



**REPORTABLE**

**CASE NO.: A 273/2009**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**HENDRICK CHRISTIAN T/A HOPE FINANCIAL SERVICES**

**1<sup>ST</sup> APPLICANT**

**HEWAT SAMUEL JACOBUS BEUKES**

**2<sup>ND</sup> APPLICANT**

AND

**NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY  
AUTHORITY**

**1<sup>ST</sup> RESPONDENT**

**FRANS JANSEN VAN RENSBURG**

**2<sup>ND</sup> RESPONDENT**

**CORAM: PARKER J**

Heard on: 2009 September 11

Delivered on: 2009 October 7

**JUDGMENT**

**PARKER J:**

[1] In this matter the respondents have brought three applications in terms of rule 30 of the Rules of Court: all three applications were filed the same day, 19 August 2009. For the sake of clarity, I shall

continue to refer to the applicants in these rule 30 applications as the respondents, and the applicants as the applicants. Mr. Van Vuuren represents the respondents; the applicants represent themselves.

[2] In each application, the respondents have set out grounds on which they rely to contend that the applicants have taken steps that were ‘irregular and/or improper’ within the meaning of rule 30. Of the view I take of the series of rule 30 applications – as will become apparent shortly – it will be otiose to consider those grounds.

[3] In *Arlene Beukes v Erica Beukes and another* Case No. A22/2009 (Unreported) at p.4 I stated the following in the interpretation and application of rule 30 of the Rules of Court:

In my view, the aforementioned second preliminary objection relates to a step that amounts to an irregularity or impropriety of form within the meaning of rule 30 of the Rules of Court, and it is my opinion that it would rather have been more efficacious if the applicant had taken the route open to her by rule 30; in which case the respondent would have been given the opportunity of removing the cause of the complaint in terms of rule 30 (2). The applicant did not follow this simple procedure whose efficacy lies in the fact that a party which has taken the irregular or improper step complained of is given the opportunity to remove the cause of the complaint without the immediate intervention of the Court. The Court may enter on the scene to set aside the irregularity or impropriety only if the offending party has failed to remove such complaint; and moreover, in that event, that party is not even permitted to take any further step in the matter unless and until that party has complied with any order of the Court in that regard.

[4] The second applicant relied on the principle I enunciated in *Arlene Beukes v Erica Beukes and another* supra in support of his submission that on that authority the respondents should have in terms of Rule 30 (5) given the applicants notice to remove the offending irregular steps before rushing to Court on three separate occasions for three separate orders they have prayed for.

[5] Mr. Van Vuuren argued strenuously contrariwise. It behoves me to take some time to consider Mr. Van Vuuren's argument; and I do so very carefully and with simon-pure independence of judgement – as I should. The vortex of Mr. Van Vuuren's argument is briefly that sub-rule (5) of rule 30 is not part of rule 30. And what is Mr. Van Vuuren's reason for such a bold contention? His reason, if I understand him, is simply that it has so been held in a number of South African cases that the phrase 'these rules' in rule 30 (5) refers to all the 71 rules of the Rules of Court, except sub-rules (1), (2), (3) an (4) of rule 30 of the Rules of Court, and so sub-rule (5) of rule 30 has nothing to do with the rest of rule 30

[6] From the outset the point must be firmly made that the principles in those cases may be persuasive but they are not binding; and *a fortiori* I did not hear Mr. Van Vuuren to submit that the Supreme Court has considered *Arlene Beukes v Erica Beukes and another* supra and has set the judgment there aside. That was, indeed, the contention of the 2<sup>nd</sup> applicant, too. What is more, the stupendous difficulty, which faces any argument that claims better knowledge of what the Judge President intended than what he actually had in mind when he expressed himself clearly – as he did – in rule 30 (5) is to put forward, without any justification, the unexpressed intention of the Judge President (see *Jacob Alexander v The Minister of Justice and others* Case No. A210/2007 (unreported), approving *Poswa v Member of the Executive Council for Economic Affairs, Environment and Tourism, Eastern Cape* 2001 (3) SA 582 (SCA). Furthermore, in this regard, it is my view that the intertextuality of subrule (5) with the other subrules of rule 30 is, with the greatest deference, unfortunately lost on Mr Van Vuuren; hence the brave but groundless argument he put up respecting subrule (5) and the rest of the subrules of rule 30, which I have set out above.

[7] For all the foregoing reasoning and its conclusions, it is my view that it is unsatisfactory and unjustifiable for this Court to take its cue from the respondents and rush into determining the

respondents' rule 30 applications without giving the applicants the opportunity to remove what the respondents allege to be irregularities within the meaning of rule 30 (1) of the Rules.

[8] In the result, I make the following order:

- (1) The respondents may give notice to the applicants of any irregularities in all the aforementioned three applications to which the respondents are parties, and request the applicants to remove the irregularities.
- (2) The respondents must in any such notice notify the applicants that if the applicants fail to comply with the respondents' request timeously they intend, after a lapse of 10 days from the date of the applicants' receipt of the said notice, apply for an order that such notice or request be complied with, or for an order that the applicants' claim be struck out, and that failing compliance therewith within 10 days after the granting of such order, they may make an application to the Court for the Court to make any order thereon as to the Court seems meet.
- (3) Costs shall be costs in the cause.

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**PARKER J**

**ON BEHALF OF THE APPLICANTS:**

In person

**ON BEHALF OF THE RESPONDENTS:**

Adv. A Van Vuuren

Instructed by:

LorentzAngula Inc.