



**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE 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

SIYAWANDISA MOYI obo BUNGCWELE MOYI

7th Respondent

JUDGMENT

JOLWANA J

[1] On 2 December 2025 I delivered a judgment dismissing the applicant's application in terms of rule 30(1) of the Uniform Rules of Court. That application was about whether or not, with no more being said in the said application in terms of rule 30(1), it is not sufficient for a litigant to file a power of attorney as proof of the attorney's authority to act for that litigant. The applicant had contended that on its understanding of rule 7(1) the litigant whose attorney's authority to act for them was

questioned must await a ruling or an order of the court, sitting as a court as against a Judge in chambers, to make a pronouncement on its satisfaction or otherwise about the attorney's authority to act for the litigant concerned subsequent to the filing of the filing of a power of attorney as proof of the attorney's mandate.

[2] I dismissed that rule 30(1) application on the basis that the mere filing of a power of attorney to act for a litigant suffices without more. I did so on the basis that a court cannot and should not be expected to make any pronouncement where the litigant who challenged the attorney's authority to and has not or is unable to question the authority conferred on that attorney as evinced in and through the power of attorney so filed of record. In coming to this conclusion, I relied on the judgment of this Court in *Fillis*¹ in which Eksteen J, inter alia said:

“[12] In 1987 the Uniform Rules 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.”

[3] In the applicant's founding affidavit filed in support of the rule 30(1) application nothing else was being challenged beyond the respondents' attorneys' mandate to act for them. I took the view that the filing of the power of attorney settled the issue of the attorneys' mandate and it was not necessary for the court to make any pronouncement on that issue as there was no longer in existence anything for the court to make a pronouncement.

¹ First Rand Bank Ltd v Fillis and Another 2010 (6) SA 565 (ECD).

[4] The notice of application for leave to appeal ran into 14 pages in total in which a number of grounds for the application for leave to appeal is set out. I do not need to enumerate them, and I do not intend to do so. I also do not intend to regurgitate what I said in dismissing the application as my reason for doing so are clearly set out in that judgment.

[5] In the application for leave to appeal a lot of stock was placed on *Eriksson*² which was quoted with approval in *Lesia*³ as follows:

“This Court was referred to an unreported decision in *Eriksson v Hollard Insurance Company Limited and Others* (Eriksson). In the judgment of Eriksson, the following was held by Strydom J:

‘I do not agree with this Interpretation. Rule 7(1) does not lay down the entire procedure to be followed by the party challenging the authority of a person acting for a party. When a party decides to challenge the authority and serve a rule 7(1) notice, a process is initiated. If the notice was timeously given, then the person whose authority was challenged will no longer be able to act in the matter. The challenged attorney will have to satisfy the court that he or she has the authority to represent the clients. This will ordinarily be done by filing a signed mandate agreement and other authority documents. If after the filling of the authority documents, the dispute is not resolved, then the court will have to make a determination. How the court will get involved to make a determination is not procedurally set out in the rule. In an action, which is not on trial yet, a judge would not even be aware of the challenge.”

[6] On my reading of *Eriksson*, for any court to make any ruling or decision as to its satisfaction or otherwise, there must be a live issue to make a determination on which as Strydom J correctly put it, “(i)f, after filing the authority documents, the dispute is not resolved”, speaks to a dispute being a live dispute, for the court to make a determination on. This is the only sensible way of understanding the words

² Erikson v Hollard Insurance Company Limited and Others [2023] ZAGPJHC 39.

³ South African Broadcasting Corporation and Another v Thabang Solomon Lesia and Others (6544/2024) [2025] ZAFSHC 401 (12 December 2025) para 28.

in rule 7(1) which speak to the court having to be satisfied. On power of attorney serves the purpose of satisfying the court as to the attorney's mandate to act for his client.

[7] It seems to me that that understanding is aligned with section 34 of the Constitution which guarantees to everyone a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. In this matter, the only issue raised in the applicant's rule 30(1) founding affidavit was the issue of the respondents' attorneys' authority to act for them. This is exactly what was addressed by the filing of the mandate documents which in this case were the powers of attorney. It was never suggested, directly or indirectly that the respondents' attorneys did not have a fidelity fund certificate or that they were, for any other reason not entitled to act for the respondents beyond the issue of the mandate. If that was the applicant's concern, such a case would have been clearly set out in the founding affidavit as the norm in any other application. This, as I said earlier, was put to rest by the filing of the powers of attorney to act for the respondents.

[8] The test for an application for leave to appeal is set out in section 17(1)(a) of the Superior Courts Act 10 of 2013 which provinces that leave to appeal may only be granted where the Judge concerned is of the opinion that the appeal has a reasonable prospect of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. On this test there is simply no basis for granting the applicant's application for leave to appeal, the entirety of the applicable test being considered about which our courts at various levels in many judgments have restated.

[9] In *Mkhitha*⁴ it was held that section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be given where the Judge concerned is of the opinion that the appeal would have a reasonable prospects of success or there is some other compelling reason why it should be heard. I am not of the opinion that the appeal in this matter would have a reasonable prospect of success. Furthermore, I do not see the judgments referred to by the applicant as being in conflict with *Fillis* on the main issue that the constitutional duty of the courts is to resolve disputes between the parties. The dispute that needs to be resolved must be apparent from the pleadings. It surely cannot be that courts are expected to go on a trance convening sittings so that they may go through the motions of making pronouncements on non-existent disputes. That simply defies logic.

[10] In *Smith*⁵ the test for reasonable prospects of success was articulated as follows:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects of success are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”

[11] In my respectful view and having considered all the facts in this matter and the applicable legal position as articulated in many judgments by various courts, this application falls short of the required threshold for the granting of an application for

⁴ MEC for Health, Eastern Cape v Mkhitha and Another [2016] ZASCA 176 at para 16.

⁵ S v Smith 2012 (1) SACR 567 (SCA) at 570 para 7.

leave to appeal. It follows that the applicant's application for leave to appeal must fail.

[12] It the result the following order is issued:

1. The application for leave to appeal is dismissed with costs.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the applicant : J.L. Hobbs

Instructed by : Engelbrecht Attorneys Incorporated

c/o JA Le Roux Attorneys

Mthatha

Counsel for the respondent: S.R. Mhlawuli

Instructed by : SR Mhlawuli & Associates

Mthatha

Date heard : 27 March 2026

Date delivered : 05 May 2026