IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case no: A5/2023

In the matter between:

KRAMER WEIHMANN & JOUBERT ATTORNEYS Appellant[1]

and

KGOPOTSO ELIZABETH RABELA (neé MOAHLOLI) First Respondent

NCUMISA YOLANDA RABELA Second Respondent[2] [3]

CORAM: OPPERMAN, J *et* GUSHA, AJ

HEARD ON: 17 APRIL 2023

DELIVERED ON: 8 May 2023. The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 8 May 2023. The date and time for hand-down is deemed to be 8 May 2023 at 15h00

JUDGMENT BY: OPPERMAN, J

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[1] Defendant in the court *a quo.*

[2] Applicants in the court *a quo*. They did not join the litigation in the appeal and an email marked Exhibit A, received on the day of the appeal, indicated that they do not oppose the appeal and will abide by the finding of the court.

[3] The parties will be referred to as the "appellant or excipient" and the "respondents" in this judgment.

SUMMARY: Is a notice of exception in terms of Rule 19(1)(b) of the Magistrate's Court Rules considered a pleading and a legal response to a notice of bar that will consequently halt a request for a default judgment?

JUDGMENT

INTRODUCTION

[1] The appeal eventuated from an opposed application for default judgment that served *a quo* before the regional court. The court order, in so many words, illustrates the issues:

1. The Applicants' Notice of Bar in terms of section 21B stands.
2. The Respondent's purported Notice of Exception herein is deemed not to be a pleading.
3. The Respondent to pay the costs of this Application.[4]

[2] The issue of the case is whether a notice of exception in terms of Rule 19(1) of the Magistrate's Court Rules is considered a pleading and a proper legal response to a notice of bar that will consequently prevent a request for a default judgment? Is it possible, at all, for a plaintiff to cause a pleading in reply and in response to a notice of exception?

[3] It must be noted that the request for default judgment shall not be entertained in the appeal. The appellant, notwithstanding their submission that default judgment was granted on the 28th of January 2022 at paragraph 2.5 on page 2 of their Heads of Argument, their prayers at paragraphs 8.5 and 8.6. of the same Heads of Argument dated 23 March 2023 and the Draft Order submitted to court on 17 April 2023, conceded that the default judgment was not granted.

[4] Although the magistrate stated in paragraph [1] of her judgment that the case is an opposed application for a default judgment she neither granted nor dismissed the application for default judgment. She also did not rule on the merits of the default

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[4] Page 16 of the Indexed Bundle at paragraph [25] of the judgment. It does not appear from the record that the default judgment was granted.

judgment; this issue remains *sub judice* in the regional court pending the outcome of this appeal.

[5] This case is a reminder that the Rules of Courts may not be utilised to play litigatory games that delay justice and causes costs and procedural misery. The Rules may not be warped to the extent that the administration of justice is made a mockery. Legislation, commentaries and cases must be read in context, in its totality and with judicious responsibility.

[6] The parties were in agreement *a quo* that Rule 19(1) and Rule 21B are applicable.

[7] The judgment will be organised as follows:

1. The Rules;
2. submissions of the appellant;
3. the relevant case law;
4. the facts and chronology of the case & the law; and
5. the order.

THE MAGISTRATE'S COURT RULES[5]

[8] The Rules came into effect in 2016 and 2019. Rule 19 was substituted by GN R842 of 31 May 2019 with effect from 1 July 2019. Rule 21B was inserted by GN R507 of 27 June 2014 with effect from 28 July 2014 and substituted by GN R2 of 19 February 2016 with effect from 22 March 2016.[6]

[9] Rule 19 Exceptions and applications to strike out

(1) (a) Where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, the opposing party who intends to take an exception shall, within the period allowed for filing any subsequent pleading, deliver an exception thereto, as provided in paragraphs *(b)* and *(c)*.

[5] The Magistrate's Court Rules are applicable here but case law referred to also deals with the Uniform Rules of Court applicable to the High Court procedure that caused the same legal disputes.
[6] *Van Den Heever NO and Others v Potgieter NO and Others* 2022 (6) SA 315 (FB).

(b) A party who intends to take an exception shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity of removing the cause of complaint within 15 days of such notice.

(c) A party who intends to take an exception shall, within 10 days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver the exception.

(d) The exception may be set down for hearing in terms of rule 55 within 10 days after delivery thereof, failing which the exception shall lapse. (Accentuation added)

[10] Rule 21B Failure to deliver pleadings — barring

(1) Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 21 shall be automatically barred.

(2) If any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may deliver a notice in writing calling upon that party to deliver such pleading within five days of receipt of such notice.

(3) Any party failing to deliver the pleading referred to in the notice mentioned in sub-rule (2) within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading and automatically barred: Provided that for the purposes of this rule the days from 16 December to 15 January, both inclusive, shall not be counted in the time allowed for the delivery of any pleading.

[11] The Rules and the law are clear here:

1. An exception is a pleading; not a notice.
2. A notice cannot replace a pleading.
3. A notice to except does not place the plaintiff in a fair and legal position to plea. A litigant pleads to a pleading not a notice; the case against the plaintiff must be clear and certain. In *Minister of Safety and Security v Slabbert* 2010 2 All SA 474 (SCA) at paragraph 11 Mhlantla, JA stated:

   The purpose of pleadings is to define the issues for the other party and the court. A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at trial. It is equally not permissible for a trial court to have recourse to issues falling outside the pleadings when deciding a case.[7]

[7] Also see *Nieuwoudt v Joubert* 1988 2 All SA 189 (SE) at page 194 where the court stated that the purpose of pleadings is to define the issues and inform one's opponent of what case he has to meet. In order to determine whether a pleading is technically correct, the question to be posed is whether the pleading in question properly defines the issues so that the other side is in a position to ascertain what evidence it requires to pursue its case at the trial.

4. A litigant may react to a notice by removing the issues excepted to but cannot plead on a notice.
5. The onus is on the excipient to maintain the momentum by the notice, followed by the pleading/exception and the set down for hearing.
6. The next legal procedural step is not a legal response in the sense that it exonerates the excipient from the provisions in Rule 19(1) and Rule 21B.
7. A notice that calls for a pleading of the exception is not compulsory and does not absolve the excipient from the process prescribed in the Rules.
8. Failure to deliver a pleading/exception causes an automatic bar and does not uplift a notice of bar. The plaintiff may on default take the next step in the main action; it is often a request for default judgment.

THE APPELLANT'S SUBMISSIONS ON THE APPLICATION OF THE RULES

[12] The appellant relies, significantly so, on the commentary to Rule 21B in Jones & Buckle[8] that:

> **…** the learned authors submit that a notice in terms of **Rule 19(1)(b)** to the effect that the plaintiff's particulars of claim are vague and embarrassing, and giving the plaintiff the required period to fix the particulars of claim, is a proper response to a notice of bar, provided that it is delivered within the stipulated **5-day** period.

[13] The above quote comes from a statement at footnote 5 in the text. At footnotes 3 and 4 Jones & Buckle do however unequivocally state that:

> An exception is a pleading and must, in terms of rule 19(1)*(c)*, be delivered within 10 days from the date on which a reply to a notice to remove the cause of complaint is received or from the date on which such reply is due. If it is not delivered within that time period, the other party may, it is submitted, deliver a notice in writing calling upon the party intending to take an exception to deliver the exception within five days of receipt of such notice as provided in rule 21B(2). (Accentuation added)

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[8] At paragraph 4.2 on page 5 of their Heads of Argument dated 23 March 2023. Jones and Buckle, The Civil Practice of the Magistrates' Courts in South Africa (Volume I and II) » … » 21B Failure to deliver pleadings — barring at RS 32, 2022 Rule-p21B-1, https://jutastat.juta.co.za/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu on 26 April 2023. The appellant refers to a quote from the 2020 issue of the Commentary at "R26, 2020 Rule-p21B-1".

[14] The learned writers might have intended "proper response" to mean "proper step" since they clearly indicated that an exception is a pleading (not a notice) and there are more steps to be taken to establish a proper legal response that will lift the bar. The proper legal response that will uplift and not just suspend the bar, must be a pleading with a consequent set down for hearing. Failure will cause the exception to lapse and the bar to remain or an automatic bar to result. The case law discussed hereunder underscores the Rules.[9]

[15] At paragraph 4.7 of their Heads of Argument the appellant argues that:

> Arguments have in the past been advanced that outright exceptions constitute "*pleadings"* and are thus the only proper response to the Notices of Bar, whereas notices to cure pleadings alleged to be vague and embarrassing do not constitute *"pleadings"* and are therefore not proper responses. This argument has, however, been rejected by several judgments of the High Court across South Africa on the basis that it would defeat the purpose of Rule 23 in the High Court.

[16] At paragraph 4.8 they argue that: "The legislature's intent of proceedings in the Magistrate Court regarding exceptions clearly ends the aforementioned debate in calling for a Notice to Cure before Exception."

[17] Again, a misinterpretation of the Rules:

Rule 19(1)(c):

> A party who intends to take an exception shall, within 10 days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver the exception.

Rule 21B (2):

> If any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may deliver a notice in writing calling upon that party to deliver such pleading within five days of receipt of such notice.

Rule 21B (3):

> Any party failing to deliver the pleading referred to in the notice mentioned in sub-rule (2) within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading and automatically barred: Provided that for the purposes of this rule the days from 16

[9] *Hill NO and Another v Brown* (3069/20) [2020] ZAWCHC 61 (3 July 2020*)* at paragraphs [4]–[5] and [8], *Lambons (Pty) Ltd v Hannes Marthinus Jonker and six others*, Case Number 2769/2017 (5 December 2017) and *Van den Heever NO v Potgieter NO* 2022 (6) SA 315 (FB) at paragraphs [16]–[26].

December to 15 January, both inclusive, shall not be counted in the time allowed for the delivery of any pleading. (Accentuation added)

[18] If a pleading from the excipient is not forthcoming or the issues excepted to removed, a vacuum occurs wherein, on the argument of the excipient, nobody needs or is allowed to take any subsequent step in the main action or the exception. The case becomes stagnant and delayed.

[19] Rule 19(1)(d) and Rule 21B (3) are clear that the excipient is automatically barred if the pleading is not delivered timeously. The bizarre situation above is not a scenario that can or may eventuate in terms of the Rules:

Rule 19 (1)(d): The exception may be set down for hearing in terms of rule 55 within 10 days after delivery thereof, failing which the exception shall lapse.

Rule 21B (3): Any party failing to deliver the pleading referred to in the notice mentioned in sub-rule (2) within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading and automatically barred: …

[20] The legislator clearly and without any doubt places the onus on the excipient to bring the hearing of the exception before a court and to completion.

[21] A notice of exception is an abbreviated legal procedural step to curtail, simplify and expedite litigation. If the issue(s) excepted to is removed, litigation proceeds on the main action in a reduced time. If not; the provisions of Rule 19(1) and Rule 21B take effect to prevent the stagnation of the case.

CASE LAW

[22] The conundrum of this case is not new. Many judgments[10] evolved on the issue. The facts

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[10] *Landmark Mthatha (Pty) Ltd v King Sabata Dalindyebo Municipality: In re African Bulk Earthworks (Pty) Ltd v Landmark Mthatha (Pty) Ltd* 2010 (3) SA 81 (ECM) at 86B–C, at 86A–B and *Hill NO v Brown* (unreported WCC case no 3069/20 dated 3 July 2020) at paragraphs [4]–[5] and [8], dealing with the position in High Court practice, *Steve's Wrought Iron Works v Nelson Mandela Metro* 2020 (3) SA 535 (ECP) at paragraphs [13]–[18], *Van den Heever NO v Potgieter NO* 2022 (6) SA 315 (FB) at paragraphs [16]–[26], *Quinn v MQ Finance (Pty) Ltd t/a Marquis Finance* (unreported, GJ case no 13330/21 dated 22 June 2022) at paragraphs [12]–[16] and [23], *McNally NO and Others v Codron and Others* (20406/11) [2012] ZAWCHC 17 (9 March 2012) and *Lambons (Pty) Ltd v Hannes Marthinus Jonker and six others*, Case Number 2769/2017 (5 December 2017).

of the cases, in some instances, differed and caused subtle nuances that caused the perception of contradicting rulings of the courts. The same scenarios, that are relevant in this case, played itself out in the High Courts.

[23] The appellant in their Heads of Argument relies on numerous judgments[11] to condone their litigatory conduct based on their view that a notice will uplift a bar placed upon them and make a request for default judgment illegal. They conflate the facts of each case, a proper legal procedural step and a proper legal response that will uplift a bar and a notice with a pleading.

[24] If the Rules do not convince then the case law that binds the appellant in this division might. Daffue, J on 5 December 2017 in an unreported judgment: *Lambons (Pty) Ltd v Hannes Marthinus Jonker and six others*, Case Number 2769/2017 (Lambons - case), gave a comprehensive exposé of the case law and some of the cases relied on by the appellant. In the Lambons - case it was ruled that a notice to an exception is not a pleading as is required in the Rules. I will not repeat the discussions in the judgment; it is comprehensive and based on solid law and reasoning that I align myself with. The judgment *in casu* must be read in conjunction with the Lambons - case.

[25] It was concluded in paragraph [18] that: "There is a huge difference between a notice of intention to except, or put otherwise, a notice in terms of the first proviso to rule 23(1) to remove a cause of complaint on the one hand and an exception on the other."

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[11] *Steve's Wrought Iron Works v Nelson Mandela Metro* 2020 (3) SA 535 (ECP) at paragraphs [13]–[19], *Landmark Mthatha (Pty) Ltd v King Sabata Dalindyebo Municipality: In re African Bulk Earthworks (Pty) Ltd v Landmark Mthatha (Pty) Ltd* 2010 (3) SA 81 (ECM) at [12] and [13], *Felix and Another v Nortier NO and Others* (2) 1994 (4) SA 502 (SE) at 506D-H, *Tuffsan Investments 1088 (Pty) Ltd v Sethole and another* (22826/2015) ZAGPPHC 653 (5 August 2016) at paragraphs 25 and 26, *Kramer Weihmann Joubert Inc v South African Commercial Catering and Allied Workers Union* (SACCAWU) (3818/2011) [2012] ZAFSHC (16 August 2012) at paragraphs [8] and [9], *Fuku v Mpoka* (A137/2013) [2013] ZAFSHC 152 (19 September 2013), *Webster NO v Mohr NO* (13645/15) [2016] ZAWCHC 41 (15 March 2016), *Bertobrite (Pty) Ltd v Kegtlengrivier Local Municipality* (3200/19) [2021] ZANWHC 47 (20 April 2021) and *Kobusch and another v Whitehead* (5217/2022P) [2022] ZAKZPHC 77 (15 December 2022).

[26] The judgment continued to rule, correctly so, and as is the situation in this case; in favour of the judgment of *McNally NO and Others v Codron and Others* (20406/11) [2012] ZAWCHC 17 (9 March 2012).

[20] During argument I raised a pertinent question with Mr Patrick, for the defendants, as to whether a notice of intention to except is a plea or a proper process which may constitute a proper response to the plaintiffs' notice of bar. The best that Mr Patrick could say is that 'a notice of intention to except' constitutes the taking of the next procedural step after service of a notice of bar, and being the next procedural step taken, it is competent of a defendant to serve a notice of exception during bar period relying on the observations of Griffiths AJ in Landmark Mthatha, supra, at p86E-F. The taking of the next procedural step in my view, would be a step which advances the proceedings one stage nearer to completion. The question that calls for determination, therefore, is whether the delivery of a notice of exception is a further step that advances the proceedings one stage nearer completion. (Accentuation added)

[21] The criterion of 'a further step in the proceedings' was laid down in *Pettersen v Burnside* 1940 NPD 403 at 406 where it was held that a further step in the proceedings is 'some act which advances the proceedings one stage nearer completion', and this criterion has been applied and followed in several other decisions. [See, amongst others, *Cyril Smiedt (Pty) Ltd v Lourens* 1966 (1) (SA) 150 (O) at 152E; *Killarney of Durban (Pty) Ltd v Lomax* 1961 (4) SA 93 (D) at 96]

[22] In *Jowell v Bramwell-Jones & Others* 1998 (1) SA 836 (W) at F-G, Heher J, as he then was, made the following observation:

"A further step in the proceedings is one which advances the proceedings one stage nearer completion and which, objectively viewed, manifests an intention to pursue the cause despite the irregularity. Seen in that light, the filing of a notice of exception, which contains as an alternative an application to set pleadings aside under the provision of Rule 18(2) read with Rule 30, does not constitute the taking of a further step within the meaning of Rule 30(2). Such an excipient is concerned merely to make full use of the remedies which the Rules provide for an attack on a defective pleading." My emphasis

[23] The issue before Heher J, in *Jowell v Bramwell-Jones & Others,* supra, concerned exceptions and procedural objections taken to plaintiff's particulars of claim in an action for damages. What is clear from Heher J's observations is that a further step in the proceedings is the one which advances the proceeding one stage nearer completion; an application to set the pleading aside does not constitute the taking of a further step in the proceedings; and an excipient who intends to except on the basis that the particulars are vague and embarrassing is concerned merely to make full use of remedies which the Rules provide for an attack on a defective pleading. Such an exception does not advance the proceeding one stage nearer completion. Those observations are compelling. I say the observations are compelling because they seek to differentiate between further procedural steps that tend to advance the proceedings towards completion and those that do

not constitute the taking of further steps but merely provide for an attack on a defective pleading.

[24] In its notice of exception, the defendant gives notice of its intention to except to plaintiffs' particulars of claim on the grounds that the particulars fail to disclose a cause of action, alternatively, that the particulars are vague and embarrassing. The defendants could well have excepted to the plaintiffs' particulars on the grounds that the particulars do not disclose a cause of action and that exception would have been a valid response to the notice of bar delivered on the defendants, but the defendants elected not to do so. The delivery of an exception on the basis that the particulars of claim lack the averments which are necessary to sustain a claim, would have been a regular step because the notice of bar calls for delivery of a pleading. As has already been pointed out in paragraph [19] above, there is authoritative support to the proposition that an exception is a pleading the delivery of which would have constituted a valid response to plaintiffs' notice of bar.

[25] As has already been pointed out, the defendants' notice of intention to except, on the basis of the authorities referred to in paragraph [21] to [22] of this judgment cannot be said to advance these proceedings a stage nearer completion. What the defendants, in effect, want to do is to utilize one of those remedies in the Rules that provide an attack on a defective pleading. The notice of intention to except is intended to achieve that objective. It is not an objective that can be achieved by way of a response to a notice of bar. It is a remedy that would have had to be utilized and resorted to within a period of twenty (20) days as provided in Rules 17(1) and 22(1) of the Uniform Rules. The notice of intention to except, as taken in the instance of these proceedings, is an irregular step that falls to be set aside.

[26] If the defendants had elected to except to the plaintiffs' particulars of claim on the grounds that the particulars are vague and embarrassing, they would have had to file their notice of exception within a period of twenty (20) days of delivery of a notice of intention to defend as provided in Rules 17(1) and 22(1) of the Uniform Rules. It is not competent of a defendant to file a notice of exception contemplated in rule 23(1) during bar period and as a response to a notice of bar. The remarks of Griffiths AJ, which, in my view, were obiter, and which remarks were relied on by *Mr. Patrick,* should be understood in the context of the analysis in paragraphs [19] to [23] of this judgment.

[27] The remarks in authorities such as *Felix v Nortier N.O.* 1994 (4) SA 502 (SE) at 506E and *Landmark Mthatha,* supra, that what rule 26 requires is that the party served with a notice of bar take the next procedural step in the matter, dealt with the delivery of an exception, which is a pleading. They are definitely no authority for what is contended for on behalf of the defendants. Those authorities did not deal with a notice of intention to except as is a case in the matter before me.

[27] In *Hill NO and Another v Brown* (3069/20) [2020] ZAWCHC 61 (3 July 2020) the defendant was served with a notice of bar requiring it to serve its plea or exception within five days from receiving the notice of bar. The defendant served a notice of intention to except against the plaintiff's summons on the basis that the summons was vague and embarrassing and did not disclose a cause of action.

[28] The court in the above case had to adjudicate whether a notice to except as envisaged in Rule 23(1)(a) is a valid response to a notice bar and the court came to the following conclusion:

> [4] An exception is a 'pleading' (*Haarhoff v Wakefield* **1955 (2) SA 425** (E); *Tyulu & others v Southern Insurance Association Ltd* **1974 (3) SA 727** (E) at 729B-D; *Icebreakers No.83 (Pty) Ltd v Medi Cross Health Care Group (Pty) Ltd* [2011] ZAKZDHC 15; **2011 (5) SA 130** (KZD) para 2). Like a plea, a properly drawn exception concludes with a prayer for relief (*Marais v Steyn & 'n ander* **1975 (3) SA 479** (T) at 483A; *Barclays National Bank Ltd v Thompson* **1989 (1) SA 547** (A) at 552H), typically – in the case of an exception to particulars of claim – a prayer that the exception be upheld with costs and that the particulars of claim be set aside.
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> [5] Accordingly, the 'pleading' contemplated in rule 26 covers – in the case of a defendant who has failed to plead to particulars of claim – a plea as contemplated in rule 22(1) or an exception as contemplated in rule 22(1) read with 23(1). Either of these is a valid response to the rule 26 notice, and the defendant will not be barred.
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> [6] A defendant's notice in terms of rule 23(1)(*a*) affording the plaintiff an opportunity to remove an alleged cause of complaint is simply that, a notice. It claims no relief. It does not call for adjudication. If the plaintiff removes the alleged cause of complaint, the notice has served its purpose and receives no further attention in the case. If the plaintiff does not remove the alleged cause of complaint but the defendant decides not to follow up his notice with an exception, the notice likewise receives no further attention. If the plaintiff fails to remove the alleged cause of complaint and the defendant files an exception, it is the exception, not the preceding notice, that the court adjudicates.
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> [7] Accordingly, I agree with Yekiso J's judgment in *McNally NO & others v Codron & others* **[2012] ZAWCHC 17** that a notice in terms of rule 23(1)(*a*) is not a pleading (and see also *De Bruyn v Mile Investment 307 (Pty) Ltd & others* [2017] ZAGPPHC 286 paras 25-26). The contrary is scarcely arguable.
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> [8] **If a defendant is to avoid being barred pursuant to a notice in terms of rule 26, he must file a 'pleading', i.e., a plea or an exception. A rule 23(1)(*a*)[12] notice, which is merely a precursor to**

> **an exception (which may or may not be delivered), is not a proper response.** (Accentuation added)

THE FACTS AND CHRONOLOGY OF THIS CASE & THE LAW

[29] The facts and chronology of the case are:

1. The claim *a quo* stems from an amount of R260 000.00 that was paid over into the trust account of the appellants on 13 February 2019.[13]
2. The monies were paid over *in lieu* of the sale of immovable property and at the instruction of the agent.
3. After the sale was cancelled on 30 July 2019, the monies were never refunded to the respondents that were the buyers of the property.[14]
4. On 15 December 2020 a letter was delivered by Maduba Attorneys on behalf of the respondents on the appellant to remind them that a mandate to terminate the sale was delivered to "Jackie and Chanel Jaars" of Kramer Weihmann & Joubert Attorneys per email on 30 July 2019. Maduba Attorneys, acting on behalf of the respondents, now claimed that the monies be paid into the trust account of Maduba Attorneys Incorporated within ten days of the filing of the letter with interest.[15]
5. The letter spurred no reaction and a combined summons was issued and served on 17 August 2021 on one Mr. D Muller of the now Kramer Weihmann Incorporated; the appellant.
6. Kramer Weihmann Incorporated served a notice of intention to defend on 31 August 2021.
7. The case was again ignored by Kramer Weihmann Incorporated and time lapsed to the degree that the respondents were forced to serve a notice of bar on 1 October 2021.

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[12] This is the Uniform Rules of Court applicable in the High Court. The equivalent Rules in the Magistrate's Court read either the same or substantially the same and what is applicable to the High Court applies *mutatis mutandis* to the Magistrate's Court with certain minor exceptions. See paragraph [2] of the Lambons - case.
[13] Annexure A page 29 of the Indexed Bundle.
[14] Annexures B and C of the Indexed Bundle at pages 30 to 32.
[15] Annexure D at pages 33 and 34 of the Indexed Bundle.

8. On the last day of the notice of bar, 8 October 2021, Kramer Weihmann Incorporated served a notice of exception in which it was stated that the plaintiffs' particulars of claim are vague and embarrassing on the grounds set out in the notice and their opponents were afforded a period of fifteen days to remove the defendant's causes of complaint.
9. The *dies* lapsed with no movement in litigation from either side.
10. Rule 19(1) does not require a mere notice but places a burden on the excipient to await fifteen days for a response and if it is not forthcoming by for instance the removal of the cause of complaint; they must deliver the exception in terms of Rules 19(1)(b) & (c). These are the pleadings.
11. The excipient must then set the matter down for hearing of the exception within ten days, failing which, the exception shall lapse. Rule 19(1)(d) is clear that the exception lapses automatically. There is not any prerequisite that the opposing party must file another notice of bar on the facts of this case. Rule 21B underscores that the respondents were in the right to file the request for default judgment without another notice of bar.
12. Kramer Weihmann Incorporated in a lackadaisical manner with complete disregard of the Rules and unacceptable delay of the proceedings did not file their exception, nor set the matter down for hearing as Rule 19 demands. It must be remembered that a notice of bar was already issued against them for not responding in the first instance.
13. The respondents in the appeal went forth and filed a request for default judgment on 25 January 2022.
14. The delay caused by Kramer Weihmann Incorporated from the date on which the notice of exception was filed, dragged on from October 2021 until January 2022 when they suddenly jumped into the litigation again.
15. Exceptions may not be abused to obstruct a litigant in obtaining expeditious justice. If Kramer Weihmann Incorporated followed the simple instructions in Rule 19 the matter could have been resolved earlier. They have not filed their pleadings on the exception or set the matter down for hearing up until the date of this judgment. The respondents, awaiting the pleadings as per the Rules, were

prevented from any further legal litigation. They cannot file pleadings to a notice in terms of the Rules and law.

16. The unfortunate state of affairs is that the litigation has blown up to an Appeal.

17. Their statement in paragraph 4.3 in a letter[16] addressed to Maduba Attorneys on 13 January 2022 with a threat of punitive costs orders is patently wrong on the reading of the Rules and law.

> 4.3 Filing of an outright exception on the basis that no cause of action is disclosed, constitutes the filing of a Subsequent Pleading. As such we are not under bar and therefor you are not entitled to proceed with default judgment, as same is an abuse of the Court Process and an irregular step/process.

[30] ORDER

The appeal is dismissed with costs

M. OPPERMAN, J

I concur

N.G. GUSHA, AJ

APPEARANCES:

For the appellant: **ADVOCATE E.G. LUBBE**
Chambers, BLOEMFONTEIN

Instructed by: Kramer Weihmann Inc., Bloemfontein

[16] Page 51 of the Indexed Bundle.

For respondents: **NO APPEARANCE**