

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-043187

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

28 August 2026

RJ Moultrie

In the applications of:

**J P RAUTENBACH t/a RAUTENBACH
AND ASSOCIATES**

First Applicant for Intervention

CORNELIS TOBIAS VERMAAK

Second Applicant for Intervention

In re: the matter between:

**DISCOUNT BOARD SPECIALISTS GROUP
(PTY) LIMITED**

Plaintiff

JOHANNES JACOBUS POTGIETER

Defendant

This judgment and the order incorporated herein is handed down by email to the parties, and by uploading to Court Online.

JUDGMENT

MOULTRIE, J

[1] This is an opposed interlocutory application in which the First Applicant for Intervention seeks to intervene in partially-pending default judgment proceedings launched by the Plaintiff (DBSG) against the Defendant (Potgieter).

[2] At the outset, it is relevant to note that the deponent to the founding affidavit describes himself as “JACOBUS PETRUS RAUTENBACH REG: CFDC 00128664/2023 ... an adult male person, a debt collector by trade ... and trading as such under the name and style of Rautenbach and Associates”. Somewhat curiously, however, the deponent then proceeds to identify “the applicant” for intervention in the third person as “JP RAUTENBACH T/A RAUTENBACH AND ASSOCIATES”. The same deponent also does not dispute in the replying affidavit that he has sent correspondence to DBSG’s attorneys under the name “Ruatenbach [sic] Lundall and Associates”, which is more fully described in the same correspondence as being “JP (Werner) Rautenbach T/A Rautenbach and Associates”. Whatever the purpose of these descriptions may be, it is trite that while a natural person who plies their trade under a trading name may be sued in that name, that is purely a procedural matter. It does not substantively “turn a partnership or firm into a different entity or into a juristic person, existing separately from its members or owner”.¹ As such, it is apparent that it is Rautenbach himself who is the applicant (and the purported cessionary of the claim that forms the basis of the intervention application).

[3] Rautenbach’s intervention application was instituted after default judgment had been granted against Potgieter in the unopposed motion court on 22 August 2024 in respect of all of DBSG’s claims except for “Claim A”, which was postponed *sine die*. Under this claim, DBSG pursues a declaration that a sale agreement concluded between DBSG (as buyer) and Potgieter (as seller) and signed on 11 March 2021 in respect of certain immovable property is valid and binding, together with ancillary orders directing Potgieter or, failing him, the Sheriff to sign the documentation necessary to effect transfer of the property to DBSG.

¹ *DF Scott (EP) (Pty) Ltd v Golden Valley Supermarket* 2002 (6) SA 297 (SCA) para 9.

[4] The reason why DBSG's default judgment claim for transfer of the property was postponed and not granted in the order of 22 August 2024 was because Rautenbach delivered a notice of intention to oppose and counsel appeared at Court his behalf contending that his client has a direct and substantial interest in the relief sought by DBSG under Claim A, and that it was his intention to launch an intervention application and oppose that relief. This argument found favour with the court, which proceeded to grant an order placing Rautenbach on terms to deliver "a substantive Application to Intervene and/or be joined in respect of Claim A". He subsequently did so, albeit four days after the stipulated date of 3 September 2024 – a matter to which I return below. Answering and replying papers were subsequently delivered, as were DBSG's heads of argument.

[5] Rautenbach's intervention application was then set down on the opposed motion roll. However, Rautenbach (who had hitherto not been formally represented) declined to co-operate in the process of preparing a joint practice note as mandated by this Court's Consolidated Practice Directive, 1 of 2024. The reason advanced for this conduct was Rautenbach's contention that his own intervention application was not ripe for hearing because another intervention application that had been threatened (and which was subsequently launched) by the Second Applicant for Intervention (Vermaak). Vermaak also claims to be one of Potgieter's many creditors who seek to claim rights in respect of the property. In his intervention application (which was subsequently opposed by DBSG), Vermaak alleges that he is "the legally entitled owner of the property" by virtue of a settlement agreement allegedly concluded between him and Potgieter, and which had allegedly been made an order of court in the Cullinan Magistrates' Court on 24 April 2025. DBSG rejected the contention that this constituted a reason why Rautenbach's intervention application was not ripe for hearing and declined to agree to delay the hearing of Rautenbach's application.

[6] This prompted Rautenbach and Vermaak (by now both represented, by the same attorneys) to jointly deliver a formal application (to be moved on the same date as Rautenbach's intervention application) seeking that it be postponed *sine die*. DBSG proceeded to file a unilateral practice note indicating that the joint postponement application would be opposed, that it continued to seek a determination of Rautenbach's intervention application and that it would seek costs on a punitive scale

due to his failure to deliver heads of argument and co-operate in preparing the required joint practice note. By the time of the hearing, answering and replying affidavits had been delivered in the joint postponement application, and DBSG had also helpfully delivered concise heads of argument. As such, the matters requiring my determination were the joint postponement application and, should it not succeed, Rautenbach's intervention application.

[7] Having heard argument from Ms Jooste on behalf of Rautenbach and Vermaak and Mr Strydom on behalf DBSG, I dismissed the joint postponement application and indicated that the reasons would be set out in my judgment in Rautenbach's intervention application. I do so now. The basis upon which Rautenbach and Vermaak sought the postponement of the hearing of Rautenbach's intervention application was the bald allegation Vermaak's intervention application is "inextricably linked" to that of Rautenbach together with the contention that "the procedural timelines applicable to the Second Intervention Application will not have run their full course" by the time of the hearing. The deponent proceeded to submit "that it would be prudent and in the interest of justice for both applications to be heard simultaneously". Even though I was prepared to approach the joint postponement application on the assumption that Vermaak's intervention application was justified and would succeed, it was apparent to me that that was entirely irrelevant to the merits of either postponement application or Rautenbach's intervention application. Simply put, the two intervention applications are entirely distinct and independent of each other. There was no reason of principle why they might have to be heard and decided simultaneously, or why the hearing of Rautenbach's intervention should not proceed on its own. My findings on the costs of the joint postponement application are set out below. I only mention here that DBSG did not pursue an award of costs against Vermaak but, as foreshadowed in the unilateral practice note, persisted in seeking costs against Rautenbach on an attorney and client scale.

[8] Before proceeding to determine the merits of Rautenbach's intervention application, it is necessary for me to briefly address the fact that it was only served (via email) at 16h10 on Monday, 9 September 2024. As noted above, this was four court days after the date stipulated in the order of 22 August 2024. Although Rautenbach seeks (and DBSG opposes the grant of) condonation for this delay, I am

doubtful that this is indeed the case. This is because, at the time that the order was made, Rautenbach was neither a party to the proceedings nor had he instituted his intervention application. But while it thus seems questionable to me whether it can truly be said that Rautenbach was bound to deliver his application by the date specified in the order, I can see no useful purpose in examining that question further. I prefer to take a more practical, if less principled, approach: having in any event heard full argument on the merits of the intervention application and, since the parties both accept that condonation is indeed required, I have little difficulty in making an order formally granting it on the basis of an unexamined assumption that the parties are correct. Again, my findings on costs are set out below.

[9] Rautenbach's intervention application is premised on what he describes as a "cession document" attached to his founding affidavit, in terms of which Potgieter's ex-wife (one Kyrnytska) ostensibly ceded a claim against Potgieter "for monies due and payable" to her in the amount of R1.05 million "forth spreading [sic] from a divorce order" to "Rautenbach & Associates – or any person so duly authorised, employed or associated with Rautenbach & Associates. Sole Proprietor: J P Rautenbach T/A Rautenbach & Associates CFDC registration Number: 00128664/23". The claim that forms the subject of the cession arises from an agreement allegedly concluded between Kyrnytska and Potgieter in November 2022 under which the proprietary terms of their divorce was settled and which was made an order of court by the Magistrates' Court, Cullinan during January 2023 when it issued a decree divorcing them. Rautenbach does not suggest that the effective date of the alleged cession was any date later than 15 July 2024, being the date on which it was ostensibly signed by both Kyrnytska (at Kansas in the United States of America) and Rautenbach (at Roodepoort).

[10] DBSG raises a range of defences in response to Rautenbach's intervention application, most of which are seemingly aimed at excluding the evidence of the cession. These include: (a) that the confirmatory affidavit of Kyrnytska submitted as part of the answering papers was not validly commissioned; and (b) that the confirmatory affidavit had not been duly authenticated in compliance with the provisions of Rule 63.

[11] However, even assuming (without deciding) that these procedural difficulties may be determined in Rautenbach's favour, and that the cession document was in fact signed by him and Kyrnytska and can be considered by me, I still do not accept that he has made out a case on the merits for the intervention order that he seeks. I say so, two reasons.

[12] In its answering affidavit, DBSG observed that the alleged interest of Rautenbach in its claim against Potgieter for transfer of the property was not the interest that he had initially identified in a letter addressed to DBSG's attorneys dated 16 July 2024 (but which, as is apparent from its content was written on 17 July 2024, when it was transmitted via email). Extraordinarily, however, that letter (of which Rautenbach does not dispute he was the author) makes no mention whatsoever of the purported cession document upon which he now relies, and which had been signed only hours previously. To the contrary, the letter stated that Rautenbach was acting on behalf of Kyrnytska, whom he described as "our client". In its answering affidavit, DBSG invited the court to draw the inference that the cession was not *bona fide* and that Kyrnytska and Rautenbach "conspired to effect an ostensible transfer of the right of action but that the proceeds of any successful recovery from [Potgieter] will accrue to [Kyrnytska] and [Rautenbach] is merely the nominal party acting on her behalf". In his replying affidavit, Rautenbach: (a) continued to insist that the 17 July letter was sent in his capacity as a debt collector and that it set forth an argument in support of his "client instructions"; (b) baldly denied DBSG's contention that the cession document had been backdated; and (c) insisted that it was valid, stating that "regardless when the Applicant obtained cession of [Kyrnytska's] rights the fact remain that these rights have been ceded". However, he failed to explain why he did not mention it in the 17 July letter, and I am for that reason satisfied that the most natural or plausible inference to be drawn from the primary facts that I have accepted is that the cession document is (at the very least) "not *bona fide*", as DBSG contends, and that Rautenbach cannot rely upon it for the purposes of his intervention application.²

[13] And even if I am incorrect in this regard, the intervention application must fail for a further fundamental reason. Although the cession document purports to record that the property that forms the subject of DBSG's claim against Potgieter "provide[s]

² *South British Insurance Co Ltd v Unicorn Shipping Lines (Pty) Ltd* 1976 (1) SA 708 (A) at 713E-H.

the security for the collection of the liquidated amount” that constitutes Kyrnytska’s claim against Potgieter under the settlement agreement, and although Rautenbach alleges in his founding affidavit that he has a right under the cession document to “take action to protect the interest and security provided by a fix property for a liquidated amount” [sic], that is quite simply not correct. There is nothing in the settlement agreement to justify a conclusion that the property constitutes real security for any obligation owed by Potgieter to Kyrnytska that could form the basis of any claim of which Rautenbach alleges to be the cessionary.

Conclusion, Costs and Order

[14] In conclusion, therefore, Rautenbach has not established any direct and substantial interest in DBSG’s claim against Potgieter, and his intervention application falls to be dismissed. I add that since it did not serve before me for determination, it would be inappropriate to dismiss Vermaak’s intervention application and proceed to grant default judgment in favour of DBSG on its remaining claim against Potgieter, as requested by DBSG in one of the two alternative draft orders that it submitted.

[15] In my view, there is no reason why the costs of the postponement application and the intervention application should not follow the result. Not only do I consider, for the reasons set out above, that both of these applications were ill-conceived and objectively vexatious in the sense that DBSG should not have been put to the trouble of having to oppose them,³ but I am also of the view that Rautenbach’s conduct, in failing to participate in the prehearing procedures required by the Practice Directive and to favour the Court with written heads of argument on either application, constitutes “procedural delinquency” (as Mr Strydom aptly put it during argument) that is deserving of censure in the form of a punitive costs order. I will consequently order Rautenbach to pay DBSG’s costs in both applications on a scale as between attorney and client. For the sake of completeness, I should add that, to the extent that DBSG may have separately incurred any wasted costs in opposing Rautenbach’s prayer for condonation, I am bound to accept such opposition was reasonable in light of the conclusion that I have reached on the merits of the intervention application. And since

³ *Re Alluvial Creek Ltd* 1929 CPD 532 at 535; *Ernst & Young v Beinash* 1999 (1) SA 1114 (W) at 1148B-C.

I grant condonation purely for the sake of good form on the assumption (but without deciding) that it is required, and the grant of condonation is an indulgence in any event,⁴ any such costs should follow those of the intervention application and be paid on the same scale, again in view of Rautenbach's procedural delinquency.

[16] In the premises (and in addition to the order I made at the hearing dismissing the joint postponement application), I make the following order:

1. The First Intervening Party is granted condonation to proceed with the application for leave to intervene.
2. Save as aforesaid, the application is dismissed.
3. The First Intervening Party is ordered to pay the Plaintiff's costs (including the costs of the postponement application and any wasted costs incurred in opposing the prayer for condonation) on a scale as between attorney and client.

RJ MOULTRIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances: For the Applicants for Intervention: MF Jooste, instructed by JSK Attorneys (replaced subsequent to the hearing by Rabie Attorneys Inc.)

For the Plaintiff: FP Strydom, instructed by Karla Strydom Attorneys

⁴ *Myers v Abramson* 1951 (3) SA 438 (C) at 455G; *Ntangazana v Member of the Executive Council for the Department of Education Eastern Cape* [2025] ZASCA 160 (SCA) para 18.