verhoef* [1952 \(2\) SA 300 \(W\)](#) at 308; *Selborne Furniture Store (Pty) Ltd v Steyn NO* [1970 \(3\) SA 774 \(A\)](#); *Koen v Goosen* [1971 \(3\) SA 501 \(C\)](#) at 509G; *Toekies Butchery (Edms) Bpk v*

*Stassen* [1974 \(4\) SA 771 \(T\)](#) at 774G–H; *Ngcawashe v Terblanche* [1977 \(3\) SA 796 \(A\)](#) at 806H; *Aramugam v Johannesburg City Council* [1979 \(1\) SA 972 \(W\)](#) at 974D; *Esquire Electronics Ltd v Executive Video* [1986 \(2\) SA 576 \(A\)](#) at 590J–591C; *Acar v Pierce and Other Like Applications* [1986 \(2\) SA 827 \(W\)](#) at 831H; *Klep Valves (Pty) Ltd v Saunders Valve Co Ltd* [1987 \(2\) SA 1 \(A\)](#) at 391–40B; *Harding v Basson* [1995 \(4\) SA 499 \(C\)](#) at 501C–I; *Rosebank Mall (Pty) Ltd v Cradock Heights (Pty) Ltd* [2004 \(2\) SA 353 \(W\)](#) at 366B–D; *Clientele Life Assurance Company Ltd v Payment Association of South Africa* (unreported, GJ case no 2021/42435 dated 4 September 2023) at paragraphs 16–21 and the order made by the court; *Cuducap (Pty) Ltd v De Bruyn* (unreported, SCA case no 69/2023 dated 29 April 2024) at paragraph [9] and the order made by the Supreme Court of Appeal. See also the judgment of the Court of Appeal of Lesotho in *Phakisi v Tlapana* (unreported, Court of Appeal for Lesotho case no C of A (Civ)/50/2014 dated 21 April 2016) at paragraph [2] (per Farlam AP).

[30](#) This position was referred to with approval in *KTRPT Investments (Pty) Ltd v Edge Investments (Pty) Ltd* (unreported, WCC case no 9978/2019 dated 27 November 2023) at paragraph [5].

[31](#) *Rosebank Mall (Pty) Ltd v Cradock Heights (Pty) Ltd* [2004 \(2\) SA 353 \(W\)](#) at 366B–D; *KTRPT Investments (Pty) Ltd v Edge Investments (Pty) Ltd* (unreported, WCC case no 9978/2019 dated 27 November 2023) at paragraph [5].

[32](#) *Pretorius v Slabbert* [2000 \(4\) SA 935 \(SCA\)](#) at 939E; *KTRPT Investments (Pty) Ltd v Edge Investments (Pty) Ltd* (unreported, WCC case no 9978/2019 dated 27 November 2023) at paragraph [5].

[33](#) *Amalgamated Engineering Union v Minister of Labour* [1949 \(3\) SA 637 \(A\)](#) at 649; *Klep Valves (Pty) Ltd v Saunders Valve Co Ltd* [1987 \(2\) SA 1 \(A\)](#) at 391–40A; *KTRPT Investments (Pty) Ltd v Edge Investments (Pty) Ltd* (unreported, WCC case no 9978/2019 dated 27 November 2023) at paragraph [5].

[34](#) *Peacock v Marley* [1934 AD 1](#); *Anderson v Gordik Organisation* [1960 \(4\) SA 244 \(N\)](#) at 247D; *Skyline Hotel v Nickloes* [1973 \(4\) SA 170 \(W\)](#) at 171H. As appears from the latter two cases, the objection may also be raised under rule 30.

[35](#) *Estate Vom Dorp v Scott* 1915 CPD 739; *Amos Legane v Webb* 1917 TPD 650; *Collin v Toffie* [1944 AD 456](#) at 467; *Anderson v Gordik Organisation* [1960 \(4\) SA 244 \(N\)](#) at 247D; *Smith v Conelect* [1987 \(3\) SA 689 \(W\)](#); *Royce Shoes (Pty) Ltd v McIndoe and Others NNO* [2000 \(2\) SA 514 \(W\)](#) at 516D–517D. See also *Feldman NO v EMI Music SA (Pty) Ltd*; *Feldman NO v EMI Music Publishing SA (Pty) Ltd* [2010 \(1\) SA 1 \(SCA\)](#) at 4H–5A. In such instance the non-joinder should be specifically raised in the exception (*Feldman NO v EMI Music SA (Pty) Ltd*; *Feldman NO v EMI Music Publishing SA (Pty) Ltd* [2010 \(1\) SA 1 \(SCA\)](#) at 5A).

[36](#) *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd* [1980 \(3\) SA 415 \(W\)](#) at 419E. An appeal is not the time to raise an argument of misjoinder (*City of Johannesburg v Changing Tides 74 (Pty) Ltd* [2012 \(6\) SA 294 \(SCA\)](#) at 316H; *Snowy Owl Properties 284 (Pty) Ltd v Mziki Share Block (Pty) Ltd* (unreported, SCA case no 642/2022 dated 27 May 2024) at paragraph [25]).

[37](#) *Royce Shoes (Pty) Ltd v McIndoe and Others NNO* [2000 \(2\) SA 514 \(W\)](#) at 518D–E.

[38](#) *Peter Taylor & Associates v Bell Estates (Pty) Ltd* [2012 \(2\) SA 312 \(SCA\)](#), reversing *Bell Estates (Pty) Ltd v Renasa Insurance Co Ltd* [2012 \(3\) SA 296 \(KZD\)](#) and criticizing *Waverley Blankets Ltd v Shoprite Checkers (Pty) Ltd* [2002 \(4\) SA 166 \(C\)](#). See also *Cape Town Municipality v Allianz Insurance Co Ltd* [1990 \(1\) SA 311 \(C\)](#) and *Naidoo v Lane* [1997 \(2\) SA 913 \(D\)](#).

[39](#) [2013 \(2\) SA 213 \(SCA\)](#).

[40](#) [2013 \(5\) SA 89 \(CC\)](#), reversing *Mukaddam v Pioneer Food (Pty) Ltd* [2013 \(2\) SA 254 \(SCA\)](#).

[41](#) [2016 \(5\) SA 240 \(GJ\)](#), discussed and not followed in *Ngubane v Road Accident Fund* [2022 \(5\) SA 231 \(GJ\)](#).

[42](#) [2022 \(6\) SA 59 \(SCA\)](#).

[43](#) At paragraphs [9]–[10].

[44](#) 1927 CPD 140.

[45](#) 1911 OPD 24.

[46](#) *Voet* 2 13 14, following *Carpzovius Def For Cons* I 2 6.

[47](#) *Sieff v Wilhelmina* 1911 OPD 24, following *Ettling v Schiff* (1887) 5 SC 131, both of which were, in turn, followed in *Lewis NO v Schoeman NO* [1951 \(4\) SA 133 \(N\)](#); *Licences and General Insurance Co Ltd v Van Zyl* [1961 \(3\) SA 105 \(D\)](#) at 110B–C; *Glens Removals & Storage Ltd v Schonken* [1973 \(3\) SA 227 \(R\)](#) at 228G.

[48](#) *F Lenders & Co v Peckey Bros* (1902) 23 NLR 231; *Standard Bank of SA v Peckey Bros* (1902) 23 NLR 281; *Opperman v Labuschagne* [1954 \(2\) SA 150 \(E\)](#).

[49](#) *Ntombela v Shibe* [1949 \(3\) SA 586 \(N\)](#).

[50](#) *Cuppusami v Naicker* 1931 NPD 390.

[51](#) [1973 \(3\) SA 928 \(W\)](#) at 930G–H.

[52](#) [1980 \(3\) SA 415 \(W\)](#) at 419E.

[53](#) [1981 \(1\) SA 1219 \(T\)](#) at 1226D–F.

[54](#) [1993 \(2\) SA 737 \(Nm\)](#) at 741E–F.

[55](#) *Sackstein v Du Preez* [2004 \(2\) SA 459 \(SE\)](#) at 462C–D.

[56](#) *Kinekor Films (Pty) Ltd v Drive-in Home Movies* [1976 \(2\) SA 87 \(O\)](#) at 94B.

[57](#) *Kinekor Films (Pty) Ltd v Drive-in Home Movies* [1976 \(2\) SA 87 \(O\)](#) at 94C; *Sackstein v Du Preez* [2004 \(2\) SA 459 \(SE\)](#) at 462C–D.

[58](#) *Vitorakis v Wolf* [1973 \(3\) SA 928 \(W\)](#) at 931E–F; *Venator Africa (Pty) Limited v Bekker* [2022] 4 All SA 600 (KZP) at paragraph [12].

[59](#) *Alberts v Minister of Justice and Correctional Services* [2022 \(6\) SA 59 \(SCA\)](#) at paragraph [12].

[60](#) *Dreyer v Tuckers Land and Development Corporation (Pty) Ltd* [1981 \(1\) SA 1219 \(T\)](#) at 1224F–1225B; *Dendy v University of the Witwatersrand* [2005 \(5\) SA 357 \(W\)](#) at 386D–E.

[61](#) *Dreyer v Tuckers Land and Development Corporation (Pty) Ltd* [1981 \(1\) SA 1219 \(T\)](#) at 1225B.

[62](#) See, for example, *Middeldorf v Zipper NO* [1947 \(1\) SA 545 \(SR\)](#); *United Dominions Corporation (Rhodesia) Ltd v Van Eyssen* [1961 \(1\) SA 53 \(SR\)](#); *Pillay v Pillay* [1962 \(3\) SA 867 \(D\)](#) at 870C; *Credit Corporation of South Africa Ltd v Brown* [1970 \(1\) SA 18 \(C\)](#); *Barclays National Bank Ltd v Pretorius* [1978 \(3\) SA 885 \(O\)](#); *Marney v Watson* [1978 \(4\) SA 140 \(C\)](#) at 144H; *Coppermoon Trading 13 (Pty) Ltd v Government, Eastern Cape Province* [2020 \(3\) SA 391 \(ECB\)](#) at paragraph [31].

[63](#) *Ettling v Schiff* (1887) 5 SC 131 at 133; *Morgan v Salisbury Municipality* [1935 AD 167](#) at 171; *Van der Lith v Alberts* 1944 TPD 17 at 22; *Sheshe v Vereeniging Municipality* [1951 \(3\) SA 661 \(A\)](#) at 666H; *Roberts Construction Co Ltd v Verhoef* [1952 \(2\) SA 300 \(W\)](#) at 308–9; *Marais v Pongola Sugar Milling Co Ltd* [1961 \(2\) SA 698 \(N\)](#) at 702D; *Mgobozvi v The Administrator of Natal* [1963 \(3\) SA 757 \(D\)](#) at 760D–761A; *Vitorakis v Wolf* [1973 \(3\) SA 928 \(W\)](#) at 932E; *Gemeenskapontwikkelingsraad v Williams* (2) [1977 \(3\) SA 955 \(W\)](#) at 971H; *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd* [1980 \(3\) SA 415 \(W\)](#) at 419E; *Ploughman NO v Pauw* [2006 \(6\) SA 334 \(C\)](#) at 341E–F; *Arendse v Van der Merwe and Another NNO* [2016 \(6\) SA 490 \(GJ\)](#) at 496D–497A.

[64](#) [1980 \(3\) SA 415 \(W\)](#) at 419E.

[65](#) See also the notes to subrule (1) s v ‘Any number of persons . . . may join as plaintiffs in one action’ above.

[66](#) *K & S Dry Cleaning Equipment (Pty) Ltd v South African Eagle Insurance Co Ltd* [1998 \(4\) SA 456 \(W\)](#) at 462C–D.

[67](#) *Dreyer v Tuckers Land and Development Corporation (Pty) Ltd* [1981 \(1\) SA 1219 \(T\)](#) at 1224F–1225B; *Dendy v University of the Witwatersrand* [2005 \(5\) SA 357 \(W\)](#) at 386D–E.

[68](#) *B & H Engineering v First National Bank of SA Ltd* [1995 \(2\) SA 279 \(A\)](#) at 295H.

[69](#) *Breetveld v Van Zyl* [1972 \(1\) SA 304 \(T\)](#); *Ferela (Pty) Ltd v Craigie* [1980 \(3\) SA 167 \(W\)](#); *Main Industries (Pty) Ltd v Serfontein* [1991 \(2\) SA 604 \(N\)](#); *Caltex Oil (SA) (Pty) Ltd v Govender's Fuel Distributors (Pty) Ltd* [1996 \(2\) SA 552 \(N\)](#).

[70](#) *Minister of Agriculture v Estate Randeree* [1979 \(1\) SA 145 \(A\)](#) at 160E.

[71](#) *Parity Insurance Co Ltd v Van den Bergh* [1966 \(4\) SA 463 \(A\)](#) at 481G.

[72](#) *Minister of Agriculture v Estate Randeree* [1979 \(1\) SA 145 \(A\)](#) at 160D–G.

[73](#) See *Johnson v SAR & H Pietermaritzburg Corporation* 1933 NPD 762; *Ophanides v Stratton* [1953 \(1\) SA 152 \(SR\)](#); *Olivier v Botha* [1960 \(1\) SA 678 \(O\)](#) at 687F; *Felton v Lewis* [1960 \(2\) SA 383 \(SR\)](#) at 394B; *Parity Insurance Co Ltd v Van den Bergh* [1966 \(4\) SA 463 \(A\)](#) at 481C; *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd* [1980 \(3\) SA 415 \(W\)](#) at 418G; *Faiga v Body Corporate of Dumbarton Oaks* [1997 \(2\) SA 651 \(W\)](#) at 670A–F; *Harrington NO v Transnet Ltd t/a Metrorail* [2010 \(2\) SA 479 \(SCA\)](#) at 496G–497B.

[74](#) *Parity Insurance Co Ltd v Van den Bergh* [1966 \(4\) SA 463 \(A\)](#) at 481G; *Rabinowitz and Another NNO v Ned-Equity Insurance Co Ltd* [1980 \(3\) SA 415 \(W\)](#) at 418H; *Harrington NO v Transnet Ltd t/a Metrorail* [2010 \(2\) SA 479 \(SCA\)](#) at 496H–497B.

[75](#) [1991 \(3\) SA 644 \(W\)](#) at 653I–654A and 654F.

[76](#) *De Polo v Dreyer* [1990 \(2\) SA 290 \(W\)](#) at 295H.

[77](#) *De Polo v Dreyer* [1990 \(2\) SA 290 \(W\)](#) at 295H–296B. See also *Caltex Oil (SA) (Pty) Ltd v Govender's Fuel Distributors (Pty) Ltd* [1996 \(2\) SA 552 \(N\)](#) at 556H–557D.

