

**REPUBLIC OF SOUTH AFRICA**



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

Case no: 42562/2015

|          |                                                                                     |
|----------|-------------------------------------------------------------------------------------|
| (1)      | REPORTABLE: No                                                                      |
| (2)      | OF INTEREST TO OTHER JUDGES: No                                                     |
| 27.03.25 |  |
| DATE     | SIGNATURE                                                                           |

In the matter between:

**ENRC MOZAMBIQUE LIMITADA**

Applicant

and

**RIVERLAND HOLDINGS LIMITED**

Respondent

This judgment was delivered by uploading it to the court online digital database of the Gauteng Division of the High Court of South Africa, Johannesburg, and by email to the attorneys of record of the parties on 27 March 2025.

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**JUDGMENT**

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## **VAN DER WALT AJ**

### *Introduction*

- [1] I have before me two applications. The one is an application for leave to appeal. The other is an application in terms of Rule 42 of the Uniform Rules of Court to vary an order of this court. Both applications relate to a judgment I gave on 10 November 2024.

### *Factual background*

- [2] Very briefly, the matter is about specific performance in terms of an oral agreement concluded in 2011. Riverland sought to enforce the oral agreement and payment for the performance of its obligations in terms of it. Riverland attached to its founding affidavit invoices, schedules and accounts that show the outstanding amount due to it for labourers provided to ENRC. Among the affidavits it filed, were affidavits by the two persons involved in the conclusion of the oral agreement. They made common cause about its terms.
- [3] ENRC answered with its own version of the oral agreement, but did not lead evidence of anyone within earshot when it was concluded. Notwithstanding not calling into question the credibility of the two persons involved in the conclusion of the oral agreement, it sought to put into evidence documents which the deponents to its affidavits interpreted as indicative of its terms. Most importantly, it sought to show that the agreement related to more than the provision of labourers (or manpower).
- [4] ENRC made two arguments that remain relevant to the application for leave to appeal. The first is about the authorisation of the main application. The second is about disputes of fact on the papers.

### *The argument about authorisation*

- [5] ENRC disputed Mr Gomes' authorisation to have had the main application issued in its answering affidavit. In reply, Mr Gomes attached a resolution he said was that of Riverland. ENRC did not rely on Rule 7 of the Uniform Rules of Court and over the course of 9 years of litigation it did not assert its rights in terms of the Rule. The attack on the authorisation of the main application changed over the course of the proceedings. In its heads of argument in the main application, ENRC sought to attack the authenticity of the resolution. At the hearing of the main application, the attack on the authenticity of the resolution was maintained, while ENRC also made arguments about the content (or efficacy) of the resolution.
- [6] I held that it is established that the way to challenge the authority of anyone acting on behalf of a litigant is to use the procedures envisioned by Rule 7(1) of the Uniform Rules of Court. As ENRC had not done so, its arguments about authority, which included the eventual attack on the authenticity of the resolution, could not succeed. I also found that the facts show Mr Gomes to have been properly authorised to represent Riverland. The resolution itself constitutes proof of the authorisation and all the facts before the court showed that Mr Gomes at all relevant times had been properly authorised to represent Riverland in its dealings with ENRC.
- [7] In its heads of argument filed in the application for leave to appeal, ENRC submits that it "is established that the way to challenge the authority of anyone acting on behalf of a litigant, is to use Rule 7." In doing so it refers to the same Supreme Court of Appeal authority I referenced in the judgment in the main application. I would have thought that is the end of the argument. Surprisingly, it isn't. Instead, ENRC referred to a judgment of the Northern Cape Division, Kimberley. According to ENRC it renders the use of Rule 7 optional. This is a striking submission in the face of clear Supreme Court of Appeal ratio to the

contrary. The submission cannot be sustained. The Kimberley judgment was not relied upon in the main hearing, was decided prior to the relevant judgment by the Supreme Court of Appeal, is most probably wrong and is in any event not binding on this court.

- [8] Little, if anything, remains of the arguments in respect of Rules 7 and 63. All the relevant evidence before the court was produced by Riverland. ENRC was therefore reduced to a factually entirely unsubstantiated denial of the application's authorisation and the authenticity of the signature on the resolution, a self-serving interpretation of the resolution that ignored the context in which it was made and, at worst, a submission that what was said in the replying affidavit somehow determined the ambit of the authority bestowed by the resolution itself. These arguments have no prospects of success on appeal.

*The argument about disputes of fact*

- [9] In considering its arguments in respect of this court's reasoning about the purported disputes of fact, ENRC submits that the court "effectively determined the matter on the probabilities". That is wrong. This court found that ENRC filed affidavits by deponents who had no knowledge of the facts they purported to speak to. ENRC's arguments, which ignore that finding, have no prospects of success on appeal.

*The application for a variation of the order*

- [10] Both parties filed applications in terms of Rule 42 to vary the court's order made on 10 November 2024. Riverland asked that the order reflect the bank account into which moneys due are to be paid. ENRC asked for a variation that would in effect confirm that the in duplum rule applies to the order. Riverland did not

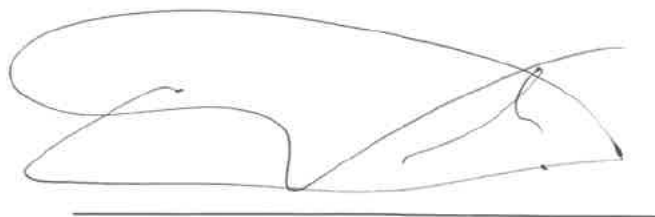
persist in its application. ENRC persisted in its application on the basis that it sought certainty about the matter.

[11] The order is obviously subject to the in duplum rule. Much the same as all orders of court are subject to the rules that must be abided to ensure that they are lawfully executed. In addition, Riverland did not take issue with the calculations in respect of interest ENRC assert are to be made. In fact, during the hearing counsel for Riverland freely submitted that they reflect the law. I therefore fail to see how the variation of the order can lead to any further certainty in the matter.

[12] Rule 42 isn't a gateway through which parties can obtain the guidance of the court as to the lawful execution of an order where no uncertainty in that regard exists. It carefully crafts out exceptions to the important general rule that once a court has pronounced on a matter, it itself has no authority to correct, alter or supplement it. The relevant exceptions are, firstly, that there must be a "patent error or omission" in the order and, secondly, that it was granted because of a "mistake" common to the parties. The 10 November 2024 order does not contain a "patent error or omission" and was not granted because of a mistake common to the parties.

[13] In the event, I make the following order:

The applications are dismissed with costs on scale C, including the costs of two counsel.

A handwritten signature in black ink, appearing to read 'Nico van der Walt', is written over a horizontal line.

Nico van der Walt

Acting Judge, Gauteng Division,  
Johannesburg.

Heard: 26 March 2025

Judgment: 27 March 2025

Appearances:

**For the applicant**

Adv A. Eyles SC

Instructed by Eric van den Berg Attorneys Inc

**For the respondent**

Adv H.J. Smith SC

with him A. Myers

Instructed by Myers Inc. Attorneys