



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

CASE NUMBERS: 6702/2013 &

15820/2022

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
<u>10/9/2025</u>	
DATE	SIGNATURE

In the matter between:

JOHN MOSIMA

First Applicant

LETTA NTHABISENG MOSIMA

Second Applicant

And

ABSA BANK LIMITED

First Respondent

SURIA KUMARI SAMANTHA PALANI

Second Respondent

VZLR INCORPORATED ATTORNEYS

Third Respondent

In re:

ABSA BANK LIMITED

Plaintiff

And

JOHN MOSIMA

First Defendant

LETTA NTHABISENG MOSIMA

Second Defendant

JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] This is an interlocutory application brought by the applicants, (the defendants in the main action proceedings), for the determination of whether the second respondent, an employee of the first respondent (the bank), was authorised to act on behalf of the bank and to instruct the firm of attorneys, the third respondents;

- i) to legally represent the bank in the institution of the default judgment application under case numbers 6702/2013 in which the bank originally claimed payment of a combined total amount outstanding of approximately R2,5m on two loans that it advanced to the defendants;

- ii) to file exception to the three counterclaims the applicants have instituted in the same action proceedings, to institute the action proceedings against the applicants under case number and 15820/2022.

BACKGROUND/ FACTUAL MATRIX

- [2] The plaintiff's erstwhile attorneys issued summons against the defendants (present applicants) under case number 7602/2013 for the recovery of the balance of the loan amount of just over R2.4m. The action was defended by the defendants also filed three counterclaims.
- [3] On the date of the hearing of the matter the parties entered into a Settlement Agreement in terms of which, *inter alia*, the defendants' monthly repayment amounts were restructured. The defendants withdrew their defences and counterclaims.
- [4] The defendants allegedly failed to fully honour the terms of the settlement agreement by making late payments and/or paying lesser amounts than had been agreed on resulting in the plaintiff launching an application for default judgment purportedly in terms of Rule 23(1) of the Uniform Rules of the Court.
- [5] The defendants filed opposing to the plaintiff application for default judgment and served a Rule 30A notice asserting that the plaintiff's reliance on Rule 23(1) for seeking default judgment was an irregular step and further stating that the plaintiff ought to have brought a substantive application seeking orders for payment premised on the defendant's alleged breach of the settlement

agreement. The defendants called upon the plaintiff to remove the cause of the complaint.

- [6] The hearing of the default judgment was enrolled for hearing on 8 January 2024 on which date the defendant, without filing an opposing answering affidavit were represented by counsel. The defendants were placed on terms to file their answering affidavit by the 19 January 2024.
- [7] The defendants failed to comply their answering affidavit as directed by the court and, instead, filed a Rule 7(1) notice on 18 January 2024.

THE CONUNDRUM

- [8] The plaintiff terminated the mandate of its attorneys and instructed the current attorneys, the third respondent, as its attorneys of record. The third respondent filed the relevant notice of appointment as attorneys of record for the plaintiff and addressed a notice in terms of Section 129 read with Section 130 of the National Credit Act of 2008 to the defendants. This was followed by the institution of action proceedings against the defendants under case number 15820/2022 for the recovery of the total balance owed to the bank – basically the same claim that had been instituted by the plaintiff's erstwhile attorneys under case number 6702/2013.
- [9] The defendants defended the new action and also filed three counterclaims. It was only upon the receipt of the defendants' plea in particular, according to the defendants, that the third respondents became aware of the existence of the

pending proceedings under case number 6702/2013 and the third respondent proceeded to withdraw the action under case number 15920/2022.

- [10] The third respondent then pursued the matter under case number 6702/2013 by filing exceptions to the defendants' counterclaims and launching the impugned application for default judgment. It is specifically the validity of the second respondent's appointment as a representative of the bank and her authorisation by the bank to appoint the third respondent to except to the defendants' counterclaims under case number 16702/2013 and seek default judgment against the defendants. The citation of the second and third respondents in the present application is directed at the challenge to the authority of the second and third respondents to act on behalf of the bank in this matter.

GRAVAMEN OF THE DEFENDANTS' CASE

- [11] The defendants' contention is that the third respondent, having hit a *cul-de-sac*, so to speak, with the new action under case number 15820/ 2022, purportedly seeks, without a valid appointment to act on behalf of the first respondent (the bank), default judgment in pursuit of the plaintiff's claim in respect of which a settlement was concluded. The defendants' further contention is that only their counterclaims are pending under case number 17602/2013.
- [12] With regard to the plaintiff's application for default judgment, the defendants contend that the application premised on the provisions of Rule 23(1) is irregular in that the plaintiff ought to launch a substantive application seeking

payment premised on the alleged defendants' breach of the terms of the settlement agreement as pointed out earlier.

PAUSE

[13] I pause at this stage to state that it appeared more in the respondents' arguments that when appointing the third respondents as attorneys for the bank, the second respondent had not advised the third respondent that there were pending proceedings in the matter under case number 6702/2013. That was the reason for the third respondent initially commencing new proceedings under case number 15820/2022.

[14] With regard to the applicants' filing of the Rule 7(1) notice, the third respondent responded thereto by notice to which was attached a Power of Attorney and a resolution of the board of directors of the bank and ancillary attachments to the resolution to prove the second respondent's appointment as a representative of the bank and her authorisation by the bank to appoint the third respondents as its attorneys of record.

THE DEFENDANTS' FIRST RULE 30A (2) APPLICATION

[15] Not satisfied with the contents of the documents provided in response to the Notice in terms of Rule 7(1), the defendants' filed a Rule 30A(1) notice setting out the grounds for dissatisfaction specifically stating that the contents of the documents filed did not meet the requirements of Rule 7(4) and called upon the respondents to remove the cause of the complaint.

[16] In response to the defendants' notice in terms of Rule 30A(1) and in an answering affidavit deposed to by Ms Niemand, an attorney in the third respondent and representing all three respondents, stated that the documents furnished in response to the Rule 7(1) notice were sufficient proof of the second and third respondents' authorisations to represent the bank in these proceedings. The defendants contend that documents provided lacked sufficient information to meet the provisions of Rule 7(1) read with Rule 7(4). This was disputed by Ms Niemand who challenged the defendants to bring a Rule 30A (2) application, if so inclined. The defendants did not file a replying affidavit. The defendants brought this application and seek orders that:

1. It is declared that the Second and Third Respondents have failed to satisfy the Court that they are authorised to act on behalf of the First Respondent in the Default Judgment Application under case number 6702/2013 and in the defendants' Counter-Claims;
2. It is declared that the Second and Third Respondents may not act on behalf of the First Respondent in the Default Judgment Application and the defendants' Counterclaims under the above case number.
3. The Second and Third Respondents' institution of the Default Judgment Application in the action proceedings and exceptions to the applicants' Counterclaims are declared unauthorised, invalid and are set aside.

4. That the respondents pay the costs of the Application, jointly and severally, the one paying the others to be absolved.

THE DEFENDANTS' SECOND RULE 30A (2) APPLICATION

- [17] On 7 December 2023 the defendants' attorneys filed a notice to oppose the Plaintiff's default judgment and Rule 46A applications. This was followed by the Defendants further filing of a notice in terms of Rule 30A advising the plaintiff's attorneys that the default judgment application was an irregular step and that the plaintiff ought to have brought a substantive application to enforce compliance with the settlement agreement and called upon the plaintiff to remove of the cause of the complaint within 10 days.
- [18] The plaintiff's attorneys were not moved and responded in writing that they will be proceeding with the default judgment and Rule 46A applications. The defendants then brought the second Rule 30A (2) application in opposition of the applicant for default judgment which the plaintiff is opposing and has filed an answering affidavit. The defendants have not filed a replying affidavit. The issue raised by the defendants forms part of the determinations to be made in the present hearing.
- [19] It is necessary to consider the provisions of Rule 7(1) and 7(4) which read thus:
- "7(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act 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 the 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 authorised so to

act, and to enable him to do so the court may postpone the hearing of the action or application.”

And

“7(4) 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 to the registrar who shall note that fact on the said power.”

ANALYSIS

[20] This court notes from the defendants’ affidavits that their legal representatives have had an intense scrutiny of the Power of Attorney, the resolution of the board of directors of the first respondent and accompanying attachments to conclude that there is no authorisation of the second respondent to act as a representative of the bank and to appoint the third respondent as attorneys of record for the bank under case numbers 6702/2013 and 15820/2022.

[21] This court is called upon to determine, on the above facts whether the documents filed by the respondents in response to the applicants’ Rule 7(1) notice, are sufficient proof to the satisfaction of the court of authorisation of the second respondent to act as a representative of the bank and to appoint the third respondent as its attorneys of record.

DISCUSSION

- [22] The respondents' attorneys have expressed the lateness of the applicants' Rule 7(1) notice without formally objecting thereto and proceeded to file a Power of Attorney, a resolution of the board of directors of the bank and attachments thereto, stating in their affidavit that they did so to avoid a further waste of time. The lateness of the filling of the notice in terms of Rule 7(1) is, therefore, not a point taken by the respondents.
- [23] Having made the comment in the previous paragraph, I must hasten to state that despite the delayed service of the Rule 7(1) notice, the applicants have not sought the indulgence of the court in an application for condonation as required by the rules. Furthermore, the applicants have not disclosed the premise for disputing the authority of the second respondent to represent the bank in the manner envisioned in the provisions of Rule 7(1). The provisions envision, in my view, a situation where the server of the Rule 7(1) has acquired knowledge that the other party may, for a specified reason, lack *locus standi* to act in his own name or in his name as a court appointed representative of another (*Nomine Officio*) in a matter. Some form of official identification or registration must be produced in the former situation whereas the relevant court order suffices in the latter case.
- [24] The role of the second respondent herein is to represent the bank, in its own name as a party in these proceedings. The second respondent, save for the discharge of her duties to the bank, stands not to be affected in anyway by the outcome in these proceedings. This is an important consideration, in my view,

in the evaluation of the type of proof required to validate representation of one person or entity by another person. The second respondent has provided copies of the Power of Attorney and resolution of the board of directors of the bank both stating her name and position in the bank and the capacity in which she is authorised to grant a Power of Attorney to and appoint a third party firm of attorneys to act as attorneys of record for the bank.

[25] It is of no assistance to the applicants to scrutinise the authorisation documentation provided and to pick therein portions they find open to criticism and rely thereon to dispute ordinary import of the documents. It needs be stated that some of the documentation the applicants suggest should have been provided are the bank's internal documents that are not to be shared with the public.

[26] The appointment of the third respondent as attorneys of record for the bank necessarily meant that the third respondent was to take over the further prosecution of the bank's claim as if it had been involved in the matter from its inception. Launching the application for default judgment against the defendants was in accordance with the provisions of clause 11.1 of the settlement agreement between the parties and, therefore, justified.

ANALYSIS

[27] The defendants failed to file a plea of *lis pendens* to the action instituted by the third respondent under case number 15820/2022, opting to file a normal plea and counterclaims of their own. There was nothing untoward with the third

respondent filing exceptions to the defendants' counterclaims as the defendants had withdrawn their counterclaims as reflected in clause 6 of the settlement agreement and agreed not to bring the counterclaims again, as reflected in clause 7 of the settlement agreement.

[28] The copy of the resolution of the board of directors of the bank and the attachments thereto, in my view, constitute sufficient proof of the appointment of the second respondent to represent the bank in the recovery of debts to the bank and to issue the Power of Attorney in her capacity as Assistant President, appointing third party attorneys, the third respondents in this instance, as attorneys of record for the bank.

[29] The applicants have since 2013, at the least, been aware of the bank's case against them. They have referred to two bank accounts (numbers) into which they made monthly repayment of the loans. Pertinently in this regard is that the applicants did not question the accounts per se as those of the bank, but merely enquired how certain payments they had made were apportioned between the two accounts. This dispels any thought that the second and third respondents may be acting without authorisation by the bank and for their own benefit.

CONCLUSION

[30] In accordance with the findings in paras 29, 30 and 31, above, the defendants' applications stand to be dismissed.

ORDER

[31] The following order is made:

1. The defendants' /applicants' applications are dismissed with costs at the scale indicated in the loan agreements that were concluded by and between the parties.




MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Applicant: Adv G Shakoane SC

Instructed by: Molobi Inc.

For the Respondents: Adv K Markram-Jooste

Instructed by: VLZR Inc.

Date of hearing: 27 November 2024

Date of delivery: 10 September 2025