

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 8159/2021

(1)	REPORTABLE: YES/ NO
(2)	OF INTEREST TO THE JUDGES: YES/ NO
(3)	REVISED.
	
	
DATE 25 September 2025 SIGNATURE.....	

In the matter between:

**PHENYO IN MEDIA CONSULTANCY CLOSE
CORPORATION trading as PIMC DEVELOPMENT
COMMUNICATION**

PLAINTIFF

REGISTRATION NUMBER: 2004/047085/23

-and-

POLOKWANE LOCAL MUNICIPALITY

1ST DEFENDANT

**MUNICIPAL MANAGER OF THE POLOKWANE LOCAL
MUNICIPALITY**

2ND DEFENDANT

Delivered : 25 September 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **25 September 2025 at 10:00 am**.

Date heard : 2 June 2025

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

[1] This case initially came before this Court on the 7th of February 2025 as a Case Management Conference in terms of Rule 37A of the **Uniform Rules of Court**. The following directives were issued relevant for purposes of these proceedings:

1.1 The Defendant is directed to launch an application to determine the following issues within 15 (fifteen) days from the date of the Case Management Meeting:

1.1.1 The Plaintiff's responsibility to lodge security;

1.1.2 Mr. Lekoma's authority to represent the Plaintiff in person in the current proceedings before court and without the assistance of a legal representative.

- 1.2 The Plaintiff is entitled to deliver its Notice to oppose and Answering affidavit within 15 (fifteen) days after delivery of the aforesaid application;
- 1.3 The Defendant is entitled to deliver its Replying affidavit thereto within 5 (five) days from the date of deliver of the Notice to Oppose and Answering affidavit.
- 1.4 The Plaintiff shall deliver its Heads of Argument [pertaining to both the aforesaid applications within 10 (ten) days after delivery [/receipt] of the Replying affidavit.
- 1.5 The Defendant shall deliver its Heads of Argument within 10 (ten) days after receipt of the Plaintiff's Heads of Argument.
- 1.6 Upon compliance with the aforesaid directives pertaining to the exchange of documents, either party will be entitled to approach the Office of the Judge President for a preferential enrolment of the matter.
- 1.7 The parties recorded that they have no objection to enrolling the matter before the Court that attended to the Case Management Meeting.

- [2] The case was therefore enrolled for argument (unfortunately on the unopposed compel roll) on the 6th of June 2025 after substantial compliance with the said Case Management Directives.
- [3] From a consideration of the record that served before court at that stage, it was evident that there are numerous interlocutory disputes pending between the parties that requires consideration and determination by the Court. As it was however also clear that the authority of the respective representatives of the Plaintiff and the Defendants was vehemently disputed, the Court directed that argument be heard only on the following aspects, with the remaining aspects to be deemed postponed *sine die*:
- 3.1 The authority of Mohale Incorporated to represent the 1st and 2nd Defendant;
and
- 3.2 The representation of the Plaintiff by its member and without assistance from any legal representative.
- [4] Having regard to the limited nature of the issues that require determination at this stage, this Court is of the view that a detailed analysis of the factual synopsis of this matter, will be of no purpose to these proceedings. The parties' arguments in Court were thus only directed at the procedural aspects.

The Applicable Legal Principles:***Representation of the Plaintiff by its member***

- [5] Mr. Phenyio Lekoma (hereinafter 'Lekoma') is the sole director of, and shareholder in the Plaintiff. Lekoma had appointed no less than four different legal representatives from the commencement of the dispute between the parties. He provided a detailed exposition as to why these representatives were terminated. The Court do not see the need to analyse the conduct of these legal practitioners to determine if same constitutes misconduct. Suffice to state that their conduct resulted in adverse cost orders being granted against the Plaintiff in the past.
- [6] During the Case Management Conference held on 7 February 2025 and contrary to the normal accepted practice, this Court directed the Defendants to submit reasons why Lekoma should not be allowed to represent the Plaintiff in these proceedings. This flows from the fact that there has already been a judgment in this case declaring that Lekoma may represent the Plaintiff. The Defendants were, in fact, now applying for a form of reconsideration of that finding.
- [7] In justification of the Defendants' view that Lekoma is not equipped and / or qualified to represent the Plaintiff, counsel for the Defendant enunciated that this case is of a complicated nature. A junior attorney will therefore not be able to assist Lekoma in this matter. Lekoma requires the assistance of a duly qualified and experienced legal team that would ensure that the rights of the Plaintiff are not prejudiced in any way. It was also submitted that Lekoma's lack of knowledge and understanding of

court procedures causes severe delays as incorrect procedures are pursued at length and to the prejudice of the Defendants.

- [8] In answer to the submission made by the Defendants' counsel, Lekoma highlighted that the very same issue was considered by both Mphahlele AJ and Semenya DJP. Both found that Lekoma is equipped and qualified to represent the Plaintiff in the absence of a legal representative. Lekoma also again highlighted his history with previous practitioners that, according to him delivered unsatisfactory services that resulted in an inordinate delay and wasted legal costs. In his view, the delay is not caused by the Plaintiff's lack of legal representation but rather by the failure of the Defendants to abide by the Rules resulting in Lekoma having to come to court repeatedly to expedite the matter. Lekoma impressed on the Court that his door is not yet closed to appoint an attorney in future, should the need arise. He merely requires leave of the Court to continue representing the Plaintiff until such a need arise.
- [9] As stated herein before, this issue was previous dealt with by the Honourable Mphahlele AJ and the Honourable Semenya DJP. Both these judgments favoured the Plaintiff's view.
- [10] The Honourable Mphahlele AJ dealt extensively with the ability of natural persons to represent juristic persons without the assistance of legal representation in his judgment dated the 8th of April 2024.

[11] Reference was made to the Supreme Court of Appeal decision of **Navy Two CC v Industrial Zone Limited**¹ where the following was *inter alia* stated:

'[11] The decision in Hallows v The Yacht Sweet Waters has been severely criticised in Lees Import & Export (Pty) Ltd v Zimbabwe Banking Corporation Ltd² as having overlooked the caveat placed upon the rule, recognising the court's residual power to regulate its own proceedings unless fettered by legislation. The caveat embodies a power which a court has, in the exercise of its discretion and in the interests of justice, to permit a person other than a legal practitioner to appear before it on behalf of a corporate entity, but only if exceptional circumstances so warrant it.

[12] There is a lot to be said for the above criticism. It is clear that the rule limiting representation of a corporate entity to legal practitioners is not inflexible. In Arbuthnot Leasing International Ltd v Havelet Leasing Ltd & others³, while accepting that the normal rule was that a body corporate must appear by counsel or solicitor, the court recognised that in certain exceptional circumstances, a director who is a party to litigation to which a company is also a party may be allowed to appear in person for purposes which are also those of the company.

¹ 2005 JDR 1069 (SCA)

² 1999 (4) SA 1119 ZSC at 1126 A-D.

³ [1991] 1 ALL ER (CH D), at 597 to 598 a-h 599 a e g

[13] In California Spice Marinade (Pty) Ltd and others in re: Bankorp v California Spice and Marinade (Pty) Ltd v others; Fair O'Rama Property Investments CC v others; Tsaperas; and Tsaperas⁴ after tracing the history of the rule in the English common law Wunsch J came to the conclusion that a court should be entitled, in an appropriate case and to avoid injustice, to allow at least a one-person company to be represented at a court hearing by its alter ego. The learned judge said that the inconvenience caused to the court as a result of an unqualified person appearing before it had to be weighed up against the injustice of a juristic person being denied access to the courts. In this regard I agree with the reasoning of Wunsch J.'

[12] Shortly hereafter and in the case of **Manong & Associates (Pty) Ltd v Minister of Public works and Another⁵** the Supreme Court of Appeal held:

'[6] It has been thought, somewhat cynically I dare say, that the rule is based on some misguided attempt to preserve an unjustified monopoly for legal practitioners. This is not the case. Litigation is based on the adversary system. In determining a dispute, a court is dependent on the way in which the case is presented. Factual admissions or denials are made from time to time and a course of conduct has to be chosen by the litigants. When a corporation instructs an attorney who in turn instructs an advocate the law recognises their authority to bind the corporation for the purpose of litigation. In those

⁴ [1997] ALL SA 317 (W)

⁵ 2010 (2) SA 167 (SCA)

circumstances a court need not concern itself about authority. Litigation will become very difficult indeed if a court had to be concerned at every step of the proceedings as to the authority of the person conducting the litigation to make binding decisions. The litigant in person can of course make those decisions without any question of authority, but a corporation cannot act except through its agent and an agent cannot have more authority than the corporation legally gives to it. Yet a further consideration is that corporate officers could cause impecunious companies to litigate hopeless causes without any fear of personal risk. Thus, apart from the fact that there are usually rules of court that preclude a company from being represented by anyone other than a qualified practitioner, a review of the cases in England, Ireland, Australia, New Zealand and Canada shows that the courts, for pragmatic and policy reasons, have set their face against unqualified persons presenting and conducting cases unless they are doing so on their own behalf. So too, in Zimbabwe and South Africa.

[7] That a person in the position of Mr Manong has no right, such as counsel and in certain circumstances attorneys have, to address this court on behalf of the appellant is thus well settled. But to observe that he does not have a right of audience is not as Scott J put it 'to answer the question whether the court does not have, and whether the court should not on the facts of the case exercise, a power to permit him to address the court on behalf of the corporate litigant'.

[8] Yates did not consider the question of a judicial discretion to allow non-professional representation in a particular case. For, as Gardiner JP put it:

'The rules of procedure of this Court are devised for the purpose of administering justice and not of hampering it, and where the rules are deficient I shall go as far as I can in granting orders which would help to further the administration of justice.'

Likewise, Denning MR stated:

'It is well settled that every court of justice has the power of regulating its own proceedings; and, in doing so, to say whom it will hear as an advocate or representative of a party before it. As Parke J said in Collier v Hicks ((1831) 2 B & Ad 663 at 672, 109 ER 1290 at 1293): "No person has a right to act as an advocate without the leave of the Court, which must of necessity have the power of regulating its own proceedings in all cases when they are not already regulated by ancient usage".'

[9] The main reasons for relaxing the rule are, I suppose, obvious enough: a person in the position of the controlling mind of a small corporate entity can be expected to have as much knowledge of the company's business and financial affairs as an individual would have of his own. It thus seems somewhat unrealistic and illogical to allow a private person a right of audience in a superior court as a party to proceedings, but deny it to him when he is the governing mind of a small company which is in reality no more than his

business alter ego. In those circumstances the principle that a company is a separate entity would suffer no erosion if he were to be granted that right. There may also be the cost of litigation which the director of a small company, as well acquainted with the facts as would be the case if a party to the dispute personally, might wish to avoid. Such companies are far removed from the images of gigantic industrial corporations which references to company law may conjure up.

[10] It follows that cases will arise where the administration of justice may require some relaxation of the general rule. Their occurrence, in my view, is likely to be rare and their circumstances exceptional or at least unusual. I thus consider that our superior courts have a residual discretion in a matter such as this arising from their inherent power to regulate their own proceedings. After all, it seems to me that the power of a court to give leave to a corporation to carry on a proceeding otherwise than by a legal representative is of necessity an integral part of the rule itself.'

[13] And further:

'[15] This approach, in my view, is consistent with the right enshrined in s 34 of the Constitution, which provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or, where appropriate, another independent and impartial tribunal or forum. Emphasising that the courts have a duty to protect

bona fide litigants and the importance of untrammelled access to the courts, the right enshrined in s 34 has variously been described by the Constitutional Court as 'fundamental to a democratic society that cherishes the rule of law', 'of cardinal importance . . . that requires active protection', foundational for 'the stability of an orderly society', and a right that 'ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self help' and serves as 'a bulwark against vigilantism, and the chaos and anarchy which it causes'.

[14] It is thus evident that the Court has a discretion, in the interest of justice, to allow a member of a juristic entity to appear and represent such entity in court. This discretion has at its heart, the ability of the Court to regulate its own procedures. The Defendants' main concern is the fact that Lekoma's lack of knowledge and understanding results in an inordinate delay in the finalisation of the matter, which in return, causes prejudice to the Defendants and the Plaintiff.

[15] Rule 37A of the **Uniform Rules of the High Court** deals with Judicial Case Management. Subrule (2)(a) states:

'(2) Case management through judicial intervention —

(a) shall be used in the interests of justice to alleviate congested trial rolls and to address the problems which cause delays in the finalisation of cases;'

[16] Subrule (5)(b) furthermore provides:

'A case management judge shall not certify a case as trial-ready unless the judge is satisfied —

- (i) that the case is ready for trial, and in particular, that all issues that are amenable to being resolved without a trial have been dealt with;*
- (ii) that the remaining issues that are to go to trial have been adequately defined;*
- (iii) that the requirements of rules 35 and 36(9) have been complied with if they are applicable; and*
- (iv) that any potential causes of delay in the commencement or conduct of the trial have been pre-empted to the extent practically possible.'*

[17] Subrule (11), in turn, states:

'(11) Without limiting the scope of judicial engagement at a case management conference, the case management judge shall —

- (a) explore settlement, on all or some of the issues, including, if appropriate, enquiring whether the parties have considered voluntary mediation;*
- (b) endeavour to promote agreement on limiting the number of witnesses that will be called at the trial, eliminating pointless repetition or evidence covering facts already admitted; and*
- (c) identify and record the issues to be tried in the action.'*

- [18] It is evident that the purpose of Uniform Rule 37A is to promote the effective disposal of defended actions through judicial intervention. As stated herein before, the current matter is the subject of an ongoing judicial case management exercise with the sole purpose of expediting the matter and ensuring that the parties do not delay unnecessarily. Any delay caused because of a possible misunderstanding of the procedural aspects of preparing for trial can be largely addressed through appropriate Case Management Directives.
- [19] It must also be noted that the remarks made by the Honourable Mphahlele AJ equally finds favour with this court to the extent that this Court was impressed with the level of understanding that Lekoma has shown pertaining to court procedures having regard to the fact that he is not a legal practitioner. It often transpires that fully qualified practitioners abuse the Court process by launching frivolous and vexatious proceedings. Having regard to the unfortunate history that Lekoma had, and the damages that were caused to the Plaintiff to date by legal representatives, one has sympathy for his plight to represent the Plaintiff.
- [20] As such, this Court is of the view that the current situation is tantamount to exceptional circumstances where the normal rules of representation of juristic persons should be relaxed in the interest of justice.

[21] As stated herein before, the matter remains under Case Management and the Court has, to a large extent, the ability to regulate its own process to avoid any unreasonable delay or abuse of process.

[22] It follows that Lekoma should be authorised to represent the Plaintiff in the current proceedings before court and in the absence of a legal representative.

Representation of the Municipality by Mohale Incorporated

[23] It is now trite law that a challenge to a person's authority must be addressed through the procedure contemplated in Rule 7(1) of the **Uniform Rules of Court** that states:

'(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.'

[24] In the case of ***Rural Maintenance (Pty) Ltd and Others v Eskom Holdings SOC Ltd and Another***⁶ the court reiterated that the purpose of Rule 7 is, one the one hand to avoid cluttering the pleadings unnecessarily with resolutions and powers of

⁶ (2023/027739) [2023] ZAGPJHC 354 (20 April 2023)

attorneys and on the other hand to provide a safeguard to prevent a cited person from repudiating the process and denying his or her authority for issuing the process.

- [25] The Plaintiff remained adamant that the Auditor General indicated in writing that Mohale Incorporated was not authorised to represent the Defendants. The Plaintiff presented a letter⁷ received from the Auditor-General stating the following:

'As per various previous communications between yourself and my office, of which the last was on 9 September 2024 where we indicated that we will provide a response to the outcome of our resting of the population affected by your request.

We audited the awards made to the panel of attorneys, which included Mohale Incorporated, and found non-compliance matters which are reported in paragraph 38 of our audit report, where we reported that appropriate evidence could not be found that all contracts were awarded in accordance with the legislative requirements. As a result of the non-compliance the payments made to date to attorneys on the panel were classified as irregular expenditure and included in the total amount of R432,4 million of irregular expenditure incurred by the municipality.'

⁷ Contained on paginated page 256

- [26] On a plain reading of the letter allegedly obtained from the Auditor-General, this Court does not share the view that it is clear evidence that Mohale Inc is not authorised. It does however appear that certain attorneys retained on the panel may be non-compliant, but the wording of the letter does not lend itself to the interpretation that specifically Mohale Inc was not properly appointed and therefore lacks authority to represent the Defendants.
- [27] The Court is fortified in its view insofar as a response to the initial Rule 7 notice was in fact delivered by the Plaintiff as early as 17 February 2022. In this notice the authority of Mr Mohale of Mohale Incorporated was already disputed. As the notice was delivered out of time, a Rule 30A(1) Notice was delivered by the 1st and 2nd Defendant resulting in the withdrawal of the Rule 7 Notice. Curiously enough, the Plaintiff did not avail itself of the procedure contemplated in Rule 7(1) to the extent that no leave was hereafter obtained from the Court on good cause shown to continue with the challenge.
- [28] Be that as it may, this Rule 7 notice was dealt with in detail in the judgment delivered by the Honourable Mphahlele AJ on 8 April 2024 and warrants no further analysis. The Honourable Mphahlele AJ equally concluded that Mohale Inc is authorised to represent the Defendants.
- [29] In the absence of good cause being shown, this Court is not willing to revisit this issue. The letter from the Auditor-General is insufficient insofar as Mohale Inc is not implicated.

[30] Consequently, this court is satisfied that Mohale Inc (and Mr. Peter Mohale) is indeed duly appointed and authorised to represent the 1st and 2nd Defendant in this case.

Costs:

[31] It is trite law that a successful party will only in exceptional circumstances be deprived of its costs. In this Court's view, neither the Plaintiff nor the Defendant were successful in their challenge to the other party's representative capacity. Consequently, and in the interest of justice, the costs (and / or expenses justifiably incurred as the case may be) of these proceedings will follow the outcome of the main action in due course.

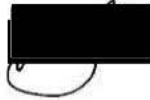
Order:

[32] **In the result the following order is made:**

32.1 It is declared that Mr. Phenyo Lekoma is entitled to represent the Plaintiff in these proceedings and in the absence of a legal representative;

32.2 It is declared that Mr. Peter Mohale of the firm Mohale Inc is duly authorised to represent the Defendants in these proceedings.

- 32.3 The costs of these proceedings challenging the authorities and / or entitlement to represent the respective parties will follow the outcome of the main action.**



M BRESLER AJ

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES:

FOR THE PLAINTIFF : Mr. Phenyo Lekoma

**INSTRUCTED BY : In person
Pretoria
phenyo@pimc-devcomm.co.za**

**FOR THE 1ST AND 2ND
DEFENDANT : Adv. JAL Pretorius**

**INSTRUCTED BY : Mohale Incorporated
Polokwane
mohaleinc@gmail.com**