

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

CASE NO: 101473/2024

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 8 AUGUST 2025

SIGNATURE

In the matter between:

CITY OF TSHWANE METROPOLITAN

MUNICIPALITY: DEPARTMENT OF

EMERGENCY SERVICES

First Applicant

GAUTENG DEPARTMENT OF CO-OPERATIVE

GOVERNANCE AND TRADITIONAL AFFAIRS

Second Applicant

NATIONAL DEPARTMENT OF CO-OPERATIVE

GOVERNANCE AND TRADITIONAL AFFAIRS

Third Applicant

and

FIDELITY SECUREFIRE (PTY) LTD

First Respondent

SINOVILLE FIREFIGHTING ASSOCIATION

Second Respondent

Summary: Interlocutory proceedings – authority of applicants' attorneys – disputed and only partially proven.

ORDER

1. The relief sought in the interlocutory application is refused.
2. The first applicant in the main application is ordered to pay the second respondent's costs of the interlocutory application against it, on the scale as between attorney and client.
3. Insofar as separable, Motsoeneng Bill Attorneys are to pay the second respondent's costs of the interlocutory application in respect of the lack of authority to act on behalf of the second and third applicants in the main application, on the scale as between attorney and client.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of the matter on Caselines. The date of the handing-down is deemed to be 8 August 2025.

DAVIS, J

Introduction

[1] In interlocutory proceedings the second respondent in the main application disputed the authority of the applicants' attorney to act on their behalf.

The parties in the main application

[2] The first applicant is the City of Tshwane Metropolitan Municipality: Emergency Services (the CTMM). The second applicant is the Gauteng Department of Co-Operative Governance and Traditional Affairs and the third applicant is the National Department of Co-Operative Governance and Traditional Affairs.

[3] The first respondent is Fidelity Securefire (Pty) Ltd. The second respondent is the Sinoville Firefighting Association (Sinoville).

[4] For ease of reference, the parties to the interlocutory application shall be referred to as in the main applicant and as identified above.

Nature of the principal dispute

[5] In the main application, the CTMM alleges that the respondents are contravening the statutory prescripts regarding the rendering of fire-fighting services in the area of the CTMM's jurisdiction.

[6] The applicants seek interdicts against the respondents to "*forthwith cease all operations, functions and/or activities ... defined as "services" in terms of the Fire Brigade Services Act 99 of 1987*".

[7] In seeking the above relief, the CTMM's Chief of Emergency Services alleged that the CTMM had the support of the other applicants as "co-functionaries".

[8] The main application is still pending and to date on the first respondent has delivered an answering affidavit.

The procedural chronology of the interlocutory application

[9] On 16 October 2024 Sinoville's attorney delivered a notice in terms of Rule 7(1) on the applicants' attorneys, calling for the furnishing of a power of attorney to act on behalf of the applicants.

[10] On the same day the applicants' attorneys, Motsoeneng Bill Attorneys delivered a "Notice of Appointment as Attorneys of Record".

[11] Annexed to the said Notice was a letter from the CTMM Group Legal and Secretarial Services Department dated 24 June 2024. It was addressed to Motsoeneng Bill Attorneys. It detailed the serving of contravention notices on Afriforum and the Fidelity Services Group. Copies of the CTMM file contents were annexed and the attorneys were given instructions "*to come on record and assist in litigating regarding this matter on behalf of the City*" and to "*urgently attend to this matter*".

[12] Aggrieved by the above response, Sinoville delivered a Rule 30A notice on 24 October 2024, followed by the interlocutory application. In the Notice of Motion in that application, being the interlocutory application under consideration, Sinoville seeks an order that the purported power of attorney be struck out and that the entire

application be struck out insofar as it concerns Sinoville. Costs are also claimed against Motsoeneng Bill Attorneys, on the basis that they never had a proper mandate to represent the applicants.

[13] In the answering affidavit to the interlocutory application, attorney Malindi from Motsoeneng Bill Attorneys contended that the letter referred to in par 11 above was enough to prove Motsoeneng Bill Attorneys' mandate. He further explained that the reference to Afriforum was because "*some of the parties rendering services unlawfully had enlisted the help of Afriforum to do its binding*". Sinoville was accused of being vexatious in continuing its challenges to the mandate of Motsoeneng Bill Attorneys.

[14] Attorney Malindi referred to "*further responses to the continued challenges*" and maintained that Motsoeneng Bill Attorneys "*hold the power of attorney to act for the first applicant*".

[15] The "further responses" referred to was firstly an extract from a memorandum from the CTMM Group Legal and Secretarial Services seeking a resolution from the Acting City Manager for "*approval to appoint Bill Motseoneng Attorneys to assist ...*" in a court application against "*Sinoville Firefighting (represented by Afriforum) and Fidelity Service Group*".

[16] The second "further" document was indeed a Power of Attorney delivered as contemplated in Rule 7. It was signed by Mr Ashraf Adam in his capacity as the "Government Support Officer: City of Tshwane Metropolitan Municipality". The document mandated Motsoeneng Bill Attorneys Inc to act as the attorney on behalf of the CTMM "*... to prosecute and secure an order ...*" against the respondents, which were properly identified in the Power of Attorney.

[17] The Power of Attorney, despite indicating that it had been executed in the presence of witnesses, bore no signature of any witnesses. It was dated 22 November 2024, which post-dated the launch of the main application on 6 September 2024.

[18] No resolution by the Acting City Manager has been produced and neither has Mr Adam's authority, delegated or otherwise, been confirmed.

[19] In respect of the second and third applicants, Mr Malindi relied on "engagements" by way of correspondence on which Motsoeneng Bill Attorneys "believed" it had a mandate to act on their behalf.

The requirements of Rule 7

[20] Save for appeals, Rule 7(1) provides that a power of attorney need not be filed "*... but the authority of anyone acting on behalf of a party may ... be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorized so to act ...*".

[21] In respect of proving authority to act by way of a power of attorney, Rule 7(4) provides that "*Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it and shall otherwise be duly executed according to law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced ...*".

Evaluation

[22] It is clear from the above, that the initial response to Sinoville's Rule 7 challenge to the authority of Motsoeneng Bill Attorneys to act on behalf of the CTMM falls short of the requirements of Rule 7. The letter of 24 June 2024 was not a power of attorney, despite it containing a request to "assist in litigating this matter on behalf of the City". The authority of the author of the letter, being the Divisional Head: Legal Counsel" had also not been proven. The letter also lacks the belated explanation furnished as to the alleged link between Afriforum and Sinoville.

[23] Counsel for the applicant tried to explain in oral argument that the CTMM employs a panel of attorneys, all appointed with proper authorization. After having become part of the panel, a letter in the fashion as that of 24 June 2025 was merely a selection of a particular attorney for purposes of a particular instance. Hence the formulation of the letter as "an instruction". This explanation was however not supported by any evidence placed before the court.

[24] Similarly, the copy of the memorandum for a resolution by the Acting City Manager also did not meet the requirements of Rule 7. Apart from not being a power of attorney, it suffers from its inherent shortcomings: there was no proof of any actual resolution or the outcome of the memorandum.

[25] The belatedly produced power of attorney also has shortcomings: it does not bear the signatures of the envisaged witnesses in whose presence it was purportedly executed, it post-dates the launching of the main applicant and the authority or delegated authority of the Government Support Officer has not been proven.

[26] In order to ascertain whether the main application itself had been authorized, I resorted to the founding affidavit thereof. The deponent was the CTMM Chief of Emergency Services. He has deposed to his delegated authority and has annexed the necessary supporting documents in this regard.

[27] Apart from the actual authority to launch the main application, the CTMM's deponent, in his affidavit relied on the advice of the CTMM's "legal representatives" when he made submissions of a legal nature. This founding affidavit was annexed to and referred to in the Notice of Motion drafted, signed and issued by Motsoeneng Bill Attorneys.

[28] I also had regard to the affidavit of Mr Malindi wherein he, on oath, confirmed that Motsoeneng Bill Attorneys "*hold the (sic) power of attorney to act for the first applicant*". For the remainder of his affidavit, it contains points *in limine* of no consequence, argumentative material and various unbecoming attacks on Sinoville and its attorneys. I shall deal with these when dealing with the issue of costs.

[29] The purpose of Rule 7 is to establish the mandate of the attorney claiming to act on behalf of a party "*... to prevent a person whose name is being used throughout the process from afterwards repudiating the process altogether and saying he had given no authority and to prevent persons bringing an action in the name of a person who never authorized it*"¹.

¹ Van Loggenberg, *Erasmus Superior Court Practice*, Second Edition at D1-93 and in particular the cases quoted at footnote 1.

[30] Applying this test and, in recognition of the evidence given on oath by the two deponents mentioned earlier, the court is satisfied that Motsoeneng Bill Attorneys had been mandated to act on behalf of the CTMM in this matter.

[31] The same cannot be said for their purported authority to act on behalf of the other two applicants. No similar evidence on affidavit nor any power of attorney as produced by the CTMM, had been produced.

[32] Although most of the evidence relating to the mandate of Motsoeneng Bill Attorneys was only produced after the launch of the main application, it would serve no practical purpose, once it has been determined that they may act on behalf of CTMM, to relaunch the application. No real prejudice has been suffered by Sinoville as a result of this as proceedings have been pended pending finalization of this interlocutory application, and to require a re-launching of the main application, would simply amount to a waste of time and costs.

[33] However, it is also abundantly clear that the proof of an actual mandate had been done in an unsatisfactory and haphazard fashion. The CTMM appears to be part and parcel of this bungling. I therefore see no need to award costs on a *de boniis propriis* basis against Motsoeneng Bill Attorneys for the costs of the interlocutory application. The apportionment of liability for those costs they and the CTMM can debate amongst themselves but I find, in the manner that they had both approached the mandate issue, that the interlocutory application had not been frivolously brought by Sinoville, despite the outcome.

[34] In addition, I find the repeated attacks on Sinoville and its legal representatives in the opposition to the justifiable testing of Motsoeneng Bill Attorneys' mandate unbecoming. When this unbecoming attack is combined with the haphazard proof of the mandate, I find, in the exercise of the court's discretion, that it justifies a punitive costs order².

[35] The same argument relating to *de boniis propriis* costs vis-a-vis the CTMM mentioned earlier, cannot of course, apply to the second and third applicants. Insofar as the Taxing Master may notionally be able to separate costs, the

² See also: *Erasmus*, supra at D5 – 21 to D5 – 24.

unsuccessful defence of the lack of authority to act on behalf of the second and third applicants, must be for the account of Motsoeneng Bill Attorneys themselves. The scale of costs should be the same as in respect of that ordered against the CTMM.

[36] Insofar as the various parties had requested or needed condonation for various processes or delays in the proceedings, such condonation is granted.

Order:

[37] In the premises, the following orders are made:

- 1 The relief sought in the interlocutory application is refused.
- 2 The first applicant in the main application is ordered to pay the second respondent's on the scale as between attorney and client.
- 3 Insofar as separable, Motsoeneng Bill Attorneys are to pay the second respondent's costs of the interlocutory application in respect of the lack of authority to act on behalf of the second and third applicants in the main application, on the scale as between attorney and client.

N DAVIS

Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 01 August 2025

Judgment delivered: 08 August 2025

APPEARANCES:

For the Applicants:

Adv JGC Hamman

Attorney for the Applicants:

Hurter Spies Incorporated, Pretoria

For the Respondent:

Adv KP Mputle

Attorney for the Respondent:

Motsoeneng Bill Attorneys, Wendywood