

## REPUBLIC OF SOUTH AFRICA



## IN THE HIGH COURT OF SOUTH AFRICA

## LIMPOPO DIVISION, POLOKWANE

Case No: 4134/2018

(1)	REPORTABLE: <b>NO</b> /YES
(2)	OF INTEREST TO OTHER JUDGES: <b>NO</b> /YES
(3)	REVISED. 18/06/20
	DATE
	SIGNATURE

In the matter between

**MALEBYE BUSINESS ENTERPRISE CC**  
**DAY BREAK PROPRTY 104 (PTY) LTD**

**FIRST APPLICANT**  
**SECOND APPLICANT**

**AND**

**BELA-BELA LOCAL MUNICIPALITY**  
**THE MINISTER OF ENERGY**  
**CONTROLLER OF PETROLEUM**  
**PRODUCTS, LIMPOPO PROVINCE**  
**MEC FOR ECONOMIC DEVELOPMENT,**  
**TOURISM AND ENVIRONMENTAL**  
**AFFAIRS, LIMPOPO PROVINCE**

**FIRST RESPONDENT**  
**SECOND RESPONDENT**  
  
**THIRD RESPONDENT**  
  
**FOURTH RESPONDENT**



**NTK LIMPOPO AGRIC LIMITED**

**VKB FUELS (PTY) LTD**

**TOTAL PETROLEUM (PTY) LTD**

**THE FIRST BUILDING CONTROL**

**OFFICER OF THE BELA BELA**

**LOCAL MUNICIPALITY**

**THE SECOND BUILDING CONTROL**

**OFFICER OF THE BELABELA**

**LOCAL MUNICIPALITY**

**FIFTH RESPONDENT**

**SIX RESPONDENT**

**SEVENTH RESPONDENT**

**EIGHT RESPONDENT**

**NINTH RESPONDENT**

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## **JUDGMENT**

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**KGANYAGO J.**

- [1] The applicants have brought an application calling upon the first, eighth and ninth respondents to show cause why the decision of the first, eighth, and ninth respondents submitted to them for approval by the fifth, alternatively the fifth and sixth respondents in terms of the National Building Regulations and Standard Act for the erection of buildings on the property owned by the fifth respondent to conduct the business of a retailer of petroleum products on the said property should not be reviewed and set aside.



- [2] On receipt of the application, the fifth and sixth respondents (respondents) filed an irregular step notice in terms of Rule 30(2) (b) of the Uniform Rules of Court (the Rules) listing six complaints. The first complaint was that the decision to be reviewed was not identified, the second complainant was that the applicants were seeking an extension of the time period imposed by the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), but have failed to set out the grounds upon which such application was sought, the third complaint was that applicants were seeking to review an administrative action in terms of PAJA, but have failed to establish the two grounds in terms of which a review of that nature may be brought, the fourth complainant that the applicant was seeking a staggered disposal of overlapping issues, the fifth complaint was that the notice of motion did not state the date of the set down should no notice of intention to oppose the application be given, and the sixth complaint was that paragraph 10.11 appears at the bottom of the founding affidavit on page 51, paragraph 10.12 appears at the top of page 52 of the founding affidavit and the remainder of paragraph 10.12 does not appear in the founding affidavit.
- [3] The applicants filed an amended notice of motion and supplementary affidavit in trying to address the issues raised by the respondents. However, the respondents felt that the applicants'



supplementary affidavit and amended notice of motion did not address four of their six complaints. The respondents filed a further irregular step notice still raising the same complaints as they appear in the first notice except for the fourth and fifth complaint which appeared in the original notice.

- [4] The applicants did not remove the causes of complaints raised by the respondents which resulted in the adjudication of the present interlocutory application. Regarding the first complaint, the respondents argued that the applicants have failed identify a decision submitted to the respondents in their notice of motion and therefore what they are seeking is nonsensical, and cannot be executed or enforced. With regard to the second complaint, the respondents argued that the applicants brought the application after the expiry of the 180 days, but have failed to disclose the reasons for their failure to bring their application on time as required by PAJA. With regard to the third complaint, the respondents have argued that the applicants have failed to establish the jurisdictional requirements for the relief they are seeking despite having filed a supplementary affidavit. With regard to the sixth complaint, the respondents argued that the applicants filed their heads of arguments prematurely before pleadings have closed and enrolled for adjudication.



- [5] Regarding the first complaint, the applicants argued that on plain reading of the amended prayer 1 of the amended notice of motion as amplified and supplemented by prayer 4, it is abundantly clear to which decision is referred to. Regarding the second complaint, the applicants argued that paragraph 4.2 of the amended notice of motion is conditional upon the decision of the first, eighth and ninth respondents been taken more than 180 days before the date of the notice. Regarding the third complaint the applicants argued that it relates to substance and will be argued on merits. Regarding the fourth complaint, the applicants argued that the filing of heads of arguments is not a procedural issue which is governed by the Rules of Court.
- [6] It is trite that Rule 30(1) procedure was intended as a procedure whereby a hindrance to the future conduct of the litigation, whether created by non- observance of what the rules of court intended or otherwise, is removed. The irregularity must be a step which at one stage or another affects the development of the suit as a whole. Rule 30(1) applications should succeed only if there is prejudice related to proceedings with the litigation. **(See Cyril Smiedt (PTY) Ltd v Lourens 1966 (1) SA 150 (O); SA Metropolitan Lewensversekerings Maatskappy Bpk v Louw NO 1981(4) SA 329 (O) and De Klerk v De Klerk 1986 (4) SA 424 (W)).**



- [7] The original prayer 1 in Part A of the applicant's notice of motion read as follows:

"Take notice that the first, eighth and ninth respondents are hereby called upon to show cause why the decision of the first, eighth and ninth respondents submitted to them for approval by the fifth, alternatively the sixth, alternatively the fifth and sixth respondents in terms of the National Building Regulations and Building Standards Act, 103 of 1977 for the erection of Buildings on the property known as portion 22 (a portion of Portion 14) of the farm Vaalboschbult 66, Registration Division J.R, Limpopo Province, 1,7295 hectares in extent held and owned by the fifth respondent in terms of title deed No T157720/04 to conduct the business of a retailer of petroleum products on the said property should not be reviewed and set aside."

- [8] In the amended notice of motion prayer 1 was not amended and remained unchanged. Prayer 4.1 was amended to read as follows:

"Take further notice that the applicants will seek the following orders under Part A of the notice of motion.

- 4.1 That the decision of the first, eighth and ninth respondents submitted to them in respect of portion 22 (a portion of Portion 14) of the farm Vaalboschbult 66, Registration Division J.R, Limpopo Province, 1, 7295 hectares in extent held and owned by the fifth respondent in terms of the Title Deed NO T157720/04 in terms of the National Building Regulations and Building Standard Act 103 of 1977 be reviewed and set aside."

- [9] On reading prayer 1 and 4.1 together it is clear what decision the applicants are seeking to be reviewed and set aside. They are reviewing the decision to approve the building plans submitted in respect of Portion 22. The respondents will know whether those building plans exist or not, whether they were submitted for approval or not and also whether they were indeed approved or not. The decision has therefore been identified in the applicants notice of



motion on reading prayer 1 in conjunction with prayer 4.1. In my view, there is no merit on the complaint raised by the respondents on this issue.

[10] With regard to the respondent's second complaint, the applicants have drawn their application without having all the necessary documents with them. The applicant's failure to have all the documents was created by the respondents who failed to furnish the applicants with the necessary documents despite being requested to do so. The applicants were forced to approach the court in order to compel the respondents to furnish them with the necessary documents. By formulating the prayer in that fashion they were merely casting their net wide open as they were not sure as when was the actual date when the decision to approve was taken. The respondents have also not shown the prejudice that they will suffer as a result of the manner in which the applicants were seeking an extension of the time period imposed by PAJA. Further this issue goes to the substance of their application and not the form. In my view, there is no merits on this complaint by the respondents.

[11] The third complaint by the respondents relates to substance and not form. It therefore does not have merits. With regard to the filing of heads of arguments before pleadings were closed, the respondents

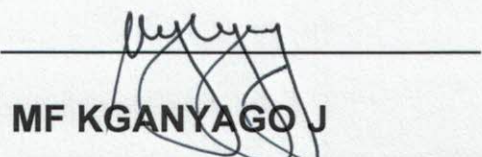


have failed to show what prejudice they have suffered or prejudice it might cause relating to the proceedings.

[12] In all the complaints that the respondents have raised, they have failed to establish any irregularity or prejudice. In my view, the respondent's complaints have no merit and their application stand to fail.

[13] In the result the following order is made:

13.1 The respondents' application is dismissed with costs on party and party scale.

  
**MF KGANYAGO J**  
**JUDGE OF THE HIGH COURT**  
**OF SOUTH AFRICA, LIMPOPO**  
**DIVISION, POLOKWANE**

<b>FOR THE APPLICANT</b>	<b>: MR OBERHOLZER</b>
<b>INSTRUCTED BY</b>	<b>: ENSLIN &amp; FOURIE ATTORNEYS</b>
<b>FOR THE FIFTH AND SIXTH</b>	
<b>RESPONDENT</b>	<b>: BRESLER</b>
<b>INSTRUCTED BY</b>	<b>: GERRIT COETZEE INC</b>
<b>DATE OF ARGUMENT</b>	<b>: 11<sup>TH</sup> MAY 2020</b>
<b>DATE OF JUDGMENT</b>	<b>: 18<sup>TH</sup> JUNE 2020</b>