



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 7654/2017

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
<u>03/11/2025</u> Date  Signature	

In the matter between:

AKHILE MANAGEMENT AND CONSULTING (PTY) LTD APPLICANT

AND

MOOKGOPHONG MUNICIPALITY

FIRST RESPONDENT

**MODIMOLLE-MOOKGOPHONG LOCAL
MUNICIPALITY**

SECOND RESPONDENT

JUDGMENT

NGOBENI J

- [1] The applicant is Akhile Management and Consulting (PTY) LTD , a private company with limited liability, duly registered and incorporated in accordance with the laws of the Republic of South Africa, with registration number 2006/013365/07, and its registered address being 2nd floor, Block 6,Suite 203, cnr Elephant Road and Steenbok Avenue, Monument Park, Pretoria, Gauteng.
- [2] The first respondent is the Mookgophong Municipality, a Local Government Municipality Structure established within the ambit and meaning of the Local Government Municipal Structures Act 117 of 1998, with its main place of business being situated at Modimolle Civic Centre, O.R. Tambo Square, Harry Gwala Street, Modimolle, Limpopo Province.
- [3] The second respondent is the Modimolle-Mookgophong Local Municipality, a Local Government Municipal Structures Act 117 of 1998, and with its main place of business being situated at 52 Harry Gwala Street, Modimolle.

- [4] This is an application in terms of Rule 30A of the Uniform Rules of Court (Rules) in which the applicant seeks compliance with Rule 28 by the first respondent on the basis that the first respondent served the applicant with its plea and counterclaim on 29 May 2018. On 1 March 2024, the first and second respondents served their special plea, plea on merits and their counterclaim on the applicant.
- [5] The cause of complaint by the applicant is that, when both respondents served their special plea, plea on merits and counterclaim on 1 March 2024, the first respondent had already served its plea and counterclaim on 29 May 2018, and therefore, because of the fact that the first respondent had already filed its plea and counterclaim, then the first respondent or the respondents should have followed the procedure that is laid down in Rule 28 regarding amendments.
- [6] The respondents were notified of the cause of complaint, and the respondents failed to remove the cause of complaint. The court is therefore asked to order the respondents to comply with the procedure in Rule 28. The applicant contends that the legal representative who is acting for the second respondent also acted for the first respondent and therefore can act on behalf of both respondents. That constitutes the summary of the application that the applicant brought before this court.

[7] The application is opposed by the second respondent on the basis that Mookgophong Municipality was disestablished through a notice published in Government Gazette No. 2735 on 22 July 2016, and the second respondent is therefore the successor in law to the first respondent. It is further stated that the legal effect of the disestablishment of the first respondent is that it no longer exists as a legal entity with legal rights and obligations. The further submission is that the first respondent cannot exercise any of the rights associated with *juristic* persons.

[8] It appears from the answering affidavit that the applicant (plaintiff) has amended its plea after the first respondent had filed its plea, special plea and counterclaim, and therefore when the particulars of claim were amended, the plea, special plea and counterclaim of the first respondent could no longer stand.

[9] In issue between the parties is that the applicant (plaintiff) issued summons against the first respondent, who then pleaded to those summons or particulars of claim. The applicant after the first respondent had pleaded then joined the second respondent as a party to the proceedings where the first respondent was already party to and had even pleaded. The second respondent after being joined pleaded to the particulars of claim and raised a special plea that the first respondent is non-existent as it

was deregistered on 22 July 2016, whereas the action proceedings were instituted on 10 November 2017. The issue which the court has to decide is as to whether the first respondent had to follow the steps that are provided for in Rule 28 to amend its plea.

[10] Rule 30A reads as follows:

30A Non-compliance with Rules and Court orders

"(1) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in Rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order-

(a) that such rule, notice, request, order or direction be complied with,
or

(b) that the claim or defence be struck out.

(2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit".

[11] The application that is before this court was brought on the basis that the respondents did not remove the cause of complainant by acting in terms of Rule 28 as requested by the applicant. I will only, for the sake of

completeness quote the provisions of Rule 28(1) to (5) as I consider those provisions to be relevant to the issues in the case at hand.

[12] Rule 28 reads as follows:

28 Amendment of Pleadings and Documents

"(1) Any party desiring to amend a pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected.

(3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.

(4) If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.

(5) If no objection is delivered as contemplated in subrule (4), every party who received notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days after the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7)

(6), (7), (8), (9) and (10)...”

[13] In issue between the parties is as to whether the second respondent when pleading after it was joined to the proceedings was obliged to follow the procedure as set down in Rule 28 to amend what was already stated in the plea by the first respondent before the second respondent was joined.

[14] I must state from the outset that I was not favoured with documents when the matter was still between the applicant and the first respondent. If those documents were filed, I would have seen the first plea of the first respondent and I would have seen the alleged amended plea which was apparently filed without following the procedure in Rule 28. The court was, however, able to understand the facts of this case and the issue to be decided from the three affidavits that were filed in this application (Founding, Answering and Replying affidavits). I will still be able to decide the issues in this case besides the non-filing of the documents I have mentioned.

[15] The applicant rightly states that the legal representative who was representing the first respondent is still the legal representative who is now representing the second respondent. It is a fact that for a legal

practitioner to represent a person, be it juristic or natural, there must be an instruction that is given to such a legal practitioner.

[16] The first respondent was deregistered on 22 July 2016. The logical explanation is that the first respondent ceased to exist. That in my view though does not mean that what transpired before it was deregistered could not be revisited. Logic though dictates that the first respondent could not enter into new transactions in its name. The court was told that it was replaced by the second respondent. The first respondent could practically not give further instructions after being deregistered. The clear demonstration is illustrated by the Supreme Court of Appeal in *Miller and Others v Nafcoc Investment Holdings Company Ltd and Others*¹, where the court said:

"deregistration...puts an end to the existence of the company. Its corporate personality ends in the same way that a natural person ceases to exist at death"

[17] The court in *Juliana & Others v Fikeni & Others*² was even more robust as it took the view that there was no trial before it as the company that issued summons was deregistered when the matter was to go to trial and found that the summons was null and void. The court showed its

¹ 2010 (6) SA 390 (SCA) et 395 para 11.

² (25388/2013) [2015] ZAGPPHC 734 (22 May 2015).

displeasure by awarding costs *de bonis propriis* against the legal representative who acted for the deregistered close corporation.

[18] In the case at hand I am not called upon to decide on the validity of these proceedings or the merits of the case, and I desist from doing that. I'm quoting the *Juliana* case, *supra*, to show that if an institution has stopped existing, it cannot give instructions. The displeasure of the court in the *Juliana* case, *supra*, is further demonstrated by what that court said in paragraph 21.1 of the judgment, on the issue of acting on behalf of a deregistered close corporation or company as thus:

"A situation where an attorney continues unabatedly to act on behalf of a deregistered close corporation or company can be likened to a scenario where an attorney acts on behalf of a natural person lying in a hospital bed in a coma, but the attorney claims to act on direct instructions from such a person or even a deceased person"

[19] The reasoning in the two cases that I have quoted above is that a non-existent person is not capable of giving instructions. The first respondent would not give instructions to amend if it is non-existent. The second respondent was only joined to the proceedings at a later stage. The fact of the matter is that even though the first respondent was already deregistered at the time when the summons was issued, that does not

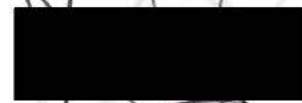
mean that even its obligations were deregistered. If, for example there were debts to be paid, that obligation had to be fulfilled. I have decided not to delve into the merits and cut the chase.

[20] The reality is that even if the court can order that the first respondent on its initial amendment before the second respondent was joined, must follow the Rule 28 procedure, that will be a futile exercise because that institution is currently non-existent. Any order that the court can make against the first respondent relating to this application that is before this court today will not be capable of being executed, and I believe that it is the reason why the second respondent was joined.

[21] The application by the applicant in terms of Rule 30A is bound to fail for the reasons that I have already stated. On costs, there are bound to be complexities when an institution is deregistered and ceases to exist. If there are proceedings to be instituted against a deregistered institution, there must be issues as to who the litigation should be directed to and even the procedures to be followed. It is for that reason that I will deviate from the general rule that costs follow the event or the result.

[22] In the result the following order is made:

- (i) The application is dismissed,
- (ii) Each party to bear its own costs.

J.T. NGOBENI
Judge of the High Court

Appearances

Counsel for the Applicant	: Adv. Russel Schorn
Instructed by	: Alant Gell & Martin Inc.
Counsel for the Respondents	: Adv. Richard Ramashia
Instructed by	Maboku Mangena Attorneys Inc.
Date of hearing	: 25 August 2025
Date of judgment	: 03 November 2025

Judgment transmitted electronically