

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case number: A206/22

Date of hearing: 30 April 2025

Date delivered: 7 May 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
7/5/25	
DATE	SIGNATURE

In the matter between:

MARK DYLAN OATES

Applicant

and

**SOUTH AFRICAN COUNCIL FOR THE
ARCHITECTURAL PROFESSIONS
COUNCIL FOR THE BUILT ENVIRONMENT**

First Respondent

Second Respondent

JUDGMENT

SWANEPOEL J:

[1] The main case before court is an appeal by the first respondent in terms of section 33 (6) (b) of the Architectural Profession Act, 2000, ("the Act"), against a ruling by its Appeal Committee. The details of those proceedings are not relevant to this enquiry.

[2] Following on an adverse finding by the first respondent's Appeal Committee with regard to the proceedings before a Disciplinary Tribunal, Ndzabandzaba Attorneys delivered a notice of appeal to this court, on behalf of the first respondent, on 4 August 2022. On 1 September 2022 the applicant delivered a notice of opposition, and a notice in terms of rule 7 of the Uniform Rules, challenging the attorney's authority to act for the first respondent.

[3] The first respondent's attorneys then delivered a reply to the rule 7 notice, attached to which was a resolution of the first respondent's council, and a special resolution by the first respondent's registrar, which confirmed that Ndzabandzaba Attorneys had been authorized to act for the first respondent.

[4] Ordinarily, the filing of a special power of attorney would be the end of the authorization challenge. That was not the case in this matter. Some 14 months later the applicant launched this application in which he seeks a declaratory order that Ndzabandzaba Attorneys are not authorized to act for the first respondent, and that the filing of the notice of appeal is void. The applicant also seeks costs to be paid by the first

respondent's registrar and by Ndzabandzaba attorneys, on a punitive scale.

Application to strike out

[5] The first issue for consideration is an application brought by the first respondent to strike paragraphs 6, 7, 8 and 27 of the replying affidavit, on the grounds that the averments made therein are irrelevant, scandalous and vexatious. The striking-out application was abandoned in respect of paragraphs 34 and 37. On closer scrutiny, it is not the entire paragraph that is sought to be struck in each case, but only certain offensive passages contained therein.

[6] In paragraph 6 of the replying affidavit the applicant said the following:

"My experience in the proceedings underlying this matter (which I feel were baseless and nothing more than a vindictive and unauthorized vendetta) is that certain of the SACAP hierarchy use SACAP for their own ends and purposes."

[7] In paragraph 7 of the affidavit the applicant said:

"In light of the fact that the decision of the appeal committee ordered an investigation into the conduct of, *inter alia*, Advocate Fiduli (the Registrar of the SACAP) – he has an apparent self-interest in his conduct not being investigated in accordance with the order of the appeal committee. There is no other rational justification for the conduct in the matter, other than

Advocate Fiduli abusing his position to save his job (which I believe is highly lucrative) and is using SACAP to do so.”

[8] In paragraph 8 the applicant said:

“The obstructive behaviour of the SACAP Registrar (Advocate Fiduli) and now chairperson, are inexplicable - I can conclude only that there is something to hide. The answering affidavit confirms my suspicion for the reasons I detail below.”

[9] Moreover, in paragraph 27, the applicant attacked the first respondent’s attorneys, by saying:

“The obstructive behaviour of Ndzabandzaba Attorneys is much to blame for the delay.”

[10] The main slant of the founding and replying affidavits is to impugn the Registrar’s honesty. When the chairperson deposed to an answering affidavit in which he confirmed that Adv. Fiduli had been authorized to appoint the first respondent’s attorneys, his honesty was also questioned.

[11] The founding and replying affidavits certainly do not make out a case that the Registrar has been dishonest at all in instructing Ndzabandzaba Attorneys. They are replete with accusations against the Registrar, and later, also against the Chairperson, without any substantial basis in fact.

[12] In argument the applicant's counsel pointed me to the ruling of the Appeal Committee regarding the manner in which the Disciplinary Tribunal had been conducted. I read the ruling, and I must say that, although it contains scathing commentary as to the manner in which the initial investigation was conducted, it was not suggestive of dishonesty, and it certainly did not suggest that the Registrar was conducting a vendetta against the applicant.

[12] Averments made in an affidavit are scandalous if they are worded in such a manner as to be abusive or defamatory, whether they are relevant or not.¹ There is, in this case, no evidence whatsoever that the Registrar has a vendetta against the applicant, that he dishonestly produced a resolution authorizing Ndzabandzaba Attorneys, that the Chairperson was somehow in cahoots with the Registrar, nor that the conduct of Ndzabandzaba Attorneys was in any manner improper.

[13] The problem here, it seems to me, is that the applicant believes that the Registrar is moved by improper motives, and the applicant's legal team has bought into this narrative, with little to no evidence to substantiate their belief. I shall, accordingly, strike the offending material from the record. The costs of the striking-out application will follow the result.

Late filing of rule 7 notice

¹ Vaatz v Law Society of Namibia 1991 (3) SA 563 (NM); See also Erasmus, Superior Court Practice, 2nd Ed. D1-91

[14] The first respondent has taken the point that rule 7 allows for a challenge against the authority of an attorney to be filed within 10 days of the aggrieved party becoming aware of the attorney so acting. If the notice is delivered late, the delay may be condoned on good case shown.

[15] The rule 7 notice was delivered a month after the notice of appeal was delivered to the applicant, and so, the first respondent says, the notice is out of time. In the absence of an application for condonation, and having not shown good cause for the late filing, the first respondent says, the applicant may not pursue the authorization issue.

[16] Rule 7 (1) reads as follows:

“(1) Subject to the provisions of subrules (2) and (3), a power of attorney need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorized to so act, and to enable him to do so the court may postpone the hearing of the action or application.”

[17] The applicant does not deny the basic fact that the notice of appeal was sent to him on 4 August 2022, nor that he delivered the rule 7 notice out of time. He rather raises the defence that he had not authorized the delivery of the notice by email. The fact of the matter is though, that it is

not disputed that the applicant became aware of the fact that Ndzabandzaba Attorneys were acting for the first respondent on 4 August 2022. It is also not disputed that the rule 7 notice was out of time.

[18] The first respondent argued that in the absence of a condonation application, the applicant was out of time, and that the application should be dismissed on that ground alone. The applicant argued that an application for condonation was not required, and that on the same basis as in *Pangbourne Properties Ltd v Pulse Moving CC and Another*² I should simply find that good cause exists for the extension of the time period.

[19] *Pangbourne* was concerned with an application where both the answering and replying affidavits had been filed out of time. Neither party sought condonation for the late filing, and neither exercised their remedies under rule 30. The court pointed out that in numerous cases courts have held that affidavits could be admitted into evidence where the interests of justice so dictate. After all, as is now trite, the rules are there for the court.

[20] *Pangbourne* is not authority for the proposition that a party can arrive at court without applying for, nor making out a case for condonation, and then call upon the nebulous “interests of justice” to justify the delay.

² 2013 (3) SA 140 (GJ)

A party must provide cogent reasons why condonation should be granted in its papers, and it must deal with the entirety of the delay.

[21] The applicant merely said the following in reply on this issue:

“27. I accept that there has been some delay in bringing the rule 7 application to finality. However, that delay was underpinned by my earnest attempt to ascertain the authority that Ndzabandzaba Attorneys received to institute the proceedings. The letters written by my attorneys and the rule 35 request that I have issued subsequently... have been ignored by Ndzabandzaba Attorneys. The obstructive conduct of Ndzabandzaba Attorneys is as much to blame for the delay.”

[22] The above passage is mendacious. Firstly, it does not deal at all with the delay in filing the rule 7 notice, and there is no indication of what occurred between 4 August 2022 and 1 September 2022. Secondly, the delays seem entirely to have been caused by the applicant. The timeline is the following:

[22.1] On 9 September 2022, and in answer to the rule 7 notice filed eight days before, the first respondent’s attorneys delivered a resolution by the Council, and a special resolution authorizing Ndzabandzaba Attorneys to act for the first respondent.

[22.2] On 9 March 2023, six months later, the applicant’s attorneys demanded a record of the Council meeting, either by video or by means of an audio recording.

[22.3] On 27 March 2023 the first respondent's attorneys refused the request.

[22.4] On 24 October 2023, another six months on, the applicant's attorneys demanded a resolution signed by all of the Council members.

[22.5] On 2 November 2023, nine days later, the request was refused.

[22.6] On 23 November 2023 this application was launched.

[22.7] On 13 February 2024 the applicant delivered a rule 35 (12) and (14) notice seeking recordings, invitations to the Council meeting and a resolution signed by all Council members.

[23] There is, as I have said, no explanation for the delay in delivering the rule 7 notice. The averment that the first respondent has delayed the case is false.

[24] In considering whether to grant condonation a court must exercise its discretion judiciously. The party seeking condonation must furnish an explanation that covers the entire time of the delay, and which explains the delay sufficiently so as to allow the court to understand how the delay came about, and to assess the party's motives.³ The extent of the delay and the possible prejudice to the other parties if the condonation were to

³ Silber v Ozen Wholesalers (Pty) Ltd 1954 (2) SA 345 (A) at 353 A

be granted are factors to be considered. Furthermore, the prospects of success on the merits must be considered.

[25] As I have said above, there is no explanation whatsoever for the delay in filing the rule 7 notice. The delays thereafter are entirely the fault of the applicant. As far as the applicant's prospects on the merits are concerned, they seem dismal at best, as I will demonstrate below. Consequently, I do not believe that it would be proper to condone the late filing of the rule 7 notice.

[26] On the merits the application must also fail. The applicant alleges that the registrar has a personal interest in the appeal being pursued. In the founding affidavit the applicant suggests that the special resolution was not authorized by the first respondent's council. He points out that the resolution by the council is unsigned. There are, moreover, no minutes of the meeting evidencing that such a decision was taken. The special resolution was signed by the very person who is alleged to have a personal interest in the pursuit of the appeal.

[27] In the answering affidavit the President and Chairperson of the first respondent, Mr. Nduku, answered to the applicant's allegations. He says that he personally chaired the meeting of 19 July 2022 at which the disputed decision was taken to appeal against the finding. Mr. Nduku attached a copy of the minutes of the meeting from which it is evident that the council resolved to note the appeal.

[28] In reply, the applicant changed tack. In addition to suggesting that Mr. Nduku was in cahoots with the registrar in manufacturing a false resolution, the applicant raised the new issue that he did not know whether the meeting of 19 July (if it had at all happened) had been convened properly in terms of the first respondent's rules.

[29] The first point to make is that the applicant is not entitled to change the basis for its attack in reply. In the founding affidavit the attack was that the meeting had never been held, whilst in reply the innuendo was that if the meeting had happened, that it may not have been properly convened. The applicant says, without any basis in fact:

"All that can be gleaned from any of the documents is that Advocate Fiduli attended a meeting where he resolved to authorize himself to appoint Ndzabandzaba Attorneys."

[30] There are no facts to substantiate this contention. I see no basis to doubt Mr. Nduku's affidavit. The attack on his integrity is baseless. Furthermore, where there is a dispute of fact on the papers, I am obliged to accept the respondent's version unless it is so untenable that it can be rejected out of hand. That is not the case in this instance.⁴ I have no reason to reject Mr. Nduku's evidence that the appeal was properly authorized.

[31] The applicant's complaints do not end there. He also says that the Council resolution (which Adv Fiduli allegedly forged) authorized the first

⁴ See *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A))

respondent's attorneys to review and set aside the decision of the CDE Appeal Committee, whilst the resolution signed by Adv. Fiduli also authorized the attorneys to appeal against the ruling. The applicant argues that the resolution gave specific authority to the attorneys, which did not include the filing of an appeal.

[32] In support of its argument the applicant has referred me to *Eriksson v Hollard Insurance Company Ltd and Others*⁵ where Strydom J said the following:

"To establish the authority to provide a mandate, a court will require the resolution of the entity, which can either provide the representative with a general authority or a specific authority to appoint attorneys to institute proceedings against a defendant or defendants. An example of a specific authority would be where an entity has resolved to appoint a specific attorney to institute legal proceedings against a mentioned defendant."

[33] The applicant's argument is that the resolution constitutes a specific authority to only review and set aside the ruling of the Appeal Committee, and not to appeal to the High Court. This argument misses the point. A general authority is given where a representative is authorized to appoint attorneys whenever he or she regards it necessary to do so, whereas a specific authority is where a representative is authorized to instruct attorneys in a particular instance. The purpose of a resolution is to authorize the representative to instruct attorneys to act for

⁵[2023] ZAGPJHC 39 (24 January 2023)

the institution, either generally or in a specific case. It is not intended to prescribe to the attorney how to go about prosecuting the matter.

[34] Mr. Nduku's evidence is clear: Advocate Fiduli was authorized to appoint Ndzabandzaba Attorneys to act for it in proceedings relating to the Appeal Committee's ruling, whether that entailed a review of the proceedings, or an appeal against the ruling.

[35] In light of the above, the application must fail and I make the following order:

[35.1] The following passages are struck from the applicant's replying affidavit:

[35.1.1] Paragraph 6:

"My experience in the proceedings underlying this matter (which I feel were baseless and nothing more than a vindictive and unauthorized vendetta) is that certain of the SACAP hierarchy use SACAP for their own ends and purposes."

[35.1.2] Paragraph 7:

"In light of the fact that the decision of the appeal committee ordered an investigation into the conduct of, *inter alia*, Advocate Fiduli (the Registrar of the SACAP) – he has an apparent self-interest in his

conduct not being investigated in accordance with the order of the appeal committee. There is no other rational justification for the conduct in the matter, other than Advocate Fiduli abusing his position to save his job (which I believe is highly lucrative) and is using SACAP to do so.”

[35.1.3] Paragraph 8:

“The obstructive behaviour of the SACAP Registrar (Advocate Fiduli) and now chairperson, are inexplicable - I can conclude only that there is something to hide. The answering affidavit confirms my suspicion for the reasons I detail below.”

[35.1.4] Paragraph 27:

“The obstructive behaviour of Ndzabandzaba Attorneys is much to blame for the delay.”

[35.2] The applicant shall pay the costs of the striking-out application on Scale B;

[35.3] The application is dismissed with costs on Scale B.


SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Counsel for the applicant:	Adv. M Cooke
Instructed by:	Adams Attorneys
Counsel for the first respondent:	Adv. T Mathopo
Instructed by:	Ndzabandzaba Attorneys
Heard on:	30 April 2025
Judgment handed down:	7 May 2025