



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 2516/2024

In the matter between:

MOHOKARE LOCAL MUNICIPALITY

APPLICANT

and

**2T INNOVATION BUSINESS CONSULTING
& PROJECTS (PTY) LIMITED**

FIRST RESPONDENT

THE SHERIFF OF ZASTRON

SECOND RESPONDENT

Neutral citation: *Mohokare Local Municipality v 2T Innovation Business Consulting & Projects (Pty) Limited & Another* (2516/2024) [2026] ZAFSHC 48 (9 February 2026)

Coram: PARKS AJ

Heard: 22 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for the hand-down is deemed to be 11h30 on 9 February 2026.

Summary: Uniform Rules of Court – stay of execution – *rule nisi* – Legal Practice Act 28 of 2014 – unauthorised legal representation – authority to represent a company – public interest – essential service vehicle.

ORDER

- 1 The *rule nisi* granted on 6 November 2025 is hereby confirmed.
 - 2 The respondent is ordered to pay the costs of the application, including the costs of counsel on scale B.
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JUDGMENT

Parks AJ

Introduction

[1] On 14 October 2025, the respondent obtained a default judgment pursuant to which, the applicant's goods were attached. Consequently, on 5 November 2025, the applicant launched an urgent application for the suspension of the execution and the return of the attached goods. The matter was subsequently postponed to 6 November 2025 to allow the respondent to file its notice of intention to oppose and answering affidavit by no later than 12h00, and for the applicant to file its replying affidavit by no later than 13h00. In the absence of an answering affidavit being filed, a *rule nisi* was granted suspending all execution steps pending the final determination of the application for rescission of the default judgment, including an order directing the Sheriff to release the goods under attachment. The respondent was called upon to show cause on 22 January 2026, why the execution steps pursuant to the order issued on 14 October 2025, suspending the final adjudication of the application for rescission of the default judgment, should not be made final.

[2] It appears that the answering affidavit was filed on 11 November 2025 and was deposed to by Mr Phetogo Morake, the legal manager employed by the first respondent. The applicant thereafter filed a replying affidavit on 15 January 2026. The parties' respective heads of argument were filed on 14 January 2026 and 20 January 2026. The application is opposed.

Background

[3] On the day of the hearing, I was informed that, on 21 January 2026, a letter had been addressed to the respondent seeking confirmation as to whether the deponent, who

purported to represent the first respondent, was an admitted and practising attorney, duly admitted to appear in the High Court.

[4] Prior to the commencement of the hearing, counsel for the applicant furnished me with copies of the following authorities: *Manong & Associates (Pty) Ltd v Minister of Public Works & Another*,¹ *S v Martin (Review)*,² *S v Lebeloane*; *S v Ketshengane* and *S v Ntshudu (Review)*³ and *Mamfengu v Magistrate Regional Court, Bizana & Others (Review)*.⁴ I directed that copies of these authorities be provided to Mr Phetogo Morake to enable him to respond to the intended argument by counsel for the applicant. Counsel for the applicant subsequently advanced an argument concerning the propriety of the respondent's representation, pointing out that the heads of argument were unsigned and failed to disclose the identity of the drafter. This resulted in a request for the practice note, which reflected that Mr Phetogo Morake would represent the respondent and appear in person.

[5] In support of their argument, counsel for the applicant referred to s 33(1) of the Legal Practice Act 28 of 2014 (the Legal Practice Act), which regulates the authority to render legal services, as well as *Manong & Associates (Pty) Ltd v Minister of Public Works and Another*,⁵ wherein it was held that a director may be permitted to appear on behalf of a company that is a party to the proceedings, provided that leave to do so is sought from the court by way of a formal application. Counsel accordingly submitted that I was required to consider the consequences where a person, in the absence of a right of appearance or proper authorisation, purports to represent a company.

[6] Mr Morake, in response, contended that his role as a legal manager employed by the respondent authorised him to ensure that the respondent was properly represented, which he submitted justified his personal appearance in court. He conceded that he does not have a right of appearance in terms of the Legal Practice Act and requested permission to continue acting on behalf of the respondent.

¹ *Manong & Associates (Pty) Ltd v Minister of Public Works and Another* [2009] ZASCA 110; 2010 (2) SA 167 SCA; [2010] 1 All SA 267 (SCA).

² *S v Martin (Review)* [2020] ZAECPHC 49.

³ *S v Lebeloane*; *S v Ketshengane* and *S v Ntshudu* [2020] ZAECGHC 153.

⁴ *Mamfengu v Magistrate Regional Court, Bizana & Others* [2025] ZAECMHC 90.

⁵ Op cit fn 1 para 14.

The issue

[7] Whether Mr Morake has the authority to appear on behalf of the respondent in these court proceedings and further whether the rule *nisi* issued on 6 November 2025 must be confirmed.

The law

[8] Rule 18(1) of the Uniform Rules of Court provides that a combined summons and the pleadings must be signed by both an attorney and an advocate, unless the attorney concerned holds a right of appearance in the High Court, or where a party sues or defends in person, in which event the documents must be signed by that party. In terms of s 33(1) of the Legal Practice Act, only a practising legal practitioner duly admitted and enrolled in terms of its provisions may appear in any court of law or draw up or execute any instrument or document relating to, or intended for use in, proceedings before a court of civil or criminal jurisdiction within the Republic.

[9] A company is defined in s 1 of the Companies Act 71 of 2008 (the Companies Act), as a juristic person incorporated in terms of the provisions of that Act. Once duly registered, a company constitutes a distinct legal persona, separate and independent from its members, whether considered individually or collectively. In terms of s 19(1)(b) of the Companies Act, a company has all the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising such powers or having such capacity, or where the company's memorandum of incorporation provides otherwise. Section 20(1) of the Companies Act further provides that a company's memorandum of incorporation may restrict, limit, or qualify the legal capacity and powers of the company. Section 66(1) of the Companies Act, vests the management of a company in its board of directors, empowering them to cause the company to participate in legal proceedings. Shareholders do not, merely by virtue of their shareholding, have *locus standi* to represent the company in such proceedings, a principle affirmed in *Basotho Meat Enterprise v Falcodor 199 CC t/a Iceburg Trading NO and 2 Others*.⁶

[10] The Supreme Court of Appeal held in *Ganes and Another v Telecom Namibia Ltd*,⁷

⁶ *Basotho Meat Enterprise v Falcodor 199 CC t/a Iceburg Trading NO and 2 Others* [2024] ZAFSHC 268 para 18.

⁷ *Ganes and Another v Telecom Namibia Ltd* [2003] ZASCA 123; 2004 (3) SA 615 (SCA); 2004] 2 All SA 609 (SCA); (2004) 25 ILJ 995 (SCA) para 19.

that it is irrelevant whether the deponent to an affidavit filed in support of an application on behalf of a company is authorised to depose to the affidavit. What is relevant is that 'the institution of the proceedings and the prosecution thereof must be authorised'. In *Manong & Associates (Pty) Ltd v Minister of Public Works*,⁸ it was held that, in rare and exceptional, or at least unusual, circumstances, the general rule may be relaxed. In each such instance, however, the leave of the court must be obtained in advance. In this regard, Ponnann JA stated:

'I have expressly refrained from formulating a test for the exercise of the court's inherent power as I believe that such cases can confidently be left to the good sense of the Judges concerned. Lest this be misconstrued as a tacit or general licence to unqualified agents, it needs to be emphasised that in each such instance leave must be by way of a properly motivated, timeously lodged formal application showing good cause why, in that particular case, the rule prohibiting non-professional representation should be relaxed. Individual cases can thus be met by the exercise of the discretion in the circumstances of that case. It would thus be impermissible for a non-professional representative to take any step in the proceedings, including the signing of pleadings, notices or heads of argument (as occurred here), without the requisite leave of the court concerned first having been sought and obtained.'

[11] In *Advertising Digital Services Pty (Ltd) v Standard Bank of South Africa and Another*,⁹ Khumalo J held that the court must determine whether exceptional circumstances exist and whether any envisaged inconvenience or prejudice will be suffered by the opposing party. The court is accordingly required to assess whether an applicant has made out a proper case for non-compliance with the general rule by showing good cause why a non-professional person should be permitted to act as a representative in legal proceedings. The purpose of this enquiry is primarily to prevent abuse of the judicial process and to protect the integrity of the legal system. In this regard, the court bears a responsibility to uphold procedural fairness and to deter conduct that undermines the administration of justice, thereby ensuring efficient and equitable legal processes and reinforcing the authority of the court.

Application of the law to the facts

Whether Mr Morake has the authority to appear on behalf of the respondent in these court proceedings

⁸ Op cit fn 1 para 14.

⁹ *Advertising Digital Services Pty (Ltd) v Standard Bank of South Africa and Another* [2025] ZAGPPHC 625 para 19.

[12] Upon a perusal of the pleadings, it is unclear who the signatory to the notice of intention to oppose is, as the document bears only a signature and the address of the first respondent. The same deficiency is apparent in the filing notice of the answering affidavit, signed at Bloemfontein on 11 November 2025, as well as in a further filing notice, signed at Rustenburg on 6 November 2025. In both instances, the documents contain merely a signature, without any identification of the signatory, and reflect only the address of the first respondent. Mr Morake failed, in his answering affidavit, to state that he was authorised to depose to the affidavit on behalf of the first respondent. He further failed to allege that he possessed the requisite authority to institute or defend the proceedings, which, in the case of a company, would ordinarily require authorisation by way of a properly adopted resolution.

[13] Having regard to the considerations set out above, I find that Mr Morake lacked both the right of appearance and the requisite authority to institute proceedings to represent and appear on behalf of the respondent, a company which exists as a separate juristic entity.

Whether the rule nisi issued on 6 November 2025 must be confirmed

[14] Counsel for the applicant submitted that a rule *nisi* was granted on 6 November 2025, staying execution, and that the refuse truck attached pursuant to the writ of execution was subsequently returned to the applicant. Counsel for the applicant further contended that this Court ought to apply the framework of principles enunciated in *Gois t/a Shakespeare Pub v Van Zyl (Gois)*,¹⁰ when considering the granting of a stay of execution. It was pointed out that the applicant's rescission application is enrolled for hearing on 6 March 2026. Counsel submitted that, should the interim order not be confirmed, the continued unavailability of the refuse truck would have adverse consequences for the community, as the applicant possesses only one refuse truck with which to render refuse removal services. This would result in severe backlogs and potentially unhygienic conditions.

[15] Lastly, it was argued that, in considering whether to confirm the interim order, the Court may have regard to the grounds for rescission, including the contention that any payment allegedly due to the respondent must first be certified by the Chief Financial

¹⁰ *Gois t/a Shakespeare Pub v Van Zyl* 2011 (1) SA 148 (LC) para 37.

Officer prior to payment. However, this consideration is not the sole factor to be taken into account in determining the matter.

[16] In *Lesapo v North West Agricultural Bank and Another*,¹¹ held that a superior court has, in terms of s 173 of the Constitution of the Republic of South Africa, 1996, the inherent power to stay execution if it is in the interests of justice. Mokgoro J, in pointing out that execution is incidental to the judicial process, stated that execution 'is subject to the supervision of the court which has an inherent jurisdiction to stay the execution in the interests of justice'. In *BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another, BP Southern Africa (Pty) Ltd v ZA Petroleum (Pty) Ltd and Another*,¹² the court referred to the principles laid down in *Gois* as 'guidelines' and held that it could, in the exercise of its discretion whether or not to grant a stay of execution, consider the prospects of success in an application for leave to appeal against the order in respect of which a stay was sought.

[17] Apart from the provisions of the rule, the Court possesses an inherent common-law discretion to order a stay of execution and to suspend the operation of an order granted by it. This discretion must be exercised judicially but is otherwise not circumscribed. I have not had regard to the contents of the answering affidavit filed on behalf of the respondent, given my finding that the respondent was not authorised to depose to the affidavit. Even if consideration were to be given to the answering affidavit, it merely highlights irrelevant matters, including the use of the same case number allocated to the summons to the urgent matter, which in the respondent's view should have been issued under a different case number; the contention that service was ineffective as it was effected via email; an alleged lack of urgency, which issue is moot; and a detailed response to the rescission application, particularly with reference to prospects of success, despite the matter not yet having been enrolled.

[18] In considering the potential prejudice to the community, the continued unavailability of the refuse truck would result in a complete cessation of service delivery until such time as it is returned to the applicant. There is also the possibility that the applicant may be

¹¹ *Lesapo v North West Agricultural Bank* [1999] ZACC 16; 2000 (1) SA 409 (CC); 2000 (1) SA 409; 1999 (12) BCLR 1420 para 13.

¹² *BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another; BP Southern Africa (Pty) Ltd v ZA Petroleum (Pty) Ltd and Another* [2020] ZAGPJHC 56; 2022 (1) SA 162 (GJ) paras 17-19.

compelled to outsource the service ordinarily rendered using the refuse truck, which would have financial implications for the public purse. I, accordingly, find that it is in the interests of justice to grant a stay of execution.

Order

[19] I, accordingly, make the following order:

- 1 The *rule nisi* granted on 6 November 2025 is hereby confirmed.
- 2 The respondent is ordered to pay the costs of the application, including the costs of counsel on scale B.


C PARKS

ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant: LA Roux
Instructed by: Peyper Attorneys, Bloemfontein

For the respondent: No appearance.