



**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE LOCAL DIVISION: MTHATHA]**

CASE NO. 1542/2025

In the matter between:

SBV SERVICES (PTY) LTD

Applicant

and

NOPHUMZILE NIKIWE MPINI

1st Respondent

BONGANI MPINI

2nd Respondent

ZOLILE SYDWELL MPINI

3rd Respondent

ZIMELE MPINI

4th Respondent

SINAWO MPINI

5th Respondent

ODWA MPINI

6th Respondent

S[...] M[...] obo B[...] M[...]

7th Respondent

JUDGMENT

JOLWANA J

[1] This is an application in terms of rule 30(1) of the Uniform Rules of Court at the centre of which is the respondents' notice of bar which the applicant seeks an order

setting it aside as an irregular step. This, until a court has been satisfied about the authority of the respondents' attorneys to represent the respondents.

[2] The brief history of this matter, to the extent that it is relevant for the purposes of determining this application is as follows. The respondents (*qua* plaintiffs) issued summons against the applicant (*qua* defendant) claiming delictual damages consequent upon the alleged shooting and killing of the late Luti Mpini, by security guards under the employ of the applicant, a company registered in the appropriate fashion for the provision of security services and specialising in cash conveyance. The deceased was the biological son of the first respondent and a sibling of the second to the sixth respondents and also the biological father of a minor child for whom the seventh respondent acts in a representative capacity as the mother and natural guardian.

[3] After being served with the summons, the applicant filed a notice of intention to defend the action simultaneously with a notice in terms of rule 7(1) the essence of which was the applicant disputing the respondents' attorneys' authority to act for them. The respondents' attorneys filed a reply to the rule 7 notice to which they attached seven separate powers of attorney signed by each one of the plaintiffs confirming that S. R. Mhlawuli & Associates are their attorneys and that they authorised them to institute the action proceedings against the applicant to claim damages consequent upon the death of the deceased. The reply to the rule 7 notice was filed simultaneously with the notice of bar in terms of which the applicant was given five days within which to file or deliver its plea to the action.

[4] It is the filing of the notice of bar that spurred this application. In its founding affidavit the applicant's case is that the period of 20 days referred to in rule 22(1)¹ of the Uniform Rules of Court shall only commence running a day after a court shall have been satisfied of the authority of the respondents' attorneys to act for them. The applicant contends that, as it was entitled to, it disputed the authority of the respondents' attorneys to act for the respondents by issuing a rule 7(1) notice. Therefore, the respondents' attorneys were not permitted to act for them until they had satisfied a court of their authority to act for the respondents. It was contended that it was insufficient for the respondents' attorneys to file the powers of attorney as the said powers of attorney were merely an attempt by them to satisfy the applicant of their authority to act for the respondents. That did not, without a court making a pronouncement that it was satisfied of their authority, entitle them to continue acting and file a notice of bar as they did. Therefore, the filing of the said notice of bar, absent a pronouncement by a court, was an irregular step. That is the essence of the applicant's case.

[5] In their opposing affidavit the respondents' case is that once they filed their powers of attorney which they had granted to their attorneys of record to act on their behalf, nothing more was required of them and their attorneys were thereupon entitled to continue acting for them. They further contend that the applicant's complaint was therefore based on a misconception of the legal position as an attorney who produces a power of attorney to act on behalf of the litigant concerned is not required to await a judicial pronouncement on his or her authority to act. Therefore, the notice of bar which was filed on their behalf by their attorneys was not

¹ Rule 22(1) reads: Where a defendant has delivered notice intention to defend, he shall within twenty days after the service upon him of a declaration or within twenty days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.

an irregular step as nothing beyond the filing of the powers of attorney was required in the circumstances of their case.

[6] The applicant's attorneys filed very long heads of argument running to 25 pages with 83 paragraphs to which they attached judgments from the Gauteng Division of the High Court and the North West Division of the High Court. Both judgments, despite having been decided long after *Fillis*², a decision of this Division which is an authority on rule 7(1) do not refer to *Fillis*. Most disappointingly, even in their very long heads of argument the applicant's attorneys also ignored *Fillis* which has been and continues to be good law in this Division.

[7] In *Fillis* from which I quote liberally, after making reference to and discussing case law preceding the advent of rule 7, Eksteen J stated the current legal position governed by rule 7 as follows:

“[12] In 1987 the Uniform Rule of this Court were considerably revised. In terms of the revised rule 7 of the Uniform Rules of Court a power of attorney establishing the authority to act on behalf of a litigant need no longer be filed as a matter of course. If, however, an attorney's authority to act on behalf of a party is challenged, then in terms of rule 7 of the Uniform Rules of Court, the attorney is required to satisfy the Court that he is properly authorised to act on behalf of the litigant. Until he has done so he is precluded from acting further. In order to do so he is required to produce proof of his mandate, usually a power of attorney, and, where necessary, an appropriate resolution authorising the signature of the power of attorney.

[13] The obligation to establish this authority only arises when the authority to prosecute the process is challenged. In the present matter Attorneys Spilkins' authority to prosecute the action and the application for summary judgment has not been challenged and is accordingly not in issue. What is contested is the authority of the deponent Freeborough to depose to any affidavit. Accordingly, the reasoning in the *Pretoria City Council* matter finds no application in this

² First Rand Bak Ltd v Fillis and Another 2010 (6) SA 565 (ECP).

matter. The challenge to the authority to depose to an affidavit is, in my view, entirely misconceived. The same point was raised in the matter of *Gans and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA). In that matter Streicher JA disposed succinctly of this argument at 624F-H where he said.

‘There is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorised. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised.’”

[8] Counsel for the applicant was not able to make any meaningful submissions on whether it was expected of a litigant whose authority has been challenged and in circumstances in which nothing was being said to gainsay the said attorney’s authority to act on behalf of her or his client as evinced in a power of attorney, that attorney, should, nonetheless, set the matter down, specifically to hear if the court will pronounce itself as being satisfied of the attorney’s authority to act for that litigant. I find it unfathomable that a court should be expected to make any pronouncement when the litigant who challenged the authority has not or is unable to question the authority conferred on that attorney by that litigant as evinced through a power of attorney.

[9] Even more interesting is, where the hearing of a matter on the merits has been concluded and judgment has been reserved at the time a rule 7 notice is filed, whether a court should convene a special sitting when there is nothing that has been filed to gainsay the authority as demonstrated through the power of attorney? I do

not think so. No meaningful submission was made in this regard, understandably so, as the issue raised by the applicant is unsustainable, misplaced and appears to have been adopted in blissful ignorance of the *Fillis* judgment, an authority on that issue in this Division which has not been upset by a higher court as far as I am aware. There is also the issue of the illogicality of a court having to make a pronouncement on an issue that ceased to be live as soon as the attorney's mandate has been established. Were this to be the case, the speedy finalisation of cases and the avoidance of unnecessary delays would be thwarted in circumstances where the authority would no longer be in doubt.

[9] In all the circumstances, the application stands to be dismissed as it is entirely devoid of merit and is totally misconceived, if not entirely misguided.

[10] In the result, the following order is made:

1. The applicant's application in terms of rule 30(1) of the Uniform Rules of Court is dismissed.
2. The applicant is ordered to pay the costs of the application on scale B.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearances :

Counsel for the applicant : J L Hobbs

Instructed by : Engelbrecht Attorneys Inc.
c/o J. A. Le Roux Attorneys
Mthatha

Attorney for the respondents : S R Mhlawuli

Instructed by : S R Mhlawuli & Associates

Date of hearing : 9 October 2025

Date delivered : 2 December 2025