REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 048387/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

08 May 2026 [redacted]
DATE SIGNATURE

In the matter between:

KINGS AND QUEENS REAL FUNERAL SERVICES CC	**Applicant**
and	
MARYNA ESTELLE SYMES *N.O.*	**First Respondent**
GONASAGREE GOVENDER *N.O.*	**Second Respondent**
ALPH LUKAU	**Proposed Third Respondent**
ALLELUIA MINISTRIES INTERNATIONAL	**Proposed Fourth Respondent**

In re:

MARYNA ESTELLE SYMES *N.O.*	**First Plaintiff**
GONASAGREE GOVENDER *N.O.*	**Second Plaintiff**
and	
KINGS AND QUEENS REAL FUNERAL SERVICES CC	**Defendant**

JUDGMENT

Mahosi J

[1] Kings and Queens Real Funeral Services CC ("the applicant") seeks an order joining Mr. Alph Lukau and Alleluia Ministries International as third and fourth defendants in the pending action instituted against it by the first and second respondents ("the liquidators"). The liquidators oppose the application.

[2] On 03 September 2021, the applicant was placed under a creditor's voluntary winding-up by special resolution in terms of section 349, read with sections 200 and 351 of the Companies Act[1]. On 11 April 2022, this court granted an order converting the KVH's voluntary winding-up into a winding-up by the Court. On 14 April 2022, the first and second respondents were duly appointed joint liquidators of KVH (in liquidation).

[3] On 23 May 2023, the liquidators issued a summons against the applicant to set aside the payment amounting to R3 000 000.00 made to it by KVH between 11 and 12 June 2019 as impeachable dispositions under section 26(1)(a) or section 30 of the Insolvency Act[2], alternatively as unjustified enrichment. The applicant filed a notice of intention to defend on 01 June 2023 and its plea on 26 June 2023. Thereafter, the liquidators filed a replication to the applicant's plea on 30 June 2023, and the pre-trial minute was signed by both parties on 07 and 08 May 2024, respectively.

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[1] Act 61 of 1973, as amended.

[2] Act 24 of 1936, as amended.

[4] On 23 July 2025, the applicant filed a notice in terms of Rule 28(1) to amend its plea, and on 25 July 2025, it filed its amended plea in which it raises the following defences:

> "1ST SPECIAL PLEA OF NON-JOINDER
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> The Defendant avers that there has been a material non-joinder. The Defendant avers that the true debtor in respect of the underlying transaction is Mr. Alph Lukau and/or Alleluia Ministries, who is not joined as a party to these proceedings. The Defendant had no contractual relationship with Kings Vision Holdings (Pty) Ltd ("KVH") and the sums paid were in discharge of a debt owed by Mr. Lukau and/or
>
> Alleluia Ministries, not a debt of KVH. The Defendant requests that the Court order the joinder of these parties, and reserves the right to apply for non-joinder should Plaintiffs fail to do so.
>
> WHEREFORE DEFENDANT PRAYS THAT:
>
> (a) The plaintiff's action be dismissed with cost including costs of counsel.
>
> 2ND SPECIAL PLEA OF PREMATURITY/ INCORRECT PARTY
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> The Defendant pleads that the action is premature and is directed against the incorrect party. The Defendant avers that Plaintiffs have failed to properly investigate the circumstance of payment, have not pleaded or proven the authority of the party instructing payment from KVH's account and have not alleged or proven any knowledge or intent on the part of Defendant as is required for relief under sections 26 and 30 of the Insolvency Act.
>
> WHEREFORE DEFENDANT PRAYS THAT:
>
> The plaintiff's action be dismissed with cost including costs of counsel."

[5] In essence, the applicant avers that it had no contractual relationship with KVH. It alleges that KVH made payments to it to discharge a debt owed by Mr. Lukau and Alleluia Ministries International, and that this makes Alleluia Ministries International the true debtors of KVH. It is for this reason that it contends that, by failing to sue Mr. Lukau and Alleluia Ministries International, the liquidators committed a material non-joinder.

[6] The applicant invokes Uniform Rule 10(3), read with Rule 6(7)(a), as the legal basis for the relief sought. It contends that Mr. Lukau and Alleluia Ministries International have a direct and substantial interest in the subject matter of the main action; that the same or substantially the same questions of law and fact arise between the liquidators and the proposed parties as arise between the liquidators and the applicant; and that it is in the interests of justice to join them as additional defendants.

[7] The liquidators oppose the application on several grounds. Firstly, they argue that Rule 10 is available only to a plaintiff and that a defendant cannot invoke it to compel the joinder of further defendants. Secondly, they contend that they have no pending dispute with Mr. Lukau or Alleluia Ministries International and seek no relief against them. As such, any judgment in the main action will be *in personam* and will not bind those parties, and the proposed parties have no direct and substantial interest in the litigation. Thirdly, they point to the inordinate delay in bringing the application, the imminent trial date, and the substantial prejudice they will suffer if the trial is postponed. Fourthly, they submit that this Court has no jurisdiction over Mr Lukau, who has left South Africa and has no attachable assets within its area.

[8] Rule 6 of the Uniform Rules of Court regulates the conduct in applications. Subrule 6(7) (a) reads:

> "Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event, the provisions of rule 10 will apply."

[9] Rule 10 of the Uniform Rules of Court provides for the joinder of parties and causes of action, and surule 10(3) reads:

> "Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination

of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action."

[10] The plain language of subrule 10(3) is permissive as to the plaintiff. It describes the circumstances under which a plaintiff may sue multiple defendants in a single action. It does not, in its terms, confer a right on an existing defendant to compel the addition of new defendants. That is not to say that a defendant can never bring additional parties into an action. Rule 13 provides a mechanism for a defendant who claims a right to contribution or indemnity from a person not already a party, or who claims that any issue in the action ought to be determined between the defendant and a third party. The applicant has not invoked Rule 13. It has not been alleged that it is entitled to contribution or indemnity from the proposed parties. Its case is that the proposed parties are the "true debtors" and that the liquidators ought to have sued them, either instead of or together with, the applicant. That is a defence, not a claim for contribution.

[11] The applicant seeks to rely on Rule 6(7)(a), which permits "any party to any application proceedings" to join another party, with Rule 10 applying. That rule is confined to "application proceedings". The main action here is an "action" proceeding, not an application. Rule 6(7)(a) cannot be transplanted into action proceedings to create a joinder right that does not otherwise exist. The proper approach is that a defendant who wishes to bring in a third party who may be liable to the defendant or to the plaintiff must do so under Rule 13, not Rule 10. The applicant has not attempted to follow that procedure.

[12] Nevertheless, it is trite that the provisions of Rule 10(3) do not affect the defendant's right to demand joinder of another party. In In *Gordon v Department of Health, KwaZulu-Natal*[3], the Supreme Court of Appeal held:

> '...The test is whether a party that is alleged to be a necessary party, has a legal interest in the subject-matter, which may be affected prejudicially by the judgment of the court in the proceedings concerned.' (Footnote omitted)

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[3] 2008 (6) SA 522 (SCA)

[13] The applicant referred this Court to *Myeni v Organisation Undoing Tax Abuse NPC and Others*[4], where the Court considered, *inter alia*, a similar misjoinder application. Although the Court doubted whether the applicant's reliance on Rule 10(3) was legally competent, it determined the defendant's right to join other parties under common law. The Court said:

> '[64] ...A party can only be said to have a direct and substantial interest in the matter if the relief cannot be sustained and carried into effect without prejudicing their interests.
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> [65] In *Amalgamated Engineering Union*, the Appellate Division explained further that "*[t]he question of joinder should ... not depend on the nature of the subject-matter of the suit ... but... on the manner in which, and the extent to which, the Court's order may affect the interests of third parties.*"
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> [66] This means that the relief is decisive, not the facts or issues in dispute. Even where a Court may be called on to make findings that are adverse to another party, this does not establish grounds for non-joinder if the relief sought does not adversely impact on that party's interests." Footnotes Ommitted.

[14] The above decision is not supportive of the applicant's case, as the court determined that the respondents sought relief only against the applicant, meaning the other Board Members had no direct interest in the case. The Court further said that while they could be called as witnesses, their involvement in any alleged wrongdoing did not affect the relief sought.

[15] In the current matter, the applicant faces several hurdles. Firstly, the liquidators have no claim against Mr. Lukau or Alleluia Ministries International in this action. They have chosen not to sue those parties. Any order this court makes in the main action will determine whether the applicant is liable to restore the R3 million to KVH's estate. That order will be *in personam* and will bind only the respondents and the applicant. It will not determine any rights or obligations of Mr. Lukau or Alleluia Ministries International. As

[4] (15996/2017) [2019] ZAGPPHC 565 (2 December 2019)

observed in *Myeni*, a person does not have a direct and substantial interest merely because a judgment might have evidentiary consequences for that person in later proceedings.

[16] The applicant argues that findings of fact made in the main action could prejudice the proposed parties. However, that is not enough. To be a necessary party, the third party's legal position must be affected by the order itself, not merely by the reasons or the findings of fact. The applicant's fear of "inconsistent findings" in separate proceedings is a risk inherent in any litigation and does not, by itself, render the proposed parties necessary parties. In the circumstances, Mr. Lukau or Alleluia Ministries International has a direct and substantial interest in the main action.

[17] Secondly, the applicant has delayed inordinately and unexplainedly. It foreshadowed its intention to seek joinder as early as 26 June 2023, more than two and a half years ago. It repeated that intention in the pre-trial minutes of 06 May 2024 and its amended plea of 25 July 2025. The liquidators have been on notice for a very long time. However, the applicant waited until less than three months before the scheduled trial to launch this application. In its replying affidavit, the applicant says it "had to gather information and evidence" and that the matter was subject to "interlocutory proceedings". However, no detail is given, and no explanation is offered for why this application could not have been brought at least six months earlier. The liquidators have waited nearly two years for a trial date. They are entitled to have their case proceed.

[18] Thirdly, the liquidators will suffer real and substantial prejudice if the joinder is granted at this late stage. Joinder would require the proposed parties to be served and if they enter an appearance, they would have to deliver pleas, make discovery, and attend a fresh pre-trial conference. The trial date of 11 May 2026 would inevitably be lost. Given this court's backlog, a new trial date would not be earlier than 2027. That delay would be profoundly prejudicial to the liquidators and, through them, to the creditors of KVH. By contrast, the applicant's alleged prejudice, that it might be held solely liable without the presence of the "true debtors", is not prejudice at all. It is simply a consequence of the applicant's own defence. The applicant is free to argue that the payments were made on

account of Mr. Lukau's debt and can subpoena him as a witness. This can provide evidence of his role in the transaction. What it cannot do is force the liquidators to litigate against a party they have chosen not to sue.

[19] Fourthly, there is a serious question whether this court has jurisdiction over Mr. Lukau. The liquidators assert, on oath, that Mr Lukau has left South Africa and that no assets belonging to him are attachable in the country. The applicant dismisses this as "hearsay and speculation" but provides no counter-affidavit from Mr. Lukau and no evidence of his whereabouts or assets. Absent jurisdiction, any order joining him would be futile.

[20] I am not persuaded by the applicant's argument that Rule 10 is a "neutral" provision that any party may invoke. The rules of court create distinct procedures for different situations. The applicant's remedy, if any, lay under Rule 13, and it is now far too late to embark on that path.

[21] In all circumstances, the application for joinder is refused. The applicant has put the liquidators to unnecessary expense on the eve of trial. There is no reason why costs should not follow the result.

[22] Accordingly, the following order is made:

1. The application to join Mr. Alph Lukau and Alleluia Ministries International as third and fourth defendants in the action under case number 2023-048387 is dismissed.

2. The applicant is to pay the costs of this application, including the costs of counsel, on Scale C as between party and party.

[redacted]

D. Mahosi J
Judge of the High Court
Gauteng Division, Johannesburg

Heard: 16 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be 08 May 2026.

Appearances

For the plaintiff:	Advocate J. Magodi
Instructed by:	Sibanda Bukhosi Incorporated Attorneys
For the defendant:	Advocate Gregory Amm SC
Instructed by:	A. B. Scarrot Attorneys