



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

CASE NO. 2023- 083030

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

05/01/2026

DATE

SIGNATURE

In the matter between:

MARTIN KYLE JOUBERT

APPLICANT

and

BLACK RHINO GAME LODGE (PTY) LTD

1st RESPONDENT

MAKHAIL JOUBERT (PTY) LTD

2nd RESPONDENT

ODETTE OCTAVIA JOUBERT

3rd RESPONDENT

HENDRIK PETRUS JOUBERT

4th RESPONDENT

BIG NAME INVESTMENTS 1025

5th RESPONDENT

COMPANY AND INTERLECTUAL PROPERTY

6th RESPONDENT

MASTER OF HIGH COURT

7th RESPONDENT

MARMIKO FAMILY TRUST IT 1275/96

8th RESPONDENT

ODETTE OCTAVIA JOUBERT N.O.

9th RESPONDENT

HENDRIK PETRUS JOUBERT N.O.

10th RESPONDENT

JUDGMENT

BHOOLA AJ

Introduction

[1] This matter concerns a series of interrelated applications arising from disputes within the Marmiko Family Trust 1275/96 and associated corporate entities. The applicant, a director of the first and fifth respondents and a beneficiary of the eighth respondents (The Trust), seeks relief in Part B of the proceedings to declare the second and third respondents' delinquent directors of the first and fifth respondents and to secure their removal from office.

[2] The respondents have opposed the relief sought and, in turn, instituted a counter - application challenging the applicant's *locus standi* in these proceedings.

[3] On the eve of the hearing of the hearing, the applicant further instituted an application to join Mr. Anagnostellis ("the joinee"), alleged to be a trustee of the eighth respondent, to the proceedings. At the commencement of argument, applicant's counsel proposed that the court first hear the Part B application, followed by the locus standi application, and lastly the joinder application. Counsel for the respondents objected, asserting that the joinder application ought to be determined first, as its outcome would have a direct bearing on the other applications.

[4] The court ruled that it was prudent to commence with the joinder application. The joinder of a trustee of the Marmiko Family Trust carries both procedural and substantive implications, and the determination of this issue is a necessary precursor to the adjudication of the main application and the *locus standi* challenge.

Factual Background

[5] The applicant launched the joinder application on the basis that, at the time he initiated the main application, he was under the impression that Mr. Christos Demetre Anagnostellis, was not a trustee of the Marmiko Family Trust. This belief was informed by a resolution passed on 26 October 2022 and correspondence from the third respondent instructing the joinee to resign. During the course of litigation, the respondents raised a point of misjoinder in their answering affidavit. The applicant contends that the joinee's position was resuscitated in 2024, and notice was served by email.

[6] The applicant then enquired from the respondents' attorney whether service could be made at his office, and the attorney consented. The joinee himself has not opposed the application. However, the first to fifth respondents and the eighth to tenth respondents oppose the joinder.

[7] The applicant contends that his failure to cite the joinee initially was not a mistake but a consequence of his reliance on the resolution and correspondence. He asserts that the joinder application was launched *ex abundanti cautela* (out of an abundance of caution).

[8] Following the respondents' revival of joinee's involvement in the Trust, the applicant sought an order for his joinder. He avers that the joinee resumed acting as a trustee in 2024, after the third respondent was interdicted from taking certain steps, and that the joinee was deployed to frustrate his position. On this basis, the applicant



contends that the joinee has a substantial interest in the matter and ought to be joined. He further conflates the Marmiko Family Trust with the Marmiko Management Services (Pty) Ltd, where the resolution was passed to remove the joinee as a director.

[9] The respondents oppose the joinder application not on substantive grounds, but on procedural defects contending that it is fatally defective and amounts to an abuse of process. They allege that the applicant failed to properly cite the joinee in the papers, did not effect proper service, and irregularly amended the notice of motion without the leave of court. They further assert that the application, filed at this late stage of the proceedings is not *bona fide* but a delaying tactic.

[10] Against this backdrop, the court is required to determine whether the procedural defects alleged are fatal, or whether the joinee's revived role as trustee and his asserted substantial interest in the proceedings justify his joinder.

[11] In his replying affidavit, the applicant concedes that he was removed as a director of the first respondent and also concedes that Mr. Anagnostellis has been involved in the running of the trust since August 2024, following the passing of applicant's father.

Issue

[12] The following issues are to be determined by this court:

12.1. Whether the joinee possesses a direct and substantial interest in the subject matter of the litigation

12.2 Whether the joinder application is defective by reason of non-compliance with the Uniform Rules of Court.

12.3 Whether the joinder application constitutes an abuse of process.

12.4 Whether the joinder is futile, given the respondent's contention that the applicant lacks *locus standi*.

Legal Framework

Argument 1: Whether the applicant is entitled to the relief claimed.

[13] For the applicant to succeed in the joinder application he must prove that the joinee has a direct and substantial interest, and the judgment in the main application cannot be sustained and carried into effect without necessarily prejudicing the joinee's interest.¹

[14] Uniform Rule 10 regulates joinder proceedings. The purpose of joinder is to ensure that all parties whose rights or interests may be affected by the court's order are before the court, preventing multiple or inconsistent judgments.

[15] Under the common law courts have the inherent power to order the joinder of further parties in an action which has already commenced, to ensure that persons interested in the subject matter of the dispute and whose rights may be affected by the judgment are before the court.²

[16] A Joinder of convenience occurs where it is practical and expedient to join parties or causes of action in one proceeding, although each could have been heard separately. The purpose is to avoid multiplicity of actions, save costs, and ensure

¹ Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A), Henri Viljoen (Pty) Ltd v Awerbach Brothers 1953 (2) SA 151 (O) at 165-71

² SA Steel Equipment Co (Pty) Ltd 1951 (4) SA 167(T) at 172F-H; Ploughman NO v Pauw 2006(6) SA 334 C at 341E-F

judicial fairness³. This type of joinder is permissible for efficiency, and it is not legally required. The court has a discretion to allow or refuse it.⁴

[17] A necessary joinder arises where a person has a direct and substantial interest in the subject matter of the litigation. This is a legal interest, that may be prejudicially affected by the court's order.⁵ Such legal interest exists where the court's order would affect a party's legal right or obligation⁶.

[18] In *Bowring NO v Vrededorp Properties CC*⁷, the Supreme Court of Appeal held that co-trustees must be joined as necessary parties, as they together form the trust's controlling organ. One trustee acting alone cannot validly represent the trust unless authorised by the trust deed or by other trustees. Proceedings brought by or against fewer than all trustees are fatally defective due to non-joinder.

[19] In *Gordon v Department of Health, Kwa Zulu Natal*⁸, the Supreme Court of Appeal held that a person must be joined when they have a direct and substantial interest in the subject matter of the litigation that may be prejudicially affected by the Court's judgment. It further held that a court must raise non-joinder *mero motu* if it appears that a necessary party has not been joined. Failure to join such a party renders the proceedings fatally defective, as the court cannot make a binding or enforceable order in the absence of such party. This was confirmed by the Constitutional Court in *Matjhabeng Local Municipality v Eskom Holdings Limited*.⁹ This principle is consistent with the Constitution's requirement of fairness and procedural justice.

³ *United Watch and Diamond Co (Pty) Ltd v Disa Hotels Ltd* 1972 (4) SA 409 C.

⁴ *Nelson Mandela Municipality v Greyvenouuw CC* 2004 (2) SA 81(SE)

⁵ *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A), *Henri Viljoen (Pty) Ltd v Awerbach Brothers* 1953 (2) SA 151 (O) at 165-71, *Absa Bank Ltd v Naude NO and Others* [2015] ZASCA 97

⁶ *Bowring NO v Vrededorp Properties CC* 2007(5) SA 391

⁷ 2007 (5) SA 391 (SCA)

⁸ 2008(6) SA 522 (SCA)

⁹ 2018 (1) SA (CC)



Argument 2: Procedural Defects

[20] Citation is the mechanism by which a party is formally brought before the court. Without proper citation, the court lacks jurisdiction to adjudicate relief against that party. It is trite that a person who is not cited cannot be bound by any order of court. *Baptista and Others v Quickstep 684 (Pty) Ltd and Others*.¹⁰

[21] Rule 4(1)(a) of the Uniform Rules of Court requires that service of initiating process be effected by the sheriff. This is a mandatory safeguard designed to ensure procedural fairness and certainty. Service by alternative means, such as email, is permissible only where expressly authorised by the Rules, the Practice Directives, or by agreement between the parties. The respondents agreed to receive service at their office but did not waive compliance of Rule 4(1)(a). There was no express agreement that service will take place by email.

[22] Rule 4A regulates service of notices and interlocutory applications but does not apply to initiating processes. Joinder applications, insofar as they seek to introduce a new party, constitute initiating processes and must therefore comply with Rule 4(1)(a). Provision 6.3 of the Consolidated practice Directive 1 of 2024 provides “service should still be effected in terms of Rule 4 or 4A of the Uniform Rules of Court, as the Case may be. Where service is effected by email the delivery or read receipt will serve as proof of service and must be uploaded. There was no delivery or read receipt filed by the applicant.

[23] The principle of *audi alteram partem* requires that a party sought to be joined must be properly cited and served, so that they have an opportunity to oppose or

¹⁰ [2023] ZAGPHC 733



respond. Failure to do so violates procedural fairness and renders the application defective. *Gordon v Department of Health, KwaZulu-Natal*.¹¹

[24] Amendments may be granted to cure citation errors, but an amendment presupposes a valid initiating process. It cannot retrospectively validate a nullity. Where the initiating process is fatally defective, the proper course is to withdraw and relaunch the application with proper citation and service. *Hlophe v Freedom Under Law In re: Freedom Under Law v Hlophe; Moseneke and Others v Hlophe In re: Hlophe v Judicial Services Commission and Others*.¹²

Argument 3: Abuse of Process

[25] Courts possess an inherent jurisdiction to prevent abuse of the court process. Abuse of process occurs where litigation is pursued for an ulterior purpose, or where procedural rules are manipulated in a manner that undermines fairness, efficiency, or the integrity of the judicial system.¹³ The principle was reaffirmed in *Beinash v Wixley*¹⁴, where the Supreme Court of Appeal held that abuse of process arises when a litigant uses the court's procedures for a purpose other than that for which they were designed, or in a manner that is vexatious, oppressive, or unfair to the other party.

[26] Rule 30 of the Uniform Rules of Court provides a mechanism for a party to apply to set aside irregular proceedings. An irregular step includes the filing of defective papers, amendments without leave, or attempts to cure fatal defects through procedural shortcuts. The Rule reflects the broader principle that litigants must comply with procedural safeguards and cannot act arbitrarily.

¹¹ 2008 (6) SA 522 (SCA)

¹² (2021/43482) [2021] ZAGPJHC 743; [2022] 1 All SA 721 (GJ); 2022 (2) SA 523 (GJ)

¹³ *Hudson v Hudson and Another* 1927 AD 259

¹⁴ (457/95) [1997] ZASCA 32, 1997(3) SA 721 (SCA)

[27] In *Mdlalose v Doctor Brendan Lune Medical Practice and Others*,¹⁵ the court emphasised that joinder applications launched without necessity or proper compliance, may constitute an abuse of process. The court stressed that joinder must be pursued *bona fide* to ensure fairness, not as a delaying tactic or to frustrate the opposing party.

[28] Abuse of process is distinct from mere procedural irregularity. While irregularities may be cured by amendment or condonation, abuse of process strikes at the integrity of the proceedings and may justify dismissal of the application or a punitive costs order.

Argument 4: Futility and Locus Standi

[29] *Locus standi* refers to the capacity of a litigant to institute proceedings. The principle is rooted in the requirement that a party must have a direct and substantial interest in the relief sought.¹⁶ Section 162 of the Companies Act 71 of 2008 regulates standing in delinquency applications. Courts have consistently held that *locus standi* is a threshold issue that must be determined before substantive relief can be granted.¹⁷

[30] However, where *locus standi* is raised in a separate counter-application, the court seized with an interlocutory matter such as joinder must avoid prejudging that issue. The proper approach is to recognise the contention but confine the present inquiry to whether joinder is procedurally necessary.

Evaluation

Joinder Application

¹⁵ [2022] ZAGPJHC 262

¹⁶ *Jacobs en 'n Ander v Waks en Andere* 1992 (1) SA 521 (A).

¹⁷ *Basotho Meat Enterprise v Falcodor* 199 CC [2024] ZAFSHC 147

[31] The applicant initially contended that the joinder was pursued out of convenience and *ex abundanti cautela*, relying on a resolution and correspondence suggesting that Mr. Christo Demetre Anagnostellis had resigned as trustee. However, this position was inconsistent with the Letter of Authority issued by the Master of the High Court, which confirmed that Mr. Christo Demetre Anagnostellis is a trustee of the Marmiko Family Trust. The applicant ultimately conceded during argument that Mr. Anagnostellis joinder was necessary, not merely convenient.

[32] The respondents did not oppose the substance of the joinder but raised procedural objections. The opposition underscores the distinction between necessary and convenient joinder. Where a trustee is a necessary party, the court cannot proceed without their inclusion, regardless of procedural irregularities.

[33] The Marmiko Family Trust in this application is cited as the eighth respondent. According to the Letter of Authority issued by the Master of the High Court, Mr. Christo Demetre Anagnostellis is reflected as a trustee. The trust estate is administered collectively by its trustees, and any order granted against the Trust necessarily affects each trustee in his or her representative capacity. Mr. Christo Demetre Anagnostellis, the joinee, has a direct and substantial interest in this matter and should be joined as a party to the proceedings.

Defective Process

[34] The applicant concedes that the original notice of motion in the main application and in the joinder application, failed to cite Mr. Christo Demetre Anagnostellis as a party to the proceedings. This omission is not a minor oversight but a jurisdictional defect. Citation is not a clerical formality; it is the act by which the court's jurisdiction is engaged. The fact that Mr. Christo Demetre Anagnostellis was referred to in the supporting affidavit does not cure the defect, he must be cited as a party to the proceedings.

[35] The applicant's reliance on amendment to correct the omission is misplaced. An amendment cannot retrospectively validate a defective initiating process. The proper course would have been to withdraw the defective application and relaunch it with proper citation and effective service.

[36] The applicant purported to amend the citation by filing a notice of intention to amend in terms of Rule 28, adding "Martin Kyle Joubert v Christos Demetre Anagnostellis" alongside the existing respondents. This was done without leave of court and without the consent of the respondents. What exacerbates the issue is the amended notice of motion dated 14 October 2025 was filed without an order of court. Such amendment is irregular and cannot be recognised as valid. The judgment accordingly proceeds based on the original citation, while considering the joinder application on its merits.

[37] The issue of service compounds the defect. The applicant effected service via email on the respondents' attorneys, contending that they had consented to service at their offices. However, the correspondence relied upon does not dispense with the requirement of service by sheriff. Rule 4(1)(a) requires service of initiating process by the sheriff, and no waiver, agreement or court authorisation was obtained to deviate from this requirement.

[38] Even if service by email had been agreed upon between the parties, Rule 4A and the Revised Practice Directives of Gauteng require proof of service in the form of a delivery note or read receipt. No such proof was furnished. Consequently, service was not effective in accordance with the Rules.

[39] I find that the joinder application is fatally defective. The applicant failed to properly cite and serve Mr. Christo Demetre Anagnostellis in accordance with the

Uniform Rules of Court. Citation is the act by which jurisdiction is engaged, and service by sheriff is the mandatory safeguard that ensures procedural fairness. An amendment cannot retrospectively cure a nullity, nor can informal service by email substitute for compliance with Rule 4(1)(a). The failure to comply with these requirements violates the principle of *audi alteram partem* and deprives the joinee of his right to be heard. Accordingly, the application in its present form cannot be sustained.

Abuse of process

[40] The respondents contend that the application was launched at the eleventh hour, shortly before the hearing of Part B, and that it was intended to delay the proceedings. The timing of the application, coupled with the procedural shortcuts, lends weight to the argument that the joinder was pursued for an ulterior purpose rather than *bona fide* compliance with the law.

[41] They assert the issue of non-joinder was raised on 18 September 2023 and the applicant took no steps for nearly two years, no application was launched, and no papers were amended. Furthermore, a case management meeting was held on 20 May 2025 with the Deputy Judge President.

[42] In *Beinash v Wixley*¹⁸, the court cautioned against the use of judicial process for purposes other than those for which it was designed. Similarly, in *Mdlalose v Doctor Brendan Lune Medical Practice*,¹⁹ the court emphasised that joinder applications launched “out of convenience” without proper compliance may constitute abuse of process. The present matter falls squarely within this category.

¹⁸ 1997 (3) SA 721 (SCA)

¹⁹

[43] The applicant candidly conceded that the joinder application was launched “out of convenience” and in *ex abundanti cautela*. While convenience may justify joinder in certain circumstances, it cannot excuse non-compliance with the Rules of Court. The concession itself suggests that the application was not pursued as a matter of legal necessity but as a tactical safeguard.

[44] The applicant amended the notice of motion without leave of the court, failed to properly cite and serve the joinee, and attempted to cure foundational defects through informal correspondence and email service. These steps amount to irregular proceedings within the meaning of Rule 30 and demonstrate disregard for procedural safeguards designed to protect fairness and certainty.

[45] While courts are slow to characterise conduct as abusive, the cumulative effect of the applicant’s actions of late filing, defective citation, irregular amendment, and improper service demonstrates a pattern inconsistent with *bona fide* litigation. The respondents have been prejudiced by having to respond to defective papers and by the delay occasioned in the adjudication of the main application. I accordingly find that the joinder application, as pursued, constitutes an abuse of the court’s process.

Futility and Locus standi

[46] The respondents argue that the joinder of Mr. Christo Demetre Anagnostellis is an exercise in futility, since the applicant, on his own version, lacks *locus standi* to pursue the relief sought in the main application. While *locus standi* is indeed a threshold issue, it is the subject of a pending counter-application that is not before this court for determination at this stage.

[47] Accordingly, while the respondents’ futility argument is noted, it cannot be decisive in the present application. The joinder must be determined on its own merits,

and the issue of *locus standi* will be addressed when the counter-application is properly before the court

[48] I therefore find that the futility argument, insofar as it rests on the applicant's alleged lack of *locus standi*, cannot be resolved in this interlocutory application. The joinder of Mr. Anagnostellis must be considered independently, and the counter-application will provide the appropriate forum for the determination of *locus standi*.

Conclusion

[49] Having considered the papers, submissions, and applicable principles, while the joinder of Mr. Christo Demetre Anagnostellis is legally necessary to ensure that all trustees of the eighth respondent are before the court, the manner in which the application was pursued was procedurally defective and constituted an abuse of process. The applicant's reliance on convenience on papers, coupled with irregular citation and service, cannot be condoned. The respondents were compelled to oppose defective papers and incur unnecessary expenses. Accordingly, the joinder is granted, subject to the applicant regularising the papers and effecting proper service in compliance with Rule 4(1)(a) within fifteen (15) days of this order.

Costs

[50] The general rule is that the successful party is entitled to its costs unless the court directs otherwise. The applicant sought a punitive cost order in its heads of argument and the respondent sought costs on an attorney- and- client scale. Costs remain the discretion of this court. In as much as the manner in which the applicant conducted the joinder proceedings is frowned upon, I do not believe that the respondent is entitled to attorney and client costs for this application. I am deviating from the normative as the applicant sought an indulgence. The applicant is directed to pay the respondents' costs occasioned by the joinder application, such costs to be taxed on the party-and-party scale.

Order

[51] As a result, I make the following order:

51.1. Joinder Application

51.1.1 The joinder of Mr. Christo Demetre Anagnostellis, as trustee of the eighth respondent (the Marmiko Family Trust), is granted.

51.1.2 The joinder is a matter of legal necessity.

51.2. Procedural Defects

51.2.1 The application, as launched, was fatally defective for want of proper citation and service.

51.2.2 The defects are noted, but in light of necessity and the absence of substantive prejudice, the joinder is nevertheless granted.

51.2.3 The applicant is directed to regularise the papers and effect proper service in accordance with Rule 4(1)(a) of the Uniform Rules of Court within fifteen (15) days of this order.

51.3. Abuse of Process

51.3.1 The joinder application, constitutes an abuse of process in its procedural form.

51.3.2 However, given necessity of joinder, the application is not dismissed.

51.3.3 The applicant is ordered to pay the respondent's costs occasioned by the irregularities on a party-and-party scale.

51.4. *Futility and Locus Standi*

51.4.1 The respondents' contention that the joinder is futile, on the basis that the applicant lacks locus standi, is noted.

51.4.2 The issue of *locus standi* is reserved for determination in the pending the subject of a pending counter-application.

51.4.3 The joinder is accordingly decided independently of *locus standi*.

51.5 *Costs*

51.5.1 The applicant is ordered to pay the respondents' costs occasioned by the joinder application, such costs to be taxed on the party-and-party scale A.



CB. BHOOLA

Acting Judge of the High Court

Gauteng Division of the High Court, Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 05 January 2026 and is handed down electronically by circulation to the parties/their legal representatives by e mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 05 January 2026.



APPEARANCES

Date of Hearing: 14 October 2025

Date of Judgment: 05 January 2026

Counsel for Applicant: Advocate Maputha

Instructed by Lazarus Joshua Attorneys

(tele: 079 494 8091, email: joshua@lazarusjoshuaattorneys.com)

Counsel for Respondent: Advocate HM Viljoen

Instructed by Osborne Wellstead and Paulsen INC

(tele: 082 331 3310, email: brett.tate@owpandapartners.com)

