



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case no: A216/2025

In the matter between:

THOMAS MARTHINUS JOUBERT

FIRST APPELLANT

(in his capacity as Trustee of the TOMMY
JOUBERT TRUST)

PIERRE JOUBERT

SECOND APPELLANT

(in his capacity as Trustee of the TOMMY
JOUBERT TRUST)

SANDRA ANDERSON

THIRD APPELLANT

(in his capacity as Trustee of the TOMMY
JOUBERT TRUST)

ADRI JOUBERT

FOURTH APPELLANT

(in his capacity as Trustee of the TOMMY
JOUBERT TRUST)

KOBUS WOLMARANS

FIFTH APPELLANT

(in his capacity as Trustee of the TOMMY
JOUBERT TRUST)

AND

ELIAS TUMEBO HASSNE

FIRST RESPONDENT

ALL OTHER OCCUPANTS

SECOND RESPONDENT

GEORGE LOCAL MUNICIPALITY

THIRD RESPONDENT

Coram: Justice J Cloete *et* Acting Justice Z Mapoma

Heard: 4 September 2026

Delivered electronically: 4 September 2026

ORDER

- 1 The appellants' application for condonation is granted.
- 2 The appeal is upheld.
- 3 The order of the court *a quo* is set aside and replaced with the following:
 'The point in limine is dismissed, with costs to be costs in the cause in the main application'.
- 4 The matter is remitted to the court *a quo* for determination of the merits of the application.

JUDGMENT

Cloete J (Mapoma AJ concurring):

[1] This is an unopposed appeal against the judgment and order of the Magistrate's Court at George, in eviction proceedings, upholding a point *in limine* raised by the first respondent (Mr Hassne) in respect of the *locus standi* of the Tommy Joubert Trust (Trust) of which the first to fifth appellants are co-trustees. The remaining respondents (those holding occupation through Mr Hassne and the George Local Municipality respectively) did not participate in the proceedings before the court *a quo*.

[2] Before turning to deal with the merits of the appeal, there is an application for condonation for the late filing of the record along with the application to the registrar of this court for the assignment of a date for the hearing of the appeal. The delay in doing so was a matter of two days, occasioned in turn by delay on the part of the transcribers in providing the record. The appellants' attorney has provided a full explanation; there is no suggestion of prejudice to Mr Hassne; and the prospects of success in the appeal are such that condonation should be granted.

[3] The eviction application was issued on or about 13 September 2024 (we were not provided with the sheriff's returns of service but the notice of motion reflects that it was served on the local authority on 19 September 2024). The founding affidavit was deposed to on 12 September 2024 by the second appellant (Mr Pierre Joubert, for convenience hereinafter referred to as 'Mr Joubert'). He alleged that he was duly authorised to depose to that affidavit, and had also been authorised to conclude lease agreements with Mr Hassne in respect of two flats owned by the Trust, which Mr Hassne, it was contended, had breached by failing to pay rental due and damages caused to the Trust's property.

[4] The point *in limine* raised by Mr Hassne was that the 'applicants is [sic] a trust', but that the appellants had not 'laid a basis upon which [a] resolution and in terms of which meeting it was decided by the [Trust's] legal and legitimate members to initiate proceedings against myself'. He admitted however that the Trust owns the flats, and further that the Trust, duly represented by Mr Joubert, concluded the lease agreements with him. In short therefore the only issue he placed in dispute regarding the Trust's *locus standi* was that it had failed to demonstrate that it had standing to institute the eviction proceedings against him.

[5] In the replying affidavit (also deposed to by Mr Joubert) he annexed a copy of the letters of authority issued by the Master on 23 November 2017 confirming that the appellants are trustees of the Trust. He further annexed a copy of a resolution signed by the appellants in their capacities as trustees over the period 10 to 16 January 2025 in which the following was recorded:

‘It is resolved that PIERRE JOUBERT, in his capacity as a Trustee of the Tommy Joubert Trust, be and is hereby authorised to depose to and sign all affidavits and other documents on behalf of the Trust and do all things as may be necessary to resolve any legal dispute the Trust may be a party to.

Insofar as any such action has been taken or any such documents have been signed before the date of this resolution, to the extent permissible by law, such actions and/or signatures be and are retrospectively approved and ratified in their entirety.’

[6] Mr Joubert submitted it was thus clear that ‘the [a]pplicants in terms of the letters of authority and the signed resolution together with the fact that they are the owners of the subject property, have the necessary *locus standi in iudicio* to institute the application for eviction against the first and second [r]espondents’.

[7] In its judgment the court *a quo* regrettably made certain errors of law. Although not a ground of appeal, it referred to the Trust, not as owner, but as the ‘person in charge’ of the properties for purposes of s 4(1) of PIE¹. This was clearly wrong.

[8] It also found that since the Trust’s *locus standi* did not appear *ex facie* the founding affidavit, it did not have the required standing to have instituted the application. In this regard, the court *a quo* referred to three decisions as authority for this proposition. The first was *Mars Inc v Candy World (Pty) Ltd*². However *Mars Inc* dealt with *locus standi* in the context of a dispute in terms

¹ Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998.

² *Mars Inc v Candy World (Pty) Ltd* 1991 (1) SA 567 (A) purportedly at 575.

of s 36(1)(b) of the Trade Marks Act.³ Despite the court *a quo* purportedly quoting directly from a passage in that judgment, what in fact was stated was that:⁴

‘I am of the opinion that in our law there is really only one issue, viz. whether the applicant under s 36 is an “aggrieved person”. In accordance with the general rule that it is for the party instituting proceedings to allege and prove that he has *locus standi*, the *onus* of establishing that issue rests upon the applicant ... [h]owever, if the applicant shows that his s 53(1) application is being blocked and that he therefore has an interest in having the offending mark expunged, there arises an inference that such application is *bona fide*, not vexatious and not without substance...’

[9] Accordingly *Mars Inc* is not authority on the issue of *locus standi* in the present context. The court *a quo* further referred to *Kommisaris van Binnelands Inkomste v Van der Heever*⁵ which, for purposes of this appeal, simply repeated the trite principle that the onus to allege and prove *locus standi* rests upon the litigant approaching the court for relief. It is likewise not authority for the proposition that, as stated by the court *a quo*, such locus must appear *ex facie* the founding papers, failing which the applicant must fail. Finally, the court *a quo* relied on a decision of the Free State Division, namely *K2011148986 (South Africa) (Pty) Ltd v State Information Technology Agency SOC Ltd and Others*⁶ where it was held, following two earlier decisions of that Division⁷, that the failure to establish *locus standi* in a founding affidavit cannot be cured by producing proof in reply.

[10] It would appear that in *K2011148986* the learned Judge’s attention was not drawn to Supreme Court of Appeal authority to the contrary. Nor was the court *a quo* in the present matter. As was summarised by the Full Court in this

³ Trade Marks Act 62 of 1963.

⁴ *Mars Inc* at 575 H-J.

⁵ *Kommisaris van Binnelandse Inkomste v Van Der Heever* 1999 (3) SA 1051 (SCA) para 10.

⁶ *K2011148986 (South Africa) (Pty) Ltd v State Information Technology Agency SOC Ltd and Others* (3996/2019) [2020] ZAFSHC 135 (18 August 2020) para 21.

⁷ The two earlier decisions are *Interboard SA (Pty) Ltd v Van den Bergh* 1989 (4) SA 166 (OPD) at 168 A-D and *M & V Tractor & Implement Agencies BK v Vennootskap DSU Cilliers & Seuns en Andere (Keln Vervoer (Edms) BPK (Tussenbetreidend) and two similar cases* 2000 (2) SA 571 (NKA) at 579 H-I and 580 D-E.

Division in *Hyde Construction CC v Deuchar Family Trust and Another* ⁸ (by which the court *a quo* was also bound, but which was similarly not brought to its attention by the parties' respective legal representatives, who were not the same as counsel who appeared before us):

‘There is no doubt that, in general, proceedings which have been instituted in the name of a particular party, but without the authority of those entitled to decide the matter on behalf of that party, may be ratified (see, for example, *Moosa and Cassim NNO v Community Development Board* 1990 (3) SA 175 (A) at 180I-181C ; *Smith v Kwanonqubela Town Council* 1999 (4) SA 947 (SCA) ...para 14). In the nature of things, when such a challenge is raised and the deficiency emerges, the ratification would need to be proved by way of supplementary papers, as occurred here [referring to supplementary replying papers]...’.

[11] In *Smith* ⁹ the Supreme Court of Appeal, after comprehensively considering the authorities, put it in the following way:

‘Apart from making perfectly good sense and being practical, it is legally sound. A party to litigation does not have the right to prevent the other party from rectifying a procedural defect ... the ratification in the present instance did not affect any substantive rights of Smith.’

[12] So too in the present case. By the Trust producing, in reply to Mr Hassne's challenge, the resolution which included ratification of prior steps in the litigation, the procedural defect upon which Mr Hassne relied was cured. It in no way affected his right to oppose the matter on the merits. It follows that the appeal must succeed.

[13] It was submitted on behalf of the appellants that the matter should be remitted for determination of the merits before a different magistrate. However in my view there is nothing to indicate that the same magistrate will not impartially adjudicate the merits.

[14] The following order is made:

⁸ *Hyde Construction CC and Another v Deuchar Family Trust and Another* 2015 (5) SA 388 (WCC) para 29.

⁹ *Smith v Kwanonqubela Town Council* para 14.

- 1 The appellants' application for condonation is granted.
- 2 The appeal is upheld.
- 3 The order of the court *a quo* is set aside and replaced with the following:
 'The point in limine is dismissed, with costs to be costs in the cause in the main application'.
- 4 The matter is remitted to the court *a quo* for determination of the merits of the application.

J I CLOETE
JUDGE OF THE HIGH COURT

I agree.

Z MAPOMA
ACTING JUDGE OF THE HIGH COURT

Appearances

For appellants: Mr V S Bruinders
Instructed by: Goussard Attorneys

For respondents: No appearance (unopposed)