



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

CASE NO: 2025/014993

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/ NO
(3)	REVISED: YES /NO
<u>16 March 2026</u> DATE	 SIGNATURE

In the matter between:

**CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

Applicant

And

MARTHINUS CHRISTOFFEL VORSTER

Respondent

In re:

MARTHINUS CHRISTOFFEL VORSTER

and

Plaintiff

**CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

Defendant

JUDGMENT

MODISA AJ

- [1] This is an opposed application in terms of Uniform Rule 30 (1) of the Uniform Rules of Court, for the setting aside of a notice of bar delivered by the Respondent as an alleged irregular step.
- [2] The Respondent (as Plaintiff) served a Combined Summons on the Municipality on 12 February 2025 and the action was defended on 17 February 2025.
- [3] On 17 February 2025 the authority of Hurter Spies Incorporated to act for the Respondent was challenged.
- [4] Still on the same day, 27 February 2025, a notice was received from Hurter Spies Incorporated showing the written Power of Attorney signed by the Respondent in their favour. The Applicant indicated that it was not satisfied and thereafter Hurter Spies Incorporated also provided another separate Special Power of Attorney.
- [5] On 20 March 2025 the Respondent (as Plaintiff) served a Notice of Bar.
- [6] This caused the Applicant to complain on 26 March 2025. The Applicant eventually proceeded under Rule 30, demanding removal of the Notice of Bar. When the step was not removed, this culminated in the current application.

- [7] The Respondent is a litigant in his personal capacity. There is nothing technical about a natural person giving a mandate.
- [8] The Applicant points out that the starting point for Rule 7 is that there should at last be some form of suspicion that the attorneys are not authorized. No basis for such suspicion is provided in the founding papers.
- [9] On 18 February 2025, Hurter Spies Incorporated provided the Applicant's attorneys with a Special Power of Attorney that addressed their queries. On 20 March 2025 the Notice of Bar was filed.
- [10] The Respondent also commented on the peculiar nature of the Notice in terms of Rule 30.
- [11] Paragraph 3 thereof reads:

“While the said attorneys did furnish copies of some documents purporting to satisfy the Defendants of their authority to act for the Plaintiff, the Rule requires that the attorney may no longer so act until they have satisfied a Court of their authority to so act.”

- [12] The Respondent's attorneys attempted to resolve the matter amicably and even tendered ten extra days to file the Plea to the Applicant's attorneys in an attempt to resolve the matter. The only response to this

correspondence was the current application.

[13] I agree with Counsel for the Respondent that any reasonable attorney or litigant would, after receipt of any version of the Power of Attorney, have known that the litigation is properly mandated. This does, however, not suit the delaying tactics of the Applicant.

[14] The Respondent states that the Applicant is an abuse of process. The Applicant and its attorneys ought to know better. This type of conduct and deliberate delay in litigation should be avoided at all cost.

[15] It is improper for any attorney to assist clients in pursuing delaying tactics.

[16] In reply for the first time the Applicant (incorrectly) claims that the admission certificates of the attorneys and the Fidelity Fund certificates must also have been provided.

[17] For the first time in the reply it is also claimed that the certified copy of the identity document of the Plaintiff (Respondent) and evidence of the mandate should have been provided.

[18] The rationale for the existence of Rule 7 is simple. The Rule is on the one hand at avoiding the cluttering of pleadings unnecessarily with Resolutions and Power of Attorneys being annexed thereto, and on the

other hand, it provides a safeguard to prevent a cited person from repudiating the process and denying his or her authority for issuing the process.¹

[19] There is no prescribed method within which a mandate has to be shown.²

[20] It is trite that the Rules exist for the Court and not the Courts for the Rules.³

[21] In ***Kobusch & Others v. Whitehead***,⁴ the unanimous Supreme Court of Appeal, *inter alia*, held that:

“... We are inclined to the view that the rules of court must be understood in a practical way to advance the process of litigation, and not to have the rules become an obstacle course without purpose ...”.

[22] It is malicious for the Municipality to have persisted in its stance after receipt of the Power of Attorney. Any reasonable attorney or litigant would read the Power of Attorneys and know that the litigation is mandated by the natural person. To then try and hide behind the Rules and to seek extension of the *dies* to file a Plea on every occasion when

¹ See: *Rural Maintenance (Pty) Ltd & Others v. Eskom Holdings SOC Ltd & Another* [2023] ZAGPJHC 354, paragraph [21]

² See: *Gainsford NNO v. Hiab AB*, 2000 (3) SA 635 (W) at 639 J to 640 A

³ See: *Arendsnes Sweefspoor CC v. Botha*, 2013 (5) SA 399 (SCA) at paragraph [18]

⁴ 2025 (3) SA 403 (SCA) at paragraph [18]

invoking the tactics, is deliberate and cannot be justified.

[23] It is unsurprising that the Courts have under similar circumstances found that a Notice of Bar is not irregular.

[24] In ***Shosholoza Auctioneers CC v. Ngqura Harbour Contractors***,⁵ the High Court in Natal held:

“Indeed, it would appear that the applicant’s challenge was nothing but a tactical and dilatory device aimed at stalling the respondent’s suit against the applicant in terms of the main action. It also seems to me that the strategy was somewhat opportunistic in that the applicant came up with the challenged for the first time only a day after receiving the notice of bar and, notably, after some nine weeks of its receipt of the respondent’s reply in relation to the power of attorney issued. The applicant’s response, in turn, were the Rule 30A(1) and 30(2)(b) notices which it served on the respondent. In the circumstances, I can safely infer that were it not for the notice of bar, the Rule 30 notices aforesaid would most probably not have been issued.”

[25] At *paragraph [26]* of that matter, the Court also expressed its dissatisfaction with only raising the grounds of objection in reply. This is also what the Applicant tried to do by claiming that Fidelity Fund

⁵ 2008 JDR 1310 (N) at paragraph [22]

certificates and other documents not mentioned anywhere in the Rule 7 should also have been provided to it.

[26] The Court remarked as follows:

“[26] The first time that the applicant let the world know of the specific grounds of its challenge, was in its replying affidavit. This step was tantamount to the applicant making out its case in reply which was generally not permissible. In this regard I recall the decision in Bowman NO v De Souza Roldao 1988 (4) SA 326 (T) at 327C-G where the Court stated:

“Generally speaking, an applicant must stand or fall by his founding affidavit; he is not allowed to make out his case or rely upon new grounds in the replying affidavit. See, for example, Director of Hospital Services v Mistry 1979 (1) SA 626 (A) at 635 in fin-636 where Diemont JA said the following:

‘When, as in this case, the proceedings are launched by way of notice of motion, it is to the founding affidavit which a Judge will look to determine what the complaint is. As was pointed out by Krause J in Pountas’ Trustee v Lahanas 1924 WLD 67 at 68 and as has been said in many other cases

‘... an applicant must stand or fall by his petition and the facts alleged

therein and that, although sometimes it is permissible to supplement the allegations contained in the petition, still the main foundation of the application is the allegation of facts stated therein, because those are the facts which the respondent is called upon either to affirm or deny’.

Since it is clear that the applicant stands or falls by his petition and the facts therein alleged

‘it is not permissible to make out new grounds for the application in the replying affidavit.’”

[27] This matter is distinguishable from the facts of the case in the matter of **South African Broadcasting Corporation and Another v Thabang Solomon Lesia and Others**⁶ in that Moroka attorneys dispatched a copy of the power of attorney which did not belong the Plaintiff in the main action. In *casu* the general signed power of attorney and a special power of attorney which were both signed belong to the Plaintiff in the main action.

[28] Upon receipt of the general signed power of attorney and a signed special power of attorney delivered by Hurter Spies Inc acting on behalf of the Respondent, Engelbrech attorneys Inc acting on behalf of the Applicant should have simply withdrawn the dispute which was raised in terms of Rule 7(1). It was proper for Hurter Spies Inc to continue to act

⁶ (6544/2024) [2025] ZAFSHC401 (12 December 2025) at para [11]

on behalf of the Respondent by delivering a notice of bar after responding the Rule 7(1) notice which was served upon them. It was improper for the Applicant to complain in writing by means of a notice in terms of Rule 30(2) (b) that the notice of bar constituted an irregular step. I am of the view that the notice of bar which was delivered by the Respondent does not constitute an irregulars step.

[29] The Respondent properly complied with the Rule 7(1) notice which was served on them and it was not necessary for the Applicant to bring this application. It is not necessary for this Court to make appropriate directives about the dies for purposes of Rule 22 of the Uniform Rules of Court.

[30] I will refrain to deal with the respondent's Rule 7(1) notice due to the fact that there is no counter application in respect of such notice.

[31] It is common cause that the Respondent is a natural person represented by Hurter Spies Inc and furnished the Applicant with a power of attorney in response to the notice in terms of Rule 7 (1) dated 17 February 2025.

[32] I am of the view that regardless of what procedure is followed in challenging the authority of a person acting for a party, the challenge should be *bona fide*.

[33] Furthermore, the grounds on which the challenge is based should be

stated clearly and unambiguously and with sufficient detail in order for both such person and the party as well as the Court to fully understand challenge and for such person and/or party to satisfy the Court that such person is authorised to act. A bare denial of authority would not suffice.

[34] It is clear that the Applicant simply made a bare denial of the authority of the Respondent's attorneys to act and there are no grounds upon which the challenge is based and the challenge lacked sufficient particularity and/or detail in order for this Court to fully understand the challenge.

[35] In order to illustrate the lack of *bona fides* on the part of the Applicant, it is clear on the notice in terms of Rule 7 (1) that a power of attorney was sought to be delivered by the Respondent's attorneys, which power of attorney was delivered as requested, but surprisingly, the Applicant sought further documents namely, the certificate of admission as an attorney as well as a valid fidelity fund certificate. These further documents were not sought from the outset at the time when the Rule 7(1) notice was issued. If the Courts will allow a Rule 7(1) notice to be issued each and every time when proceedings are instituted, then the Courts will open floodgates of unnecessary expenses to be incurred in litigation, waste of time and a delay in finalising litigation. This is exactly what this application is all about.

[36] In the premises, the following order is made:

1. The application is dismissed.

2. The Applicant is ordered to pay the costs on attorney and own client scale

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MODISA AJ
JUDGE OF THE HIGH COURT
PRETORIA

For the Applicant:
Adv A.S. Myburgh

Instructed by:
Engelbrecht attorneys Inc

For the Respondents:
Adv J.GC Hamman

Instructed by:
Hunter Spies Inc