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

Case Number: A2024-113909

REPORTABLE: ~~YES~~ / NO

(1) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(2) REVISED: NO

6 August 2025

In the matter between:

MEDICROSS HEALTHCARE GROUP (PTY) LTD

Appellant

and

DR LH LINDE & ASSOCIATES

Respondent

JUDGMENT

NOKO J (Wilson J *et* Botsi-Thulare AJ concurring):

Introduction

[1] The appellant, (“Medicross Healthcare Group (Pty) Ltd”) instituted appeal proceedings against the order and judgment of Shepstone AJ delivered on 21 June 2023. The urgent court (Court *a quo*) granted in favour of the respondent, Dr LH Linde and Associates, the following orders:

1. The Applicant shall forthwith pay any amount it receives in its bank accounts it currently holds with the First Respondent and the Second Respondent, from debtors in respect of debts incurred before 31 May 2023, into the trust account of TLI Inc to Attorneys Incorporated held at ABSA BANK, Meyersdal with account number 4[...].
2. Directing the First Respondent [Nedbank Ltd] to take all necessary steps to ensure that no monies are paid from the Applicant's bank account, having account number 1[...], without prior written authorization or approval from the Applicant's board of directors being provided to the First Respondent.
3. Directing the Second Respondent [First Rand Ltd] to take all necessary steps to ensure that no monies are paid from the Applicant's bank account, having account number 6[...], without prior written authorization or approval from the Applicant's board of directors being provided to the Second Respondent.
4. Directing the first and Second Respondents to give the Applicant full access and control over the Applicant's bank accounts as held with them with effect from 1 June 2023.
5. The Third Respondent [Medicross Healthcare Group (Pty) Ltd] shall not be able to transact in any manner on the said bank accounts.
6. Directing the First and Second Respondents to release any hold which they may currently have on any of the funds contained in the Applicant's bank accounts as held with them.
7. Notwithstanding the above, the Third Respondent be entitled to receive monthly bank statements of the above accounts, from the Applicant's [Dr Linde and Associates] attorneys if required and requested in writing.

8. The Third Respondent is ordered forthwith to furnish the file numbers of all of the Applicant's patients (which appear on the electronic debtors' system) to the Applicant.

9. The remaining issues in the application are postponed to the ordinary motion roll.

10. The counterapplication is dismissed.

[2] The Court *a quo* postponed further relief that the respondent sought to the normal roll and reserved costs for later determination. This appeal is with the leave of the Supreme Court of Appeal.

Background

[3] The background facts were comprehensively set out in the judgment of the Court *a quo* and heads of argument submitted by the parties and will not be regurgitated in detail in this judgment. In brief, the parties entered into three agreements. First, an administration agreement in terms of which the appellant was appointed to administer the medical practice conducted by the respondent at a fixed monthly administration fee. Either of the parties was entitled to terminate the agreement by giving the other party 30 (thirty) days' written notice of termination.

[4] The second agreement was the loan and financing agreement in terms of which the appellant agreed to loan and advance the respondent the aggregate amount required to pay the respondent's practitioners, to buy materials, consumables, and other medical supplies. The loan advanced would be settled on a month-to-month basis. The respondent would create a loan account for the benefit of the appellant and credit the account with the amount advanced by the appellant, including the administrative fees due. The appellant was entitled to cancel the loan and financing agreement in the event the respondent failed to pay the amount due within 3 days of the date of payment.

[5] The third agreement was a cession of book debts agreement in terms of which the respondent ceded in favour of the appellant its current and future claims against its debtors (debtors' book) in *securitatem debiti* as continuing covering security for the due payment of all sums of money due to the appellant. The said cession would include all debts, whether arising from the administration agreement or the loan and financing agreement. The cession agreement would remain extant until cancelled by the appellant (*vide* clause 3).

[6] The respondent had, in addition, executed two irrevocable powers of attorney in favour of the appellant, dated 24 May 2016 and 17 November 2020 respectively. The said powers of attorney entitled the appellant to open, operate, and collect all the payments made into two bank accounts, which were opened in the respondent's name. The first account was opened with Nedbank in terms of the powers of attorney dated 24 June 2016, and the other account was opened with First Rand Bank in terms of the powers of attorney dated 8 December 2020. The operation of the accounts was fettered, and the respondent could not operate the said accounts on its own. The appellant could also sweep funds from the said accounts into other bank accounts.

[7] The respondent dispatched a written notice on 2 May 2023 conveying its intention to cancel the administration agreement. In turn, the appellant cancelled the loan and financing agreement on 25 May 2023 due to the respondent's failure to make timeous payments of monies due under the loan agreement. The respondent purported to cancel the two powers of attorney in writing on 30 May 2023, which (cancellation) was rejected by Nedbank and FirstRand, who were instructed by the appellant to deny the respondent access and control over the bank accounts.

[8] Given the banks' refusal to recognise the cancellation of the powers of attorney, the respondent launched an urgent application which served before the Court *a quo*. The respondent sought an order discontinuing the appellant's ability to make payments without the approval of the respondent and to put an end to the practice of sweeping the funds from the bank accounts. In turn, the appellant brought a counter-application seeking an asset preservation and anticipation interdict based on the apprehension that the respondent would liquidate the medical practice to

evade repayment of monies owed to the appellant. The amount due as at the hearing of the matter before the Court *a quo* was R4.2 million.

Before the Court a quo

Revocability of powers of attorney.

[9] The Court *a quo* identified the crux of the case in the following terms: that “... the quintessential (and thorny issue) is this: is the Applicant entitled to revoke a power of attorney given to the third respondent to open and operate banking accounts on its behalf? If the answer is yes, then the main application must succeed.”¹²

[10] The Court *a quo* had regard to the position set out by the SCA in *Stupel and Berman Inc v Rodel Financial Services Pty Ltd*,² which held that the principal may terminate the mandate of its agent even if the mandate is described as irrevocable, except where the authority given under the mandate is ‘coupled with an interest’.³ In this regard, counsel for the parties referred to *Chevron South Africa*,⁴ and *Smit*, which were considered *locus classicae* relative to the revocability of power of attorney.⁵

[11] The Court *a quo* considered different previous judicial pronouncements as outlined in the above two judgments and concluded that a distinction must be drawn between an interest in the subject matter of the power versus an interest arising from the exercise of the power of attorney, which is in fact a cession or transfer of rights. If the agent has a personal interest where authority has been delegated, the principal’s revocation of such authority would constitute a breach entitling the aggrieved party to a remedy, such as damages, an interdict, or specific performance.

[12] The Court *a quo* preferred to follow *Chevron*, where it was held that “A true authority or power delegated to an agent is thus a personal competency that allows

¹ See para 17 of the judgment CL 18-548.

² (3) SA 36 (SCA).

³ See Judgment of the Court *a quo*, at para 28, CL 18-552).

⁴ *Chevron South Africa v Ufudu Transport Pty Ltd* [2016] ZAGPJHC 251.

⁵ *Smit and Others v Origize 166 Strand Real Estate Pty Ltd and Others* [2020] ZASCA 132.

the agent to act on behalf of the principal. This personal competency⁶ cannot be owned or possessed by another” (vide para 60). The Court *a quo* proceeded and stated that:

“It is difficult to comprehend, with due deference to the judgment of the Supreme Court of Appeal in *Smit*, how a principal can transfer a personal competency such as expression of will as security for a debt security for a debt can be given by the cession of her personal rights, by means of a pledge or by registration of her personal or real security in the deeds office.” (vide para 61)

[13] The judge referred to the SCA decision in *Stupel & Berman Inc.*,⁷ where it was stated that “In the US, a distinction was drawn between an interest in the subject on which the power is to be exercised and an interest (in that) which is produced by the exercise of the power. Only the former is considered as “coupled with an interest” and not revocable even on the death of the grantor of the power. The court *a quo* held further that authority coupled with an interest signify a transfer of real right in which case the holder of authority would be exercising the right as a holder and not on behalf of the principal and as an example cession *in securitatem debiti* or pledge of movable property with the right to sell on default of the pledgor’s debit repayment obligation”.

[14] On the other hand, if power is given as security, it is required that there should be cession of rights or delivery of possession of property, failing which no security is conferred. Such interest in movable and immovable assets requires to be registered in the deeds registry. Our law does, the court *a quo* held, “... not recognise a non-possessory security interest in movable property” except as provided for by section 1(1) of the Security by Means of Movable Property Act, 1943. Without the foregoing, the revocation remains valid, and the agent would be entitled to common law remedies for the breach of the contract. In conclusion, the court held that since the power was not given as security, the court did not need to follow *Natal Bank*.

⁶ Except where the powers also relate to what the court *a quo* referred to as real competency, which relates to the relationship with the property itself, in which case authority or power granted would not be revocable. see para 22 of the judgment.

⁷ *Stupel & Berman Inc v Rodel Financial Services (Pty) Ltd* 2015 (3) SA 36 SCA.

[15] The Court *a quo* stated further that powers of attorney mandated the appellant to operate the respondent's bank account for as long as the respondent is indebted to the appellant, but do not mandate the appellant to operate the banking account as security for any amounts owing to the appellant. As such, the funds standing to credit cannot form part of the security or cession by virtue of the powers of attorney. The powers of attorney were just to operate the account and facilitate payment of the monies for the debt owed to the appellant and not as security for the debts. To this end, the Court *a quo* distinguished the facts from the *Chevron* judgment and found that the respondent was entitled to revoke the powers of attorney granted to the appellant. Further that the suite of agreements was terminated on 31 May 2023. The relief sought in para 1⁸ was granted, and the remaining prayers were stood over to the normal roll. The Court *a quo* further granted an order directing the appellant to provide files which the respondent needed to identify the payments made by debtors and classify the payments as part of the cession of book debts.

Counter application

[16] The Court *a quo* considered the counter-application launched by the appellant, who sought an order that the funds in the accounts be frozen, as once it loses control over the bank account, it loses control over the funds ceded to it. Furthermore, the respondent would liquidate itself with the object of frustrating the appellant's claim for monies owing. The Court *a quo* found that the allegations that the respondent may not be able to pay its debts are not supported by evidence and therefore unsustainable. In addition, the undertaking by the respondent that funds received from the book debts incurred before 31 May 2023 would be paid into the attorneys' trust account tilts the balance of convenience in favour of the respondent. To this end, the counter-application was dismissed.

[17] The appellant considered the order to mean that the respondent was given unlimited access to two bank accounts, which had the effect of confirming the unilateral cancellation of the two irrevocable powers of attorney. In addition, the said order meant that the respondent would be entitled to collect debtors' books which

⁸ Other prayers sought are not relevant for this judgment.

were ceded to the appellant *in securitatem debiti*. In the premises, the appellant decided to launch an appeal against the order and judgment of the Court *a quo*.

[18] The appellant raised several grounds as the basis⁹ for the appeal, which are truncated in this judgment. First that the Court *a quo* erroneously found that all three agreements were terminated by the respondent on 31 May 2023, whereas the deed of cession remained extant. Second, that the Court *a quo* erroneously found that the powers of attorney were not given to the appellant as additional security beyond the security of the cession of book debts, whereas they were given to, *inter alia*, enable the appellant to collect payments from the respondent's debtors. Third, the Court *a quo* erred in directing the appellant to furnish the respondent with several files of all patients without the respondent providing a legal foundation. Fourth, the Court erred in directing that the monies should be paid into Tli Incorporated Attorneys but failed to direct how the monies should be dealt with once paid to the attorneys. Fifth, the Court *a quo* erred in concluding that there is no final or consistent definition of what constitutes a power of attorney coupled with interest, and further that the powers of attorneys were truly irrevocable, notwithstanding the findings in *Smit*. Sixth, the Court *a quo* failed to follow the principles enunciated in this division in *Kroon*¹⁰ without distinguishing it or finding the same to have been incorrectly decided.

On appeal

[19] The parties have, during argument, identified the following issues, which require adjudication by the court: appealability of the orders of the Court *a quo*, the revocability of the powers of attorney, and whether the respondent was entitled to the electronic debtors' system.

Appealability of the order.

⁹ The Court *a quo* having decided at para 15 of the judgment on CL 18-582 that the grounds of appeal were distilled in one question, namely this: did the revocation of the power of attorney given by Linde and Associates to Medicross destroy the security held by Medicross- in the form of the cession of book debts?

¹⁰ *Corrie Kroon & Associates Inc v Nedbank Ltd and Others* ¹¹ [2020] ZACC 10; 2020 (8) BCLR 916 (CC); 2020 (6) SA 325 (CC).

[20] The counsel for the respondent contended that the order of the Court *a quo*, *inter alia*, directed that funds paid by the debtors should be kept in the attorneys' trust account, and the remainder of the claims were referred to the normal motion roll. This would mean that the funds would be kept pending the finalisation of the dispute referred to the ordinary roll, hence being interim in effect. As set out in *Economic Freedom Fighters v Gordhan*,¹¹ the order of the court *a quo* did not dispose of a substantial portion of the relief sought. Further that it is not susceptible to being altered by the court of the first instance and is not definitive of the rights of the parties.¹¹

[21] In retort, the counsel for the appellant argued that the order granted by the Court *a quo* is final and there is no room for the same to be revisited by the Court *a quo*. In addition, the order does not provide for what should happen after the funds are deposited into the trust account of the attorneys.

Revocability of the powers of attorney.

[22] The counsel for the appellant contended that the Court *a quo* failed to follow the SCA in *Smit*, where it was clearly stated that the power of attorney given as security for a debt owing remains irrevocable for as long as the debt remains unpaid. Further, the said powers of attorney would only be revoked with the concurrence of the agent, and in this instance, it would refer to the appellant.

[23] In addition, counsel argued that the Court *a quo* erred in the interpretation of the judgment in *Chevron*, which acknowledged that powers of attorney coupled with interest are not revocable. The Court *a quo* should not have followed the judgment of the lower court ("*Chevron*") whilst the issue was settled by the SCA in *Smit*, counsel continued. Furthermore, this division in *Kroon* was seized with similar facts, where the Court held that under those circumstances, the agent would lose control over the ceded debtors' book if the power of attorney is cancelled. (*vide* Para 33).

¹¹ See para 6 & 7 of the Respondent's Heads of Argument, at CL 19-30.

[24] The counsel for the respondent referred to the judgment in *Stupel and Smit* and reemphasised that the powers of attorney would remain irrevocable provided that they were given as security for a debt for as long as the debt remains due. In *casu* the powers of attorney were not given for that purpose, and the security for the debt was the book debts, which were accordingly ceded.

[25] The money in the account was also not ceded as security for the debt, and the appellant is not entitled to it, lest it mean that the appellant would be entitled to operate the account *ad infinitum* and have access to the funds which were received after 31 May 2023, which may also include shareholders' funds.

[26] Since both loan agreement and cession made provisions for non-variation clauses, it cannot be concluded that the powers of attorney should be interpreted to have any impact on those agreements unless the said clause is complied with.

[27] The respondent's counsel persisted with the argument that the powers of attorney were not granted as security for any debt and are therefore revocable.

Electronic debtors' system

[28] The counsel for the appellant contended that the Court *a quo* erred in finding that the respondent is entitled to the patients' numbers on the electronic debtors' system. The particulars of the patients are with the consulting doctors and could be accessed for the purposes of treating patients. To the extent that cession is still extant, the respondent does not require the said patient's numbers, which are not necessary for the patient's treatment but critical for debt collection.

Counter-application.

[29] Concerning the counter-application, the counsel for the appellant submitted that the funds should be preserved as security until the finalisation of the *lis*. This will safeguard the interest of the appellant in the event the respondent becomes insolvent.

[30] The counsel for the respondent, on the other hand, submitted that the Court *a quo* correctly dismissed the counter-application since the requirements for a preservation order anti-dissipation interdict were not met. The payment of the funds into the attorneys' account was found to safeguard the interest of the appellant and the Court *a quo*, having found that this tilts the balance of convenience in favour of the appellant.

[31] In conclusion, the counsel for the respondent asked that the appeal be dismissed with costs, and the appellant is seeking that the appeal be upheld with costs.

Legal principles and analysis.

[32] The legal position has been clarified that, whilst in general irrevocable power of attorney can be revoked, there are exceptions in instances where the power of attorney has been given as security for a debt owing. In the premises, the powers of attorney would remain extant until the indebtedness is extinguished.

[33] In an endeavour to distinguish available authorities, the Court *a quo* held that, even though there was no reference to security in the power of attorney, it was given as security for a debt. This position has been spelt out in *Smit*, where the SCA quoted with approval the sentiments in *Glover v Bothma*,¹² where it held that "An authority coupled with interest is one given for the purpose of protecting or securing any interest of the agent..." Further that such authority is given and allows one to transact for his benefit and not for the benefit of the principal. Under these circumstances, irrevocability will be implied even if the power of attorney does not expressly state so. "The test is whether it is intended for the protection or securing of an interest of the agent. If it is, it is irrevocable, until such as the protection or security is no longer needed".

[34] The appellant's counsel correctly submitted that the Court *a quo* was bound by the judgment of the SCA in *Smit*. Furthermore, the court was obliged to follow

¹² 1948 (1) SA 611 (WLD)

Kroon, decided in this Division, and concluded that a party in the appellant's position requires access to the bank account, failing which it would lose its security. The Court *a quo* failed to explain why the said judgment should not be followed alternatively to clearly state that the said judgment then it was incorrectly decided.

[35] It seems to me that both *Smit* and *Kroon* were correctly decided and are applicable to this case. The fundamental point is that the appellant agreed to lend the respondent everything it needed to run a medical practice, and to administer that practice, in return for control over the practice's bank accounts. The purpose of that control was plainly two-fold: first, to allow the appellant to administer the practice, and second, to provide the appellant with security for the recovery of all of its outlays in doing so. Any other interpretation of the parties' agreements is fanciful. In concluding, erroneously, that the mandate given to the appellant was not coupled with a security interest in the money paid into the bank account, the Court *a quo* stripped the appellant of the security it had bargained for. Although it is clear that the Court *a quo* considered the overall effect of the agreements to be oppressive, there was simply no basis on which it was entitled to interfere with the security arrangements the parties had reached.

Appealability of orders

[36] The order of the Court *a quo* is made in final terms that the appellant's access to the bank account is limited. There is no indication in the order that this is a temporary measure pending some other outcome.

[37] In any event, it is in the interest of justice¹³ that certainty must be reached, as the Court *a quo* did not detail as to what should happen to the funds payable to the respondent's attorneys. As such, the contention that the orders were not appealable is unsustainable.

Counter-application

¹³ *City of The Tshwane Metropolitan Municipality v Afri-Forum and Another* [2016] ZACC 19.

[38] The appellant's counsel submitted that the horse has bolted, and the issue on the counter-application would be resolved in the action proceedings launched against the respondent. That notwithstanding, I was persuaded that the interim relief as set out in the counter-application should be granted, to preserve the value of the appellant's security.

Conclusion

[39] It is trite law that the appeal court would ordinarily be slow to interfere with the judgment and order of the Court *a quo*. Interference would be allowed where it can be demonstrated that the Court *a quo* improperly applied the legal principles or misdirected itself. In this case, it is axiomatic that the Court *a quo* failed to, *inter alia*, follow the principle of *stare decisis*, which culminated in its findings being misdirected, susceptible to being reversed and or set aside. In the premises, the appeal is sustainable.

[40] In the premises, the appellant made out a case warranting that the judgment of the court *a quo* be interfered with.

Costs

[41] It is trite that the costs should follow the result, and no amount of persuasion has been advanced to upset this well-trodden path, which requires no interrogation. Both parties have employed senior counsel and have further asked for costs on scale C, which is warranted in the circumstances.

[42] In the result, I make the following order

1. The appeal is upheld with costs.
2. The order of the Court *a quo* is set aside and substituted as follows:
 - 2.1. *The application is dismissed with costs on scale C, which include costs of two counsel where so employed.*
 - 2.2. *The 1st and 2nd respondents are directed to maintain a hold on the bank accounts respectively held by them and the account numbers 1[...] and*

6[...], until an amount of 4.2 million has accrued and is available in the aforesaid accounts.

2.3. Once the funds available in the aforesaid accounts reach an amount of R3 379731.31, the first and the second respondents are directed to transfer an amount of R3 379731.31 into an interesting investment account, held at the second respondent.

2.4. The amount of R3 379731.31 must be retained in the aforementioned interest-bearing investment account, held at the second respondent, together with such interest as may accrue thereon, until the final resolution of the dispute between the applicant and the third respondent.

2.5. Once the total amount of R3 379731.31 has been transferred into an interest bearing investment account as foreshadowed in paragraph 2 above, the first and second respondents are directed to uplift the hold on the two bank accounts and to provide the applicant full and unrestricted access in respect of the said banking accounts, inter alia, affording the applicant transactional powers on these accounts, barring the amount of R3 379731.31 and accrued interest, which is to be retained in the interest bearing investment account.

M V Noko,

Judge of the High Court.

This judgement is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **6 August 2025**.

Dates

Hearing: 14 May 2025

Judgment: 6 August 2025.

Appearances

For the Appellant:

I Brewer, instructed by Mouyis Cohen Attorneys.

For the Respondent:

C Read, instructed by Adam Creswick Attorneys.

