



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

CASE NO: 2017-01312

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: No

Date: 24 November 2025

In the matter between:

SS NTSHANGASE ATTORNEYS

Applicant

and

MASAKHE TENGWA

1st Respondent

ROAD ACCIDENT FUND

2nd Respondent

LEGAL PRACTICE COUNCIL

3rd Respondent

ADVOCATE JABU LUVUNO N.O

4th Respondent

JUDGMENT

Mfenyana J:

Introduction

[1] The applicant, a firm of attorneys, instituted proceedings against the first and second respondents seeking a series of orders against the first, second and fourth respondents. Key to these orders, listed in no particular order, is an order declaring

the settlement agreement reached between the first respondent (Mr Tengwa) and the second respondent (the Road Accident Fund / the Fund) on 28 August 2020 invalid. A second order is to the effect that Mr Tengwa be directed to account to the third respondent (the LPC) and the fourth respondent (the curator) on various issues relating to the settlement amount paid by the Road Accident Fund into 'Mr Tengwa's trust' account on 1 August 2022 as compensation for injuries sustained by a certain Mr Thwala within seven days.

[2] Against the Fund, the relief sought is for the Fund to make available to the registrar of this court a copy of a forensic investigation report compiled by the Fund pursuant to a complaint lodged by the applicant within seven days of an order by this court.

[3] Lastly, the applicant seeks an order directing the curator to ratify, accept and finalise any proposed settlement and file his report in respect of Mr Thwala's claim with the registrar of this court within 21 days of an order being granted by this court.

[4] Costs are sought only in the event of opposition.

[5] The application is opposed by the first and second respondents only. The third and fourth respondents have not opposed the application, with the fourth respondent only filing an explanatory affidavit. In his explanatory affidavit, the fourth respondent sought to lend support to the applicant's contention of ratification.

[6] On 14 June 2016, the applicant, acting in terms of the power of attorney signed by Mr Thwala in April 2016, lodged a delictual claim on behalf of Mr Thwala in terms of the Road Accident Fund Act¹, claiming damages allegedly suffered by Mr Thwala as a result of a motor vehicle accident which took place on 15 March 2016. The claimant sustained head injuries. On 18 January 2017, the applicant instituted proceedings in this court against the Fund under case number: 2017-01312.

¹ Act 56 of 1996.

[7] The applicant argues that the claimant was, at the applicant's instance, referred for medical assessment to substantiate the claim, and the experts diagnosed Mr Thwala with a severe brain injury and further that his mental acuity was adversely affected. Doctors Fine and Rosman, who furnished medico-legal reports, further recommended that, due to the nature of his injuries, a curator *ad litem* be appointed on behalf of the claimant as he would not be able to manage his affairs. The doctors further opined that it might also be necessary to appoint a curator *bonis*. Advocate Jabu Luvuno, cited as the 4th respondent, in these proceedings, was appointed as the curator *ad litem* for the plaintiff on 8 October 2018.

[8] The applicant contends that this application is brought under section 38 of the Constitution to protect Mr Thwala's rights and interests. It further asserts that, as of October 2020, when it learned of a settlement between Mr Tengwa and the Fund, it still had the authority to represent Mr Thwala in his claim against the Fund. It further contends that the settlement was reached without any input from the curator, who was also unaware of it. The applicant also states that it has filed a complaint with the LPC to resolve the dispute regarding the mandate given by Mr Thwala to either the applicant or Mr Tengwa. Accordingly, the applicant argues that the LPC has a direct and substantial interest in the matter. It also notified the Fund, which then initiated an investigation. Thus, the applicant contends that the settlement is invalid and falls to be set aside.

[9] In opposing the application, Mr Tengwa raised various points in *limine* as set out hereunder.

Locus standi

[10] Mr Tengwa avers that the applicant has no *locus standi* to initiate these proceedings. He further asserts that the applicant has neither provided a mandate nor a power of attorney authorising it to act on behalf of Mr Thwala, nor has the curator approved the institution of these proceedings by the applicant. Mr Tengwa denies that any of Mr Thwala's rights are at risk.

[11] Furthermore, he contends that Mr Thwala has not been declared *non compos mentis* under Rule 57 of the Uniform Rules of Court, and thus does not require the applicant's assistance. However, this argument overlooks the fact that the court has appointed a curator to act on Mr Thwala's behalf. As such, the applicant cannot rely on section 38(b) of the Constitution, as this responsibility now vests in the curator, the fourth respondent in these proceedings. Similarly, Mr Tengwa's assertion that Mr Thwala has not been declared *non compos mentis* is unsanctionable.

[12] In **Firm-O-Seal CC v Prinsloo & van Eeden Inc and Another**², the SCA held that:

[6] Locus standi in iudicio is an access mechanism controlled by the court itself. Generally, the requirements for locus standi are these: the plaintiff must have an adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief sought; the interest must not be too remote; the interest must be actual, not abstract or academic; and, it must be a current interest and not a hypothetical one. Standing is thus not just a procedural question, it is also a question of substance, concerning as it does the sufficiency of a litigant's interest in the proceedings. The sufficiency of the interest depends on the particular facts in any given situation. The real enquiry being whether the events constitute a wrong as against the litigant."

[13] In **Giant Concerts CC v Rinaldo Investments (Pty)Ltd and Others**³, the Constitutional Court (CC) held that the question of *locus standi* must be determined before the merits of the *lis* are considered by the court.

[14] Section 38(b) provides for 'anyone who acts on behalf of another person who cannot act in their own name to approach the court alleging that a right in the Bill of Rights has been infringed or threatened'. This provision essentially expands who has standing to bring a case and enables the specified groups of people to litigate for those who cannot.

² (483/22) [2023] ZASCA 107 (27 June 2023).

³ 2013(3) BCLR 251 (CC) at para 32.

[15] It is common cause that the fourth respondent was appointed by the court as a curator ad *litem* on behalf of Mr Thwala. Consequently, the responsibility of instituting proceedings on behalf of Mr Thwala falls on him. It does not shift to the applicant even if the curator has ratified other decisions. Moreover, legal standing cannot be ratified. Ratification stems from the law of agency, where a principal ratifies otherwise unauthorised conduct of their agent and thus giving consent to an agreement to render it legally binding and enforceable. *Locus standi*, on the other hand, is a technical legal point and does not involve the exercise of discretion by the person purporting to ratify prior unauthorised conduct. The rights of the curator have also not been ceded to the applicant. It follows, therefore, that this point in *limine* should succeed.

Jurisdiction

[16] The application was filed under a case number previously issued in a matter between the Fund and the claimant. That dispute has since been settled and finalised. Mr Tengwa contends that the applicant should have issued this application under a different case number. He argues that, failing this, the court lacks jurisdiction to adjudicate the matter. It is common cause that the applicant in this matter did not initiate the proceedings under a new case number.

[17] While I agree with Mr Tengwa that the present application is a new one, distinct from the initial dispute between Mr Thwala and the Fund, and should have been filed under a new case number, Mr Tengwa's contention seems to conflate the court's jurisdiction with the procedural irregularity of obtaining a case number. This is an administrative requirement aimed at identifying the matter. The lack of a new case number is not fatal to the application and can be remedied by reissuing it under a correct number. This does not mean that the court lacks the authority to adjudicate the matter, as the court inherently possesses the power to hear and decide cases. I do not agree that the application should be dismissed solely on that basis. An improperly issued application implies that the matter is not properly before the court and can therefore not be adjudicated. It is the kind of procedural irregularity that is curable and cannot result in the dismissal of the matter on its merits.

Non-joinder

[18] Mr Tengwa further contends that he entered into the settlement agreement with the Fund within the scope of his employment at Tengwa Attorneys. The settlement amount was deposited into Tengwa Attorneys' trust account and not his personal account. Therefore, the applicant's failure to join Tengwa Attorneys as a party to these proceedings is fatal to this application, he avers. I do not agree.

[19] In Erasmus: Superior Court Practice, Vol 2 at D1-125, the following is noted:

“The rule is that any person is a necessary party and should be joined if such person has a direct and substantial interest in any order the Court might make, or if such an order cannot be sustained or carried into effect without prejudicing that party, unless the Court is satisfied that he has waived his right to be joined.”

[20] The SCA held in **Naude**⁴ that “(t)he test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject-matter of the litigation, which may prejudice the party that has not been joined.”⁵ The SCA referred with approval to the sentiments expressed in **Gordon**⁶, where it was held that “... if an order or judgment cannot be sustained without necessarily prejudicing the interests of the third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined”.⁷

[21] In the supplementary heads of argument, the applicant contended that Mr Tengwa and Tengwa Attorneys “...are one in the same”.⁸ (sic). Mr Tengwa is the sole director and principal of Tengwa Attorneys, a company with personal liability. As a director of Tengwa Attorneys, Mr Tengwa is not an employee of the firm in the strict sense of the word. By definition, an employee is a person who is hired by another (in

⁴ *Absa Bank Ltd v Naude NO and Others* 2016 (6) SA 540 (SCA).

⁵ *Id* at para [10].

⁶ *Gordon v Department of Health, KwaZulu -Natal* (2008) (6) SA 522 (SCA)

⁷ *Id* at para [9].

⁸ See para 17 of the Applicant's Supplementary Heads of argument.

this case, an employer) to perform certain tasks or undertakings in return for remuneration. This presages a situation where there is an existence of an employer/employee relationship within the meaning and contemplation of the Labour Relations Act⁹. While a director is typically not liable for the debts of the firm, the power of attorney issued to Mr Tengwa by Mr Thwala records that Mr Tengwa was appointed to prosecute the claim on behalf of the firm. Moreover, there is no apparent distinction between Tengwa Attorneys and Mr Tengwa. Importantly, the order granted against the first respondent would not be prejudicial to Tengwa Attorneys in any way whatsoever. This point in *limine* should fail.

Lis pendens

[22] The first respondent did not persist with this point.

The relief sought is competent

[23] Mr Tengwa avers that the relief sought by the applicant is incompetent and bad in law, arguably on the basis that the settlement agreement has run its course and both parties involved (Mr Thwala and the Fund) have performed their obligations in terms of the settlement agreement. He argues that the court cannot declare invalid or set aside a settlement that does not exist.

[24] I find no merit to this contention as it is relevant to the merits of the application. It is not, strictly speaking, a legal point.

Conclusion

[25] Having found that the applicant has no legal standing to institute these proceedings, which is dispositive of the entire application, it will serve no purpose to traverse the merits of this application. The application ought to be dismissed.

⁹ Act 66 of 1995.

[26] With regard to costs , I am of the view that the general rule that costs follow the result should apply. The dismissal of the point of law of *locus standi* implies that the first respondent is successful in his opposition.

Order

[27] The following order is made:

- a. The first point in *limine* of lack of *locus standi* is upheld.
- b. The second point in *limine* of jurisdiction is dismissed.
- c. The third point in *limine* of the non-joinder of Tengwa Attorneys is dismissed.
- d. The application is dismissed.
- e. The applicant shall pay the first and second respondents' costs of the application


S MFENYANA
Judge of the High Court
Johannesburg

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading the judgment onto Caselines. The date of handing down the judgment is deemed to be 24 November 2025.

Appearances:

For the applicant :
Counsel: B Molojoa
Instructed by SS Ntshangase Attorneys

For the respondent 1st respondent:
Counsel: M.S. Lufele
Instructed by: Tengwa Attorneys

For the 2nd respondent
Counsel: P Nziyanziya
Instructed by: State Attorney

For the 3rd respondent:
No appearance

For the 4th respondent:
Counsel: AJP Luvuno
(In his representative capacity as the curator *ad litem*)

Date of hearing: 29 May 2025

Date of judgment: 24 November 2025