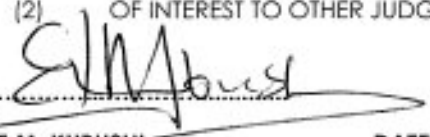




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case Number: 82865/2018

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	
DATE: 28-04-2021	

In the matter between:

In re: Intervention application

**THE TRUSTEES FOR THE TIME BEING OF
THE GLOBAL ENVIRONMENTAL TRUST**

First Applicant

**MINING AFFECTED COMMUNITIES
UNITED IN ACTION**

Second Applicant

**SOUTHERN AFRICA HUMAN RIGHTS
DEFENDERS NETWORK**

Third Applicant

ACTIONAID SOUTH AFRICA

Fourth Applicant

and

**MFOLOZI COMMUNITY ENVIRONMENTAL
JUSTICE ORGANISATION**

First Respondent

SABELO DUMISANI DLADLA	Second Respondent
MINISTER OF MINERALS AND ENERGY	Third Respondent
REGIONAL MANAGER, DEPARTMENT OF MINERAL RESOURCES, KWAZULU-NATAL	Fourth Respondent
DIRECTOR-GENERAL, DEPARTMENT OF MINERAL RESOURCES	Fifth Respondent
TENDELE COAL MINING (PTY) LTD	Sixth Respondent
MINISTER OF ENVIRONMENTAL AFFAIRS	Seventh Respondent
MTUBATUBA MUNICIPALITY	Eighth Respondent
HLABISA MUNICIPALITY	Ninth Respondent
INGONYAMA TRUST	Tenth Respondent
EZEMVELO KZN WILDLIFE	Eleventh Respondent
AMAFA-AKWAZULU-NATAL HERITAGE COUNCIL	Twelfth Respondent
MPUKUNYONI TRADITIONAL COUNCIL/ MPUKUNYONI TRADITIONAL AUTHORITY	Thirteenth Respondent
MPUKUNYONI COMMUNITY MINING FORUM	Fourteenth Respondent

ASSOCIATION OF MINeworkERS AND CONSTRUCTION UNION (AMCU)	Fifteenth Respondent
NATIONAL UNION OF MINE WORKERS (NUM)	Sixteenth Respondent
APPLICANT IN THE WITHDRAWAL APPLICATION	Seventeenth Respondent
<i>In re: Withdrawal application</i>	
MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANISATION	Applicant
and	
YOUENS ATTORNEYS	First Respondent
MINISTER OF MINERALS AND ENERGY	Second Respondent
REGIONAL MANAGER, DEPARTMENT OF MINERAL RESOURCES, KWAZULU- NATAL	Third Respondent
DIRECTOR-GENERAL, DEPARTMENT OF MINERAL RESOURCES	Fourth Respondent
TENDELE COAL MINING (PTY) LTD	Fifth Respondent
MINISTER OF ENVIRONMENTAL AFFAIRS	Sixth Respondent
MTUBATUBA MUNICIPALITY	Seventh Respondent

HLABISA MUNICIPALITY	Eighth Respondent
INGONYAMA TRUST	Ninth Respondent
EZEMVELO KZN WILDLIFE	Tenth Respondent
AMAFA aKWAZULU-NATAL HERITAGE COUNCIL	Eleventh Respondent
MPUKUNYONI TRADITIONAL COUNCIL/ MPUKUNYONI TRADITIONAL AUTHORITY	Twelfth Respondent
MPUKUNYONI COMMUNITY MINING FORUM	Thirteenth Respondent
ASSOCIATION OF MINEWORKERS AND CONSTRUCTION UNION (AMCU)	Fourteenth Respondent
NATIONAL UNION OF MINE WORKERS (NUM)	Fifteenth Respondent
<i>In Re: Review Application</i>	
MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANISATION	First Applicant
SABELO DUMISANE DLADLA	Second Applicant
and	
THE MINISTER OF MINERALS AND ENERGY	First Respondent

REGIONAL MANAGER, DEPARTMENT OF MINERAL RESOURCES, KWAZULU-NATAL	Second Respondent
DIRECTOR-GENERAL, DEPARTMENT OF MINERAL RESOURCES	Third Respondent
TENDELE COAL MINING (PTY) LTD	Fourth Respondent
MINISTER OF ENVIRONMENTAL AFFAIRS	Fifth Respondent
MTUBATUBA MUNICIPALITY	Sixth Respondent
HLABISA MUNICIPALITY	Seventh Respondent
INGONYAMA TRUST	Eighth Respondent
EZEMVELO KZN WILDLIFE	Ninth Respondent
AMAFA aKWAZULU-NATAL HERITAGE COUNCIL	Tenth Respondent

JUDGMENT

KUBUSHI J,

***Delivered:** This judgment is handed down electronically by circulation to the Parties and/or their legal representatives by email and by uploading it to Caselines. The date for hand-down is deemed to be 28 April 2021.*

INTRODUCTION

[1] Before me are two interlocutory applications, namely, the intervention application and the withdrawal application. The genesis of the two interlocutory applications is the review application that was launched by Mfolozi Community Environmental Justice Organisation ("MCEJO"). MCEJO is the first respondent in the intervention application and the applicant in the withdrawal application.

[2] In the said review application, MCEJO seeks an order firstly, to review and set aside the decision of the first respondent in the review application, the Minister of Minerals and Energy ("the Minister"), dated 15 June 2018 dismissing MCEJO's appeal against the decision of the third respondent in the review application, the Acting Director-General, Department of Minerals and Energy ("the Director-General") dated 31 May 2016, in which the Director-General granted a mining right to the fourth respondent in the review application, Tendele Coal Mining (Pty) Ltd ("Tendele"), over part of the Remainder of Reserve 3 (Somkhele), 15822 situated in the Hlabisa District and measuring 21 233.0525 hectares in extent ("the mining area"), and, secondly, to review and set aside the decision by the Director-General, in the first place, to grant the said mining right to Tendele, as well as an order in terms of other ancillary orders. The impugned mining right authorises Tendele to mine coal over the mining area for a period of 30 years commencing from 26 October 2016.

[3] The review application was initially launched by two applicants, namely, MCEJO as the first applicant and Sabelo Dumisani Dladla ("Mr Dladla") as the second applicant. Mr Dladla has since withdrawn his application and only MCEJO is proceeding with the review application. Although a number of parties are cited as respondents in the review application, only Tendele opposed the said review application.

[4] The review application was set down for hearing for two (2) days on 18 and 19 March 2021. But, before it could be heard, two interlocutory applications were filed, namely, the Rule 7 application filed by Tendele questioning the authority of MCEJO's attorneys of record, Youens attorneys ("Youens"), to act on behalf of MCEJO in the review application; and the withdrawal application filed by MCEJO in which it sought a declarator terminating Youens' mandate and an order withdrawing the review application.

[5] The parties in the review application requested that the matter be case managed before the hearing of the review application, to provide direction regarding the further conduct of the review application as against the two interlocutory applications, that is, the Rule 7 application and the withdrawal application. The case management meeting was held on 10 March 2021.

[6] During the case management meeting Tendele abandoned and/or withdrew the Rule 7 application and tendered costs to be reserved pending finalisation of the review application. Tendele, also, conceded the merits of the review application and wanted to argue for a just and equitable remedy when

the review application is heard. An order was, also, made for the withdrawal application to be heard on 18 March 2021 before the hearing of the review application. Consequently, the review application set down for 18 to 19 March 2021 was to stand down pending the decision in the withdrawal application. A Directive to that effect was issued on 10 March 2021.

[7] On 12 March 2021 a further interlocutory application, an intervention application, was filed by four applicants in which they sought an order granting them leave to intervene in the pending review application as second, third, fourth and fifth applicants. I shall, for convenience, refer to them collectively as the applicants in the intervention application. Although a number of respondents were cited in the intervention application, only MCEJO, as first respondent in the intervention application, is opposing the intervention application.

[8] Therefore, on 18 March 2021 when the matter appeared in court two interlocutory applications, the intervening application and the withdrawal application, served before me. The parties were not agreed as to how to proceed with the applications. Ms de Vos, who appeared with Ms Ferreira, on behalf of Youens, the first respondent in the withdrawal application as well as the applicants in the intervening application, suggested that the intervening application be heard first. Whereas Mr Tshikila, who appeared with Mr Bobison-Opoku, on behalf of MCEJO as applicant in the withdrawal application and as first respondent in the intervening application, suggested that prayer 1 of the withdrawal application be adjudicated first.

[9] Tendele had not opposed the intervention application and had opposed the withdrawal application merely as to the cost order, which prayer for costs was subsequently abandoned by Mr Tshikila, on behalf of Tendele. Consequently, Mr Lazarus, appearing with Mr Salakozana for Tendele, stated that Tendele will abide the decision of the court in the withdrawal application.

[10] After argument I ruled that the intervention application be heard first before the withdrawal application.

THE ISSUE TO BE DETERMINED

[11] The issue to be determined is whether the intervention application and the withdrawal application should be granted. I deal hereunder with each applications, in turn.

Re: The Intervention Application

[12] The applicants in the intervention application approached court on an urgent basis. MCEJO in opposing the intervention application seeks to have the application struck from the roll on the ground that it is not urgent.

[13] On the substantive issues the applicants argue that the wider considerations of convenience favour the intervention. The contention is that, given the fact that firstly, the merits, with which they make common cause, have already been dealt with extensively in the papers filed of record; secondly, that the matter is ripe for hearing and, lastly, that Tendele has now conceded the invalidity and unlawfulness of the impugned mining right, considerations of equity and convenience warrant intervention. They submit further that their

intervention will not require the filing of additional papers or delay the hearing of the review application and that there is, as such, no real prejudice to the respondents.

[14] MCEJO opposes this application on the basis that:

14.1 The application is vexatious, frivolous and constitutes an abuse of court process, and no case has been made at all for intervention (even if one were to assume that the application is one for intervention); and

14.2 The application for intervention is more of an application for substitution having regard to the first respondent's withdrawal application.

[15] The issues to be determined on this topic are firstly, whether the intervention application is urgent; secondly whether a case has been made out for intervention; and lastly, if so, whether the intervention application, in the light of the withdrawal application, is not more of an application for substitution. I deal hereunder with the issues in turn.

Whether the intervention application is urgent and if so whether such urgency is not self-created

[16] The applicants in the intervention application submit that the intervention application is manifestly urgent. Their contention is that in the event the relief sought is not granted on an urgent basis, they will not be able to obtain adequate redress in due course. This is so according to the applicants,

because if the pending withdrawal application succeeds, there is no review application.

[17] In opposing the intervention application, MCEJO contends that the intervention application is not urgent and that if it was found that the application is urgent, the court should find that the urgency is self-created and as a result the intervention application should not be heard but be struck off from the court roll.

[18] In *Mogalakwena Municipality v Provincial Executive Council, Limpopo and Others*,¹ the court explained that the primary investigation in determining urgency should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. It is only if an applicant cannot establish prejudice in this sense that the application cannot be urgent.

[19] According to the applicants in the intervention application, they launched the intervention application because of the pending withdrawal application. It is common cause that if the withdrawal application is granted, there will be no review application and the applicants in the intervention application will have to start the process afresh.

[20] There appears to be no dispute that the urgency of the application, as contended for by the applicants in the intervention application, was created by the filing of the withdrawal application. It is, also, not in dispute that if the withdrawal application is granted there will be no review application to speak

¹ [2014] 4 SA 67 (GP).

of. This according to the applicants in the intervention application will result in them not being afforded substantial redress at a hearing in due course.

[21] This contention is not specifically denied by MCEJO in its papers. MCEJO's proposition, in response to this argument, is that the applicants in the intervention application can be afforded a hearing in due course because they can always and should institute their own review application to challenge the impugned decisions, instead of "piggybacking" on MCEJO's review application, especially one which the original applicants (MCEJO) no longer have an interest in pursuing. And that if this process is followed, there will be no urgency.

[22] Quintessentially, MCEJO's argument means that it should be allowed to withdraw the review application and that if the applicants in the intervention application are not satisfied with the impugned decisions, they should institute a fresh review application in order to be afforded substantial redress. In that sense, MCEJO's argument is that by instituting a fresh review application, the applicants in the intervention application will be afforded a hearing in due course and there will be no urgency to hear their intervention application now.

[23] The argument by MJECO that the applicants should institute their own application against the impugned decisions is without merit. It is not in the interest of justice that the applicants in the intervention application be refused to intervene in the review proceedings only because they can in future launch their own review application against the impugned decisions.

[24] The present review application has been instituted and is ripe for hearing. A lot of work has gone into it including the filing of voluminous papers. There is, therefore, no logic in the contention that the applicants in the intervention application not make use of the process that is already in place and should instead start a new process afresh. The applicants in the intervention application have, also stated in the heads of argument that they do not intend to file any further documents but will argue the matter on the documents already filed in order not to delay the proceedings.

[25] In the light of Tendele having conceded the merits of the review application, it makes perfect sense that the applicants in the intervention application would want to argue the matter on the papers already filed without filing any further documents. Of importance is that there are other communities, as will appear more fully hereunder, who stand to be prejudiced should the pending withdrawal application be allowed and the application for intervention not be granted. To start the review proceedings afresh would not be in the interest of justice for those communities as the proceedings will be protracted. It, therefore, makes perfect sense that the applicants in the intervention application would want to pursue the review application even when MCEJO no longer wants to proceed with it and proceed on the papers already filed.

[26] This, also, does away with MCEJO's argument that the proposition by the applicants in the intervention application that they will not be filing further documents in the review application, renders the intervention application a substitution application.

[27] I am, also, of the view that the intervention application should be heard as a matter of urgency due to the fact that the issues involved in the review application, are of great public interest impact. The public interest is manifest in that the rights and interests of some of the members of the community of Somkhele and Fuleni, who it appears are not represented by MJECO, are at stake.

[28] The deponent to the founding affidavit in the withdrawal application, Medical Ntombiyenkosi Ndziba ("Mr Ndziba") who is also the deponent in the answering affidavit in the intervention application, alleges that the review application was instituted on behalf of the community of Somkhele and that he has, as such, been authorised by the said community to institute the review application. The community of Somkhele has subsequently, according to Mr Ndziba, given MCEJO, through him, instructions to withdraw the review application, hence the withdrawal application.

[29] To the contrary, it is alleged that the review application was launched on behalf of both the Somkhele and the other communities who are members of MCEJO as *per* the amended constitution on which Mr Ndziba relies. The contention is that, Mr Ndziba, having been authorised only by the community of Somkhele, has not been duly authorised to act on behalf of members of MCEJO, but represents a splinter group of members of MCEJO who have been suspended from the organisation.

[30] It is indeed so that according to the amended constitution of MJECO, filed of record, the organisation is not only constituted by community members of Somkhele. In terms of the constitution, members of MCEJO are based within the communities of Somkhele and Fuleni areas, as such, the communities in these areas constitutes the membership of MCEJO. It is these communities that ought to have authorised Mr Ndziba to institute and subsequently withdraw the review application.

[31] On the version of Mr Ndziba, who is insistent that only the community of Somkhele is represented in these proceedings, it is clear that the interest of some of the members of MCEJO, who on that version are not represented, would be at stake should the withdrawal application be granted. Put differently, it is evident that the interests of some members of MCEJO, who it appears have not authorised Mr Ndziba to withdraw the review application, are at stake in that should the pending withdrawal application be granted they will lose the rights they sought to establish in the review application. It is, thus, undeniable that this matter is of great public importance impact, necessitating that the intervention application be heard before the withdrawal application.

[32] What is also of public interest is that the issues in the review application must be finalised in order to curb the prevailing situation in the mining area. It is not in dispute that the none finalisation of the issues in the review application, is causing turmoil in that area that might come to an end once these issues are settled. Thus, the continued existence of disputes in the area, is not in the public interest and/or in the interest of justice.

[33] Having found the matter urgent, it is MCEJO's argument that I should find such urgency to be self-created. The applicants in the intervention application contend that the urgency cannot be found to be self-created because they were advised of Tendele's concession of the merits, its purported abandonment of the bulk of its impugned mining right and attitude to the pending withdrawal application by Ms de Vos, during the course of 11 March 2021 and accordingly launched this application as soon as duly possible. The application was launched on 12 March 2021.

[34] It is trite that urgency will in all likelihood be considered as "self-created" in circumstances where the applicant chose to not bring the application at the earliest opportunity — particularly where the applicant may have had prior knowledge which would have justified acting earlier because when an applicant gains knowledge of the respondent's prejudicial behaviour, it is important that the applicant take steps to launch their application as expeditiously as possible.²

[35] I am in agreement with the argument by the applicants in the intervention application and the reasons they provide for the argument that the urgency in this application is not self-created. As argued by the applicants, it is actually MCEJO's withdrawal application that has created the urgency in this application. As a matter of logic, the withdrawal application demands that it be heard before the review application which was set down for hearing on 18 and

² Twentieth Century Fox Film Corporation v Anthony Black Films (Pty) Ltd 1982 (3) SA 582 (W).

19 March 2021. MCEJO in its papers confirms that it had known since September 2020 that the review application was set down for 18 and 19 March 2021, yet they waited until 8 February 2021 to launch the withdrawal application without any prior notice to all the parties, including Youens. It is correct that a reasonable litigant, in the position of MCEJO, would have alerted all the parties once they instructed legal representatives to bring this application.

[36] Furthermore, when at the case management meeting of 10 March 2021 it was ruled that the withdrawal application be heard before the review application it became paramount that the intervention application be filed and determined as a matter of urgency.

[37] In addition, the evidence of the applicants in the intervention application that they were advised of Tendele's concession of the merits, its purported abandonment of the bulk of its impugned mining right and MCEJO's attitude to the pending withdrawal application, by Ms de Vos during the course of 10 and 11 March 2021, remains uncontested. It was on the basis of such advice that they launched this application on 12 March 2021, which was only two days after such advice.

[38] I am satisfied that the urgency in the intervention application is not self-created and that the applicants therein launched the application as soon as

they gained knowledge of MCEJO's prejudicial behaviour. The truncated time lines MCEJO is complaining about, are in the circumstances justified.³

Whether a case for intervention has been established

[39] Except for the reason that the applicant should launch their own review application, MCEJO does not provide reasons why the applicants in the intervention application should not be joined as applicants in the review application. The question, therefore, is whether the applicants in the intervention application, themselves, have made a case to be granted leave to intervene in the review application.

[40] The intervention of persons as parties to an existing action is provided for in Uniform Rule 12. The rule stipulates that any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet.

[41] The position in regard to intervention was made clear by the Constitutional Court in *SA Riding for the Disabled Association v Regional Land Claims Commissioner & Others*,⁴ wherein the court opined as follows:

³ See *Luna Meubels Vervaardigers (Edms) Bpk v Makins and Another (t/a Makins Furniture Manufacturers)* 1977 (4) SA 135 (W).

⁴ 2017 (5) SA 1 (CC).

"[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*⁵ 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." "

[42] Uniform Rule 10 (1) which provides for the joinder of parties, stipulates that the right to relief of the persons proposing to join as plaintiffs [applicants] depends upon the determination of substantially the same question of law or fact which, if separate actions were instituted, would arise on each action, and provided that there may be a joinder conditionally upon the claim of any other plaintiff failing.

[43] The court in *Shapiro v South African Recording Rights Association Ltd (Galela Intervening)*⁶ held that whilst this test applies to persons wishing to intervene as defendants or respondents, the first requirement thereof (i.e the direct and substantial interest requirement), is too limited, and will be generally inapplicable, for persons wishing to intervene as plaintiffs or applicants but

⁵ Nelson Mandela Metropolitan Municipality v Greyvenouw CC 2004 (2) SA 81 (SE) at 898B-C.

⁶ 2008 (4) SA 145 (W) at 152F – 153B.

should be dependent, as stated in *Vitorakis v Wolf*,⁷ upon the determination of substantially the same question of law or fact.

[44] The test, therefore, is that, as in the case of joinder as of right, the applicant for leave to intervene must show that she has a 'direct and substantial interest' in the subject matter of the dispute. The question to be asked is whether the party seeking leave to intervene has a direct and substantial interest in the subject matter of the dispute.

[45] MCEJO does not, in essence, dispute the fact that the applicants in the intervention application have a direct and substantial interest in the review application. MCEJO's argument is that the applicants will not be in a position to disclose their interest in the review application if they do not file any documents or heads of argument, as they intend not to do. The argument, in my view is misplaced. It is not necessary that the applicants in the intervention application file documents in the review application to show that they have direct and substantial interest in the review application. That requirement should be alleged and proved in the intervention application, as the applicants in the intervention application have done in this instance. For the applicants in the intervention application to be granted leave to intervene, they should establish the interest in the intervention application.

[46] The main object of MCEJO, in terms of its constitution, is to protect the rights of the members of the organisation who are members of the communities

⁷ 1973 (3) SA 928 (W) at 930G – H.

affected by the open-cast coal mining in the vicinity of where they reside. The applicants in the intervention application should be granted leave to intervene for whilst MCEJO's view is not to proceed with the review application, the applicants in the intervention application can take forward the interest of any other members of the organisation who are said not to be represented by MCEJO and that MCEJO had undertaken to protect but seem to be abandoning. Thus, it can only be in the interest of justice to allow the applicants to intervene in these proceedings.

[47] Even if it can be accepted that MCEJO is in the review application acting on behalf of its members, as it alleges, the challenge is that in its founding papers in the review application, it alleges that it is also acting in the public interest and the interests of all the people residing in the vicinity of the open-cast mining who are affected thereby. In withdrawing the review application on the basis of the mandate of its members only, the interests of the public and of all the other people residing in the vicinity of the open-cast mining who are affected thereby, which MCEJO was protecting, will now be placed in jeopardy. As such, the applicants in the intervening application, if allowed to intervene in the review application, will be protecting the said interests.

[48] Therefore, intervention application ought to be granted.

Re: The Withdrawal Application

[49] The withdrawal application is based on two grounds, namely the withdrawal of the review application by MCEJO and the order to declare that

Youens' mandate has been withdrawn. I deal hereunder with the two grounds in turn.

The Order for Withdrawal of the Review Application

[50] Having granted the applicants in the intervention application leave to intervene in the review application, whether the withdrawal application is granted or not seems now to be of no consequence.

[51] In accordance with Uniform Rule 41 (1) (a), a person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings.

[52] It is common cause that the review application was set down for hearing on 18 and 19 March 2021. The application was stood down pending the hearing of the withdrawal application. That the application was not heard on the dates it was scheduled for hearing, does not mean that the matter was not set down for hearing.

[53] MCEJO can, therefore, not withdraw its review application without the consent of the respondents in the review application or leave of the court. It is common cause that the consent has not been granted by any of the respondents in the review application. The withdrawal should, thus, be with leave of the court.

[54] Having exercised my discretion in that regard, the withdrawal application falls to be dismissed on the basis of all the reasons provided in the intervention

application. Similarly, it is trite that a court should not force a party to pursue a matter in which it has lost interest. It is not in dispute that MCEJO has lost interest in the review application and it would not be prudent to force it to proceed with the review application, under the circumstances. However, since the applicants in the intervention application have been granted leave to intervene, it means that they have now been joined as applicants to the review application and MCEJO can no longer withdraw the review application. MCEJO can only withdraw as a party and/or litigant in the review application.

The Order to Declare Youens' mandate withdrawn

[55] As regard the declarator, there is a material dispute of fact as to who Youens is legally representing in these proceedings or whether Youens' mandate has been withdrawn. As is trite, where there is a real, genuine and *bona fide* dispute of fact, the *Plascon-Evans*⁸ rule finds application, and the respondent's version must prevail unless it is so untenable as to be rejected out of hand.

[56] I am satisfied that the answering affidavit filed on behalf of Youens and MCEJO contains allegations which indeed give rise to such a dispute of fact in respect of the material allegations underpinning the issue of whether Youens' mandate has been terminated and by whom. For this reason, the *Plascon-*

⁸ *Plascon-Evans Paints Ltd v Van Riebeeck Paints Pty Ltd* 1984 (3) 623 (A) at 634E-635C.

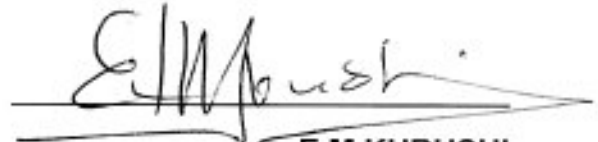
Evans principle dictates that the application should be determined on the version set out in the answering papers.

[57] In the circumstances, the withdrawal application falls to be dismissed.

ORDER

[58] Consequently, I make the following order:

1. The court dispenses with the forms and time periods for service as required by the rules of this court in terms of Rule 6(12) and the intervention application is heard as a matter of urgency.
2. The intervention application is granted.
3. The first, second, third and fourth applicants in the intervention application are granted leave to intervene and to be joined as the second, third, fourth and fifth applicants in the review application under case number 82865/2018.
4. The first respondent in the intervening application is ordered to pay the costs of the intervening application including costs of two counsel.
5. The withdrawal application is dismissed.
6. The applicant in the withdrawal application is ordered to pay the costs of the withdrawal application including costs of two counsel.


E.M KUBUSHI

JUDGE OF THE HIGH
COURT

GAUTENG DIVISION, PRETORIA

Appearance:

Applicants' Counsel : Adv. Anna-Marie de Vos SC
Adv. L. Ferreira

Applicants' Attorneys : **Youens Attorneys**

1ST, 2ND, 3RD, & 5TH Respondents' Attorney : Mr Eben Snyman

1ST, 2ND, 3RD, & 5TH Respondents' Attorneys : **The State Attorneys,**
Pretoria.

4th Respondent's Counsel : Adv. P. Lazarus SC
Adv. N. Ferreira
Adv. M. Salukazana

4th Respondent's Attorneys : **Malan Scholes**
Incorporated

9TH Respondent's Counsel : Unknown
9th Respondent's Attorneys : **Austen Smith Attorneys**

11TH to 14TH Respondents' Attorney : Mr Dennis Sibuyi
11TH to 14TH Respondents' Attorneys : **DMS Attorneys**

Date of hearing : 18 March 2021

Date of judgment : 28 April 2021