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

Not Reportable

Case no: 4962/2019

APPEAL CASE NO: A164/2024

In the matter between:

DLABANTU AND ASSOCIATES INCORPORATED	**APPELLANT**
and	
LITSOANE GERMINA LITSOANE	**FIRST RESPONDENT**
ROAD ACCIDENT FUND	**SECOND RESPONDENT**

In re:

LITSOANE GERMINA LITSOANE	**PLAINTIFF**
and	
ROAD ACCIDENT FUND	**DEFENDANT**

Neutral citation:	*Dlabantu and Associates Incorporated v Litsoane Germina Litsoane and Another* (4962/2019 and A164/2024) [2026] ZAFSHC 55 (13 February 2026)
Coram:	DAFFUE, REINDERS and MOLITSOANE JJ
Heard:	15 September 2025

Delivered: 13 February 2026

Summary: Legal practice – s 84 of the Legal Practice Act 28 of 2014 – whether a suspended attorney who is a director of an incorporated company can represent the company as a legal practitioner in proceedings before court – variation of an order which has a patent error as contemplated in Uniform rule 42(1)*(b)*.

ORDER

The appeal is dismissed with costs, such costs shall include the costs of counsel on scale B.

JUDGMENT

Molitsoane J (Daffue J and Reinders JJ concurring)

[1] This is an appeal with leave of this Court, against the judgment and order of a single judge of this Division in which the court ordered the second respondent to pay the first respondent's compensation into the attorneys' trust bank account of the first respondent. At the inception of the hearing, Mr Dlabantu, the sole director of the appellant, purported to represent the appellant in the appeal before us. We denied him the audience and undertook to give our reasons in the main judgment.

[2] Mr Ongamo Dlabantu was employed by Motaung Attorneys as a legal practitioner. He was the attorney responsible for the institution and prosecution of a third-party claim of the first respondent against the second respondent (RAF). This claim was settled. On 10 March 2022 the first respondent accepted and signed an offer of settlement which specifically stipulated that payment of compensation by the RAF would be made into the trust banking account of Motaung attorneys.

[3] On 5 October 2022, Mr Dlabantu left the employment of Motaung Attorneys. He later commenced practicing for his own account under the name and style, Dlabantu and Associates Incorporated. He was the sole director of this incorporated company. It appears that on 25 October 2022, Mr Dlabantu and the first respondent had a consultation which led to the first respondent signing a document terminating the mandate of Motaung Attorneys. It also appears that the first respondent also signed a special power of attorney empowering Mr Dlabantu to carry out the mandate concerning her claim against the RAF.

This special power of attorney mandated Mr Dlabantu, *inter alia*, to: (i) institute a delictual claim against the RAF; (ii) obtain all facts, medical records, accounts relating to the injury sustained by the first respondent from relevant doctors and hospitals; (iii) consent to the inspection of information by any parties; (iv) do all that is necessary for the speedy and effective finalization of that claim by the RAF; (v) negotiate any settlement on behalf of the first respondent; (vi) sign all necessary forms for the prosecution and settlement of the claim on behalf of the appellant; and (vii) to receive the capital and costs of the compensation of the first respondent from the RAF.

[4] There is a dispute between the appellant and the first respondent as to how the termination of Motaung Attorneys' mandate and the first respondent came about. On the version of the appellant, Mr Dlabantu was contacted by the first respondent and a consultation was scheduled for 24 October 2022. According to Mr Dlabantu, the first respondent expressed concerns in the delay of payment of her compensation and wanted Mr Dlabantu to continue assisting her to pursue the payment. Mr Dlabantu advised the first respondent that in order to ensure that the compensation was not paid to Motaung Attorneys, she had to terminate their mandate, in which case the money would be paid into the appellant's bank account, which in turn, would pay over any monies due to Motaung Attorneys for services rendered by them, before the termination of the mandate. According to the appellant, the first respondent then terminated the mandate of Motaung Attorneys and appointed the appellant as her legal representatives.

[5] On the version of the first respondent, she was contacted by Mr Dlabantu who scheduled an appointment with her. During the consultation, Mr Dlabantu informed her that he had prepared documents which needed her signature and would email same to her. She avers as follows in her founding affidavit, which was before the court a quo:

'Upon receiving that email from Mr Dlabantu, I noticed that the documents that he needed me to sign where, inter alia, termination of mandate of Motaung Attorneys, a confirmatory affidavit and a contingency fee agreement wherein Dlabantu and Associates Incorporated, the company unknown to me, were appointed as my attorneys, I requested Mr Dlabantu to provide me with reasons why I had to sign these documents and he told me that he was doing this in terms of the instructions of Mr Motaung of Motaung Attorneys and that I had to sign same on that day if I wanted my money.'

According to her, she then reluctantly signed the documents.

[6] The appellant then launched an application to make the settlement agreement an order of court. On 10 November 2022, Mhlambi J (Mhlambi J order) made the settlement agreement an order of court. The court also ordered that the compensation by the RAF be paid into the trust banking account of the appellant as opposed to the trust banking account of Motaung Attorneys which was stipulated in the settlement agreement. According to the first respondent, she thereafter consulted with Mr Motaung about her matter. The consultation revealed that the whereabouts of the file of the first respondent were unknown to Motaung Attorneys. An investigation was launched by Motaung Attorneys which culminated in the order by the court a quo varying the Mhlambi J order and effectively removing the appellant as the payee into which the compensation had to be deposited and substituting Motaung Attorneys in its stead. This varied order is the subject of the dispute and appeal before us.

[7] The court a quo held that the settlement of the claim of the first respondent against the RAF occurred before Mr Dlabantu left the employment of Motaung Attorneys. This was before payment could be affected into the trust banking account of Motaung Attorneys. The court a quo also held that the Mhlambi J order differed from the settlement agreement, and at the time the order was made, the settlement agreement had not yet been amended. Further, the court a quo found that the order reflected incorrect banking details stipulated in the settlement agreement and as a result, the court deemed it fit to vary it to be in line with what was contained in the settlement agreement.

[8] The judgment of the court a quo is assailed on various grounds. It is contended that the court a quo erred in that: (i) it failed to correctly apply principles regarding motion proceedings and dealing with disputes of fact; (ii) the court a quo conflated the appellant with its director; (iii) the court a quo failed to apply the principles regarding joinder and various other grounds which in my view are unnecessary to deal with as they would have no impact on the order I wish to propose.

[9] As a starting point, I will deal with the issue of Mr Dlabantu's standing, as it is also the reason for our decision to refuse to grant him audience during the appeal. I hasten, however, to indicate that in spite of the fact that we refused to hear Mr Dlabantu, we had

regard to the comprehensive heads of arguments prepared by him on behalf of the appellant in which he listed 71 authorities.

[10] These are the reasons for refusing to grant him audience: On 8 November 2024, Mr Dlabantu was suspended by the court from the roll of practising legal practitioners. This meant that, since Mr Dlabantu was the sole director of the appellant, the appellant had no legal practitioner to run or overseer its affairs as a legal firm. The appeal before us was enrolled for hearing on 15 September 2025. Prior to the hearing, on 28 August 2025, my brother Daffue J addressed a letter to Mr Dlabantu through his secretary in which the following was stated:

'You have been suspended to practice as an attorney under case number 3712/2024. Your application for live to appeal was dismissed by the Supreme Court of Appeal on 24 June 2025 under reference number 312/2025. You allege in your heads of argument dated 23 August 2025 that on 28th July 2025 you have lost an application for reconsideration with the President of the SCA. Mr P Myburg of the high court has been in contact with the SCA today but no records could be found of any such application for reconsideration.

If this is correct there cannot be any argument that the suspension decision has been suspended in terms of section 18(1) of Act 10 of 2013. In any event you are not in possession of a Fidelity Fund certificate and may not practice as an attorney.

Insofar as you believe that you may act in the appeal in your capacity as a director of the appellant, you shall urgently and not later than Monday, 1 September 2025 at 16H00 present written heads of argument to support such contention.'

[11] When we heard the appeal on 15 September 2025, Mr Dlabantu had not responded to the letter of Daffue J above. At that stage, we accordingly held the view that Mr Dlabantu had not responded to the invitation to clarify the status of the application for reconsideration and had not responded to the fact that he had no Fidelity Fund certificate. In the result, we held a view that the order of suspension had not been suspended by the filing of an application for reconsideration and Mr Dlabantu did not have a Fidelity Fund certificate. In the heads of argument, Mr Dlabantu submits that as a director of the incorporated company, he is entitled to represent it in a court of law. He submitted that the existence of an incorporated company did not cease upon the suspension from practice of its sole director, who is an attorney. He thus contends that its personality endures beyond the suspension. He further submits that, as a director of the incorporated company he is not rendering any legal services in expectation of any fee, commission or reward and he consequently argues that s 84(1) of the Legal Practice Act 28 of 2014 (the

LPA) was not applicable as he had not received nor did he hold any funds or property belonging to any person. However, this argument is flawed.

[12] In the letter of Daffue J, Mr Dlabantu was referred to two hurdles which stood in his way of representing the appellant. In my view, proof of any one of them affected the status of Mr Dlabantu as an attorney. In his heads of arguments, he seems fixated on the appeal procedures which, in his view, suspended the order of suspension. However, he conveniently fails to appreciate, or simply ignores, the fact that he has no Fidelity Fund certificate. Even if we were to accept for a moment that the order of suspension had been suspended by the operation of Uniform rule 18(1) as he has filed a reconsideration application in terms of s17(2)(f)), he still cannot practise as an attorney due to his lack of possession of a Fidelity Fund certificate. Section 84 of the LPA provides as follows:

'1) Every attorney or any advocate referred to in section 34(2)*(b)*, other than a legal practitioner in the full-time employ of the South African Human Rights Commission or the State as a state attorney or a state advocate and who practices or is deemed to practice–

(a) . . .

(b) As a director of a practice which is a juristic entity, must be in possession of a Fidelity Fund certificate.

2) No legal practitioner preferred to in subsection (1) or a person employed or supervised by the legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund certificate.

. . .'

[13] Mr Dlabantu was suspended from practice for, *inter alia*, practising without a valid Fidelity Fund certificate. In the heads of argument filed on behalf of the appellant dated 23 August 2025, he confirmed that he did not have such certificate. Accordingly, he cannot practise as an attorney. Furthermore, under the common law, a director or shareholder does not, in general, have a right to legally represent a juristic person in a court of law . Such representation is only permissible in rare or exceptional circumstances and upon proper substantive application being made to the court. In *Manong & Associates (Pty) Ltd v Minister of Public Works and Another*[1] (*Manong*) the court held that '[t]he rule that a company cannot conduct a case in this court except by the appearance of counsel

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

on its behalf was laid down in the *Yates Investments (Pty) Ltd v Commissioner for Inland Revenue*.'[2]

[14] The court went further to deal with the inherent powers of the Constitutional Court, the Supreme Court of Appeal and Divisions of the High Court as derived in s 173 of the Constitution. *Manong* then proceed to hold as follows:

'[13] It is important to emphasize that the power vested in the court in this regard is a purely discretionary power. In general, and without attempting to lay down any hard and fast rules, discretionary audience should be regarded as a reserve or occasional expedient. For whilst we must be free to review the *Yates* rule in the light of currently prevailing conditions and requirements, we perhaps need to remind ourselves that given the increasing complexity of litigation, the rule may well be required as strongly today as it, ever was. In those circumstances an unqualified and inexperienced person may do more harm than good to the corporate litigant that he purports to assist.

[14] 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.'

[15] There was no application before us to enable us to exercise our discretion. Mr Dlabantu has not established any rare or exceptional circumstance why we should allow him to represent the appellant. Importantly, the purpose for which the appellant was established needs to be taken into account, namely, to conduct a legal practice. Without the driver, in the form of a practising attorney, the firm cannot practice. A prohibited person like Mr Dlabantu cannot climb on the bandwagon of being a director per *se* in order to represent a professional company. The situation might be different if the company was an entity selling goods, not where the monies of the clients are at serious risk. It is on this

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[2] Ibid para 4, footnote omitted.

basis that I hold that Mr Dlabantu cannot enjoy audience before us. Even if he had filed an application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act, the fact of the matter remains that he is still not in possession of a Fidelity Fund certificate. This is reason enough to deny him audience before a court of law unless he represents himself.

[16] Uniform rule 42(1)*(b)* empowers the court *mero motu* or upon the application of any affected person, to rescind or vary an order or judgment in which there is an ambiguity or a patent error or omission to the extent of such ambiguity, error or omission. In this case, the settlement agreement clearly indicated that the compensation had to be deposited into the account of Motaung Attorneys. I agree with the court a quo that at the time when the settlement agreement was made an order of the court, it had not been amended to allow payment into the account of the appellant. It cannot be disputed that the banking details appearing in the settlement agreement differed from those in the order of Mhlambi J, thereby constituting a patent error as contemplated in rule 42(1)*(b)* and as held by the court a quo. The finding of the court a quo is unassailable in this regard.

[17] On the issue of non-joinder, Mr Dlabantu asserts that he ought to have been joined in these proceedings. The analysis of his complaint in the heads of arguments seems to revolve around the issue of alleged misconduct against him. He states that the court a quo 'misdirected itself. . . by making findings against Mr Dlabantu without him being heard in respect of what amounts to prima facie acts of misconduct.' I fail to understand why the court a quo had to grapple with what essentially was an issue in the suspension application of Mr Dlabantu. The court a quo indicated that it limited its judgment on the question of whether the order reflected the correct banking details contained in the settlement agreement and whether this error was patent as provided for in rule 42(1)*(b)*. There was no need for him to be joined, reference to his conduct had nothing to do with the order granted. He had no substantial interest in the order granted. In any case, it is an established principle of our law that an appeal lies against the judgment or order and not the reasons for granting it[3]. In my view, the attack on the judgment of the court a quo on non-joinder is irrelevant for the adjudication of the dispute between the parties.

[3] Neotel(Pty) Ltd v Telkom SOC & Others (605/2016) [2017] ZASCA 47 (31 March 2017) para 15.

[19] I have already set out the versions of the parties as to how the termination of the mandate of Motaung Attorneys came about. In my view, who called who is of no consequence for the adjudication of this dispute. That dispute of fact is immaterial. What is common cause is that the parties met and the documents were completed and signed. It bears mentioning that what surprises me is the fact that the power of attorney given to Mr Dlabantu empowered him to investigate the claim, obtain medical records and negotiate settlement of the claim. One would ask oneself why the first respondent had to sign the power of attorney as if no claim had already been lodged with the RAF and that only payment was awaited. The gripe of the first respondent that she was pressurised to sign the agreement without first discussing it with her parents does not take this matter anywhere. The first respondent is an educated person, a lecturer. She can easily take the decision independently. Another fact which must also be taken into account is the undisputed reality that the director of the appellant has no Fidelity Fund certificate and is precluded from handling the clients' monies. If we agree to reverse the order of the court a quo, we would impermissibly allow the appellant to deal with the compensation of the first respondent contrary to the law. In my view, this cannot be correct. When the settlement was initially reached, Mr Dlabantu was an employee of Motaung Attorneys. However, nowhere does he indicate how the first respondent's file came to be in his possession. There is no evidence that after termination of the mandate of Motaung Attorneys he also demanded the file from them. This is suspicious. The uncontested evidence is that Motaung Attorneys had no idea where their file was. It was not up to the appellant to amend the order, as done in the Mhlambi order.

[20] I hold the view that the appeal should fail. On the issue of costs, there is no reason why the costs should not follow the cause. I accordingly propose the following order:

The appeal is dismissed with costs; such costs shall include the costs of counsel on scale B.

[redacted]

P E MOLITSOANE

JUDGE OF THE HIGH COURT

I concur.

[redacted]

JP DAFFUE

JUDGE OF THE HIGH COURT

I concur.

[redacted]

C REINDERS

JUDGE OF THE HIGH COURT

Appearances

For the appellant:	No appearance
Instructed by:	Dlabantu and Associates, Bloemfontein
For the first respondent:	MS Litheko
Instructed by:	Motaung Attorneys Bloemfontein.