



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Case No: M 676 / 2023

In the matter between:

**RUSTENBURG LOCAL MUNICIPALITY
MUNICIPAL MANAGER: RUSTENBURG
LOCAL MUNICIPALITY
EXECUTIVE MAYOR: RUSTENBURG
LOCAL MUNICIPALITY**

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

And

**SEROBATSE SOLOMON MAGAU
OPTI PROPERTY CONSULTANTS CC**

FIRST RESPONDENT

SECOND RESPONDENT

In the main review application between:

**SEROBATSE SOLOMON MAGAU
OPTI PROPERTY CONSULTANTS CC**

FIRST APPLICANT

SECOND APPLICANT

And

**RUSTENBURG LOCAL MUNICIPALITY
MUNICIPAL MANAGER: RUSTENBURG
LOCAL MUNICIPALITY**

FIRST APPLICANT

SECOND APPLICANT

EXECUTIVE MAYOR: RUSTENBURG

LOCAL MUNICIPALITY

TSAKANE KWENA PETER MOTANI

MONTANI PROPERTY VALUERS

MEMBER OF THE EXECUTIVE

COUNCIL (MEC) FOR NORTH WEST

PROVINCIAL DEPARTMENT OF

COOPERATIVE GOVERNANCE AND

TRADITIONAL AFFAIRS

CORAM: MAODI AJ

THIRD APPLICANT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

Date judgment reserved: 22 May 2026

*Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **20 August 2026 at 14h00**.*

ORDER

1. In the main review application under case number M 676/2023, the first respondent is not duly authorised to act on behalf of the second respondent and the first respondent may not proceed to act on behalf of the second respondent.
2. In the main review application under case number M 676/2023, the attorneys acting on behalf of the second respondent are not duly authorised by the second respondent to act on behalf of the second respondent and the said attorneys may not proceed to act on behalf of the second respondent.

3. The launching and continuation of the main review application under case number M 676/2023 is not authorised by the second respondent, to the extent only that it affects the second respondent.
4. The main review application under case number M 676/2023 is dismissed, only against the second respondent.
5. The first respondent to pay costs on scale B including costs of counsel.

JUDGMENT

MAODI AJ

Introduction

- [1] This is an interlocutory application in terms of rule 7(1) wherein the first to third applicants (applicants) are denying and disputing that the first respondent was and is duly authorised to act on behalf of the second respondent. The applicants seek four prayers, that (i) – the first respondent is not authorised to act on behalf of the second respondent and may not proceed so to act; (ii) – the attorneys acting on behalf of the second respondent are not authorised to act on behalf of the second respondent and may not proceed to so act; (iii) – the launching and continuation of the main review application was not authorised by the second respondent; and finally (iv) – that the main review application be dismissed with costs as between attorney and client.
- [2] The first and second respondents are the first and second applicants in the main application in which they seek a review and setting aside of the decision to appoint the fourth and/or fifth respondents as municipal valuer for the first respondent together with other ancillary relief. The fourth and fifth respondents in the main application are not participating in the

interlocutory application before me as they have filed a notice to abide by any order to be given by this Court. The parties before me shall therefore be referred to as cited in the interlocutory application.

Applicants' case

- [3] On 7 December 2023 the applicants delivered a notice in terms of rule 7(1) disputing the authority of the first and second respondent's attorneys to act on behalf of the first and second respondents. The notice further disputed the authority of the first respondent to act on behalf of the second respondent. On 13 December 2023 the first and second respondents delivered a reply to the applicants' rule 7(1) notice in which they (the respondents) attached a power of attorney signed by the first respondent authorising the respondents' attorneys to act on behalf of the first and second respondents. The power of attorney was signed by the first respondent on 27 November 2023. Together with the power of attorney, the respondents delivered proof of membership of the first respondent showing his membership interest in the second respondent to be 49%.
- [4] The proof of membership shows that the majority and larger portion of membership in the second respondent, which is 51%, belongs to and is held by one Masape Salome Magau with identity number 5[...]. Nowhere in the documents provided by the respondents is it stated that the second respondent authorised the first respondent to act on its behalf. There is further no power of attorney by the second respondent authorising the respondents' attorneys to act on its behalf. There is no resolution by the majority membership interest holder, authorising the first respondent to act on behalf of the second respondent.

- [5] In the main review application, it was the second respondent, not the first respondent, who was the successful bidder appointed by the first applicant to execute a number of municipal valuation functions. Only a member/shareholder of the second respondent could be nominated as the “designated municipal valuer” of the first applicant.

Respondents’ case

- [6] The deponent to the respondents’ answering affidavit is the first respondent who states that he has provided a power of attorney dated 27 November 2023 in terms of which he authorised the respondents’ attorneys (PL Samuels Inc) to act on behalf of the first and second respondents. The power of attorney includes a ratification clause on what might have been done prior to the date of execution by PL Samuels Incorporated. Sometime during April 2024 Mr Paul Samuels, the principal of PL Samuels Incorporated, passed away.
- [7] To avoid the matter being struck from the roll, on 29 July 2024 the respondents served the applicants with a notice of substitution appointing Sekgala and Njau Attorneys (respondents’ current attorneys of record) in the stead of PL Samuels Incorporated. The applicants have not challenged the authority of Sekgala and Njau Attorneys or any of its directors to act on behalf of the respondents. The late Mr PL Samuels is the only one precluded from acting on the basis of the rule 7 notice in support of the current application. Based on the rule 7 notice and the interlocutory application, Sekgala and Njau attorneys or any of its directors are not precluded from representing the first or second respondent. Therefore, the first two prayers (prayers [a] and [b]) by the applicants, fell off with the death of Mr PL Samuels.

- [8] There is no challenge to the authority of Sekgala and Njau Attorneys to act on behalf of the second respondent. Secondly, Sekgala and Njau Attorneys have substituted PL Samuels as attorneys to the first and second respondents. Thirdly, the authority to act by the first respondent on behalf of the second respondent is separate from the authority of Sekgala and Njau Attorneys to maintain the suit at the instance of both respondents. Fourthly, the failure by the applicants to challenge the authority of Sekgala and Njau Attorneys to act on behalf of the second respondent in the main application is fatal to the interlocutory application.
- [9] There are two members of the second respondent being the first respondent and his wife. The first respondent is acting in his personal capacity and does not need authority to act on his own behalf. The first respondent has sufficient personal interests in the subject matter of litigation, having been appointed in his own right as the municipal valuer by the first applicant. Prayer 1.1 of the notice of motion in the main application relates to the first respondent in his own personal capacity. The first respondent has interest in the remainder of the prayers sought in the main application.
- [10] The first respondent is a member of the second respondent whereas the first applicant is not a member thereof and should accept that the first respondent is the agent of the second respondent in line with section 54(1) of the Close Corporations Act, Act 69 of 1984. The relief in the main application is competent in his own name (first respondent) without the second respondent as a party.

Applicant's reply

[11] The onus falls on the first and second respondents to satisfy the court that the first respondent is authorised to act on behalf of the second respondent. Only a member of the second respondent holding the majority membership stake can assist in defeating the challenge by the applicants' rule 7 notice by executing and providing a written resolution. That person is Masape Salome Magau with identity number 5[...]. There is no such resolution and the first respondent was not able to secure or produce same. The applicants challenge not only the authority of PL Samuels, but the authority of any other and subsequent attorneys to act on behalf of the second respondent.

The authorities and reasons for judgment

[12] I am dealing here with a juristic person in the form of the second respondent. Juristic persons can only effectively function through natural persons behind them who run and operate them for the benefit of those who own them. After all, they are business enterprises and exist, in the main, for the benefit of those who own them, with the principle of majority rule being of paramount importance. The ones who own majority stake are the ones who stand to benefit more than others. The reverse is true. That is, the ones who own majority stake are the ones to suffer more losses than others, should there be any losses. The wishes and intentions of the majority must be respected. That is the natural order of juristic persons.

[13] Section 46 (d) of the Close Corporations Act 69 of 1984 provides as follows:

S 46 Variable rules regarding internal relations

The following rules in respect of internal relations in a corporation shall apply in so far as this Act or an association agreement in respect of the corporation does not provide otherwise:

(a) ...

(b) ...

- (c) ...
- (d) at any meeting of members of a corporation each member shall have the number of votes that corresponds with the percentage of his or her interest in the corporation;
- (e) ...
- (f) ...”

[14] The decision to institute legal proceedings is an internal arrangement between members of a close corporation. Therefore, it requires for their conduct to be in line with the Act or the association agreement. In the absence of such authority contained in the association agreement, the correct approach would be to comply with the Act, specifically section 46 (d). Section 54 (2) provides that if a member does not have the power to act on behalf of the corporation, his/her action does not bind the corporation, more so if the person with whom a member of a close corporation is dealing, has or ought to have, knowledge that the member does not have authority. The applicants do not only have knowledge of the first respondent’s lack of authority to act on behalf of the second respondent, but they (applicants) have in fact raised an objection to that effect. This should have been enough for the first respondent to accede to the non-compliance with the Act. The first respondent has not provided any association agreement authorising him so to act. The documents provided indicate that he is the minority membership interest holder.

[15] The legal position has been set out in a number of cases, with the approach in *Boerboonfontein BK v La Grange N.O. and Another (A409/09) [2010] ZAWCHC 81; 2011 (1) SA 58 (WCC) (15 April 2010)* being repeated by the Supreme Court of Appeal in the case of *Steyn and Another v Venter and Others 2025 (5) SA 140 (SCA)* as follows:

“[17] Whether a member of a close corporation may perform management functions on his own without the consent or cooperation of his fellow members was considered

in *Boerboonfontein BK v La Grange N.O.* The matter involved two members of a close corporation, which owned a farm on which both members farmed separately. On the death of the one member, Mr La Grange, a dispute arose between his family and the other member, Mr Theron, pertaining to who would be entitled to the deceased's membership. Mr Theron on behalf of the CC instituted eviction proceedings against La Grange's family. The latter raised a special plea claiming that the institution of the action was not authorised by the close corporation as Mr Theron could not have acted alone, and without the executor who had stepped into the shoes of Mr La Grange. They therefore had to act together. The appellants drew a distinction between a member of a juristic entity as opposed to a member of such entity's governing body as referred to in s 13(1) of the CC Act.

[18] Binns-Ward J stated in *Boerboonfontein*:

‘Ingevolge art 2 van die Wet is 'n geregistreerde beslote korporasie 'n regs persoon. Dit bring mee dat die korporasie 'n regs persoonlikheid van sy eie het wat apart en onderskeibaar van die van sy lede is. In hierdie opsig is 'n beslote korporasie juridies net soos 'n maatskappy of 'n ingelyfde assosiasie, en verskil dit in aard van 'n vennootskap. Soos in die geval van enige ander regs persoon, hang die beslissings en optrede van 'n beslote korporasie af van die besluite van die natuurlike persone wat dit beheer. 'n Onhoudbare situasie sou ontstaan as die besigheid van regs persone nie op 'n samehangende wyse gevoer word deur die mense in beheer daarvan nie. Dit beteken dat elke sodanige mens slegs binne sy of haar magte ingevolge die statuut of stigtingsverklaring van toepassing op die regs persoon ter sake kan optree. Waar daar 'n meervoud van E mense in beheer is met gelyke magte om die regs persoon se sake te bedryf, kan die regs persoon samehangend funksioneer slegs as sy beslissings en optrede deur 'n beslissende stem in 'n vergadering van sodanige mense bepaal word. As dit anders was, sou dit onmoontlik wees om 'n doeltreffende onderskeid te tref tussen die handelinge en bedoelinge van 'n regs persoon en die van elkeen van die verskeie natuurlike persone wat ten opsigte daarvan 'n individuele bestuursfunksie het.’ (Citation omitted).

Binns-Ward J concluded that ‘[d]ie wilsuiging van 'n beslote korporasie word weergegee in 'n beslissing wat die ondersteuning het van 'n meerderheid van die stemme van sy lede.’”

[16] The attempted English translation reads as follows:

In terms of Sec 2 of the Act, a close corporation is vested with legal personality and is separate from its members. To this extend a close corporation is legally like a company or an incorporated association and is different from a partnership.

As in the case of any other legal person, the decisions and actions of a close corporation is dependent on the decisions of the natural persons that manages it. It would be untenable if the business of legal persons is not being managed by the natural persons that oversee it. It

means that every natural person can only act according to his/her powers according to the memorandum of association applicable on the legal person.

Where there is more than one natural person in a legal person vested with the same functions and responsibilities, then the legal person can only act properly if the decisions are made with a majority votes during a meeting of those vested with the powers and responsibilities.

If it were different, it would have been impossible to effectively differentiate between the actions of the legal person and those of the natural persons who manage it.

Binns-Wards J 'the expression of the will of a close corporation is done by the decision that is supported by a majority of the votes of its members.'

[17] The power of attorney by the first respondent was signed on 27 November 2023, which is the same day on which the main review application was issued at court. Although the power of attorney was signed on the day the application was issued and while it can be accepted that the said power of attorney was in existence at the time the proceedings were launched, it does not avail the first respondent nor the second respondent on the basis that it was not done by the majority of those who hold majority membership of the second respondent. Therefore, the said power of attorney does not cure the defect faced by the first respondent in respect of the second respondent.

[18] With regard to the issue of the first and second respondents having changed attorneys of record, and their defence that the applicants' first two prayers (prayers [a] and [b]), fell off with the death of Mr PL Samuels, I find that this is an untenable proposition or approach. Legal representation is not restricted to a firm of attorneys but is universal on behalf of a litigant. The authority of legal representation has been challenged by the applicants. Perusal of the notice of motion para (ii) thereof refers to "attorneys acting on behalf of the second respondent" and not a specific firm of attorneys. Be that as it may, I have already found that the approach by the respondents is untenable.

The first respondent in his personal capacity

[19] I am only seized with the issue of authority to act on behalf of the second respondent. The rule 7 (1) notice of motion is specifically directed at the authority of the first respondent to act on behalf of the second respondent. Nothing has been said about authority or capacity or locus standi of the first respondent to act on his own. The main application shows that the first respondent was nominated as valuer in line with the terms of engagement between the first applicant and the second respondent. No attacks have been levelled against the first respondent in his personal capacity. Whether or not he has a case in the main review application, is something that I have not been called to determine and cannot determine right now.

[20] Of common cause is the fact that the first respondent was nominated as the “designated municipal valuer”. The applicants’ case against the first respondent to act in his own capacity in the main application, might be strong as set out in the replying affidavit, however, this was not the case for the applicants in the rule 7 notice in front of me. The challenge was only against authority in respect of the second respondent. The applicants cannot be seen to make their case against the first respondent in replying papers. The applicants cannot be granted that which they did not ask for. The applicants have not filed any opposing or answering affidavit to the main application. As such, I do not know what their defence against the first respondent, in his personal capacity, is. More so given the provisions of prayer 1.1 in the main application.

[21] The orders that I make are made only in respect of the second respondent and are to be restricted and executed only against the second respondent, except the costs issue, which is to be effected against the first respondent only.

Costs

[22] As I have stated earlier, the effect of the orders is that they affect only the second respondent, except the costs order. The applicants have vigorously pursued the objection that the second respondent has not sanctioned the decision, prosecution and appointment of attorneys in this matter. I do not see any reason why, having found that the second respondent had nothing to do with this matter, the second respondent should be mulct with costs of this matter. It is clearly the perseverance of the first respondent alone, which caused the matter to be before this Court and the manner in which it was prosecuted thus far. There is no evidence before me what the attitude of the majority membership holder of the second respondent, on all issues canvassed in this matter, is. Therefore, the first respondent will pay the costs of this matter alone.

Order

[23] I therefore make an order as follows:

1. In the main review application under case number M 676/2023, the first respondent is not duly authorised to act on behalf of the second respondent and the first respondent may not proceed to act on behalf of the second respondent.
2. In the main review application under case number M 676/2023, the attorneys acting on behalf of the second respondent are not duly authorised by the second respondent to act on behalf of the second respondent and the said attorneys may not proceed to act on behalf of the second respondent.

3. The launching and continuation of the main review application under case number M 676/2023 is not authorised by the second respondent, to the extent only that it affects the second respondent.
4. The main review application under case number M 676/2023 is dismissed, only against the second respondent.
5. The first respondent to pay costs on scale B including costs of counsel.

J. T. MAODI

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
NORTH WEST DIVISION, MAHIKENG**

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Date judgment reserved:

22 May 2026

Date of Judgment:

20 August 2026

