

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 2019/39986**

In the matter between:

**T-SYSTEMS (PTY) LTD**

Applicant / Defendant

and

**BDM TECHNOLOGY SERVICES (PTY) LTD (in liquidation)**

First Respondent / Plaintiff

**GERT LOURENS STEYN DE WET N.O.**

Second Respondent / Plaintiff

**GORDON NOKHANDA N.O.**

Third Respondent / Plaintiff

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**JUDGMENT SUMMARY**

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*Rule 30 – irregular steps – attempt to set aside application for summary judgment brought in terms of Rule 32 as an irregular step – complaints for purposes of Rule 32 application constituted substantive issues cloaked as procedural irregularities – Rule 32 – a sui generis procedure designed to deal with prejudice – Rule 30 appropriate for procedural irregularities, but not substantive issues – Sasol Industries distinguishable – Rule 30 unsuitable procedure in the circumstances – issues raised should be canvassed in summary judgment proceedings under Rule 32 – Rule 30 application dismissed.*

**Background and Issues**

The applicant, T-Systems (Pty) Ltd ('T-Systems') was the defendant in the main action instituted against it by the respondents. The first respondent, BDM Technology Services (Pty) Ltd ('BDM'), was a company in liquidation and the plaintiff in the main action. The other plaintiffs/respondents were the joint liquidators of BDM.

In the main action, BDM and its liquidators sought an order setting aside a set-off between BDM and T-Systems in terms of s 46 of the Insolvency Act 24 of 1936, alternatively in terms of s 30 of the Act. It claimed payment for the amount of R8 979 921.85. BDM and the liquidators instituted an application for summary judgment thereafter.

T-Systems brought an application in terms of Rule 30 to set aside the application for summary judgment as an irregular proceeding. For the purposes of the Rule 30 application, T-Systems argued that the summary judgment was defective on a number of grounds.

Firstly, T-Systems argued that the affidavit in support of summary judgment contained annexures which (a) introduced new evidence which did not relate to allegations contained in the particulars of claim; and (b) constituted impermissible and inadmissible hearsay evidence.

Secondly, T-Systems argued that the claim did not fall within the scope Rule 32. It argued that it was necessary for BDM to obtain a declaratory order disregarding the set-off under the provisions of the Insolvency Act, prior to claiming payment under the summary judgment procedure. Otherwise, there would be no debt upon which to found a summary judgment application.

It was argued that the deponent to the affidavit in support of summary judgment had failed to verify the amount claimed in the particulars of claim. BDM sought summary judgment for a lesser amount than that which was claimed in the main proceedings, an amount purportedly conceded by T-Systems.

Lastly, T- Systems argued it was prejudiced because it was compelled to provide security or file an affidavit in circumstances where the BDM had failed to comply with Rule 32.

BDM argued that the Rule 30 application should be dismissed, as the proper route would have been for T-Systems to raise any perceived deficiencies in the summary judgment application in the affidavit resisting summary judgment. It argued that allowing T-Systems to rely on Rule 30 would create two separate parallel processes for dealing with a summary judgment application.

### **The Court**

The question before the Court was whether there had been non-compliance with the provisions of Rule 32, and if so, whether these objections should be dealt with under Rule 30.

The Court found that although the issues were framed as procedural objections to the summary judgment application, they were substantive in nature. In particular, the Court stated that whether the respondents could rely on additional or secondary facts in their summary judgment affidavit to show the absence of a triable issue, and the question of what facts they could legitimately introduce to verify the cause of action, was a substantive issue. The same was true for the question of whether the claim was for a liquidated amount and could be granted without a

declaratory order disregarding the set-off between the parties. It was a substantial question of law.

The Court noted that Rule 30 applies to irregularities of form, not substance. It further noted that the purpose of the summary judgment procedure was to ensure that a plaintiff obtains expeditious judgment on the merits of a case where there is no real defence to the claim.

The Court also found that T-Systems had failed to establish that it had suffered prejudice, a prerequisite for a successful Rule 30 application. It distinguished *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a LH Marthinusen* 1992 (4) SA 466 (W), in which it was held that even if there is another Rule which provides a remedy for the irregularity complained of in the Rule 30 application, it did not mean that prejudice was absent for the purposes of Rule 30 based on the outcomes. The Court found that any prejudice complained of by T-Systems was either self-created, or could be remedied by the provisions of Rule 32.

Therefore, the Court held that the Rule 30 application was not a suitable means of addressing the irregularities raised by T-Systems. It would be inappropriate to set aside the summary judgment proceedings on the basis of Rule 30 (which deals with form complaints) without properly ventilating the merits of what was, in actuality, a substantive dispute. It would undermine the purpose of the summary judgment procedure and such an approach which should be discouraged. The application was dismissed with costs.

**Coram:** Siwendu J  
**Heard:** 17 August 2020  
**Delivered:** 7 October 2020