

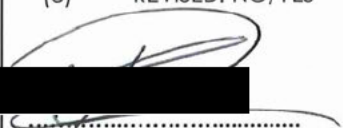
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-030800

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


SIGNATURE

DATE 31 August 2026

In the matter between:

MEDIA CAPITAL (PTY) LTD

Applicant / Defendant

and

THE CONSORTIUM

Respondent / Plaintiff

JUDGMENT

VERVEEN AJ:

This judgment is handed down electronically by circulating it to the parties' representatives by email and by uploading on CaseLines.

Introduction

- [1] This is an interlocutory application under Uniform Rule 7(1). The applicant, Media Capital (Pty) Ltd, seeks leave to dispute the authority of Alicia van Wyk Incorporated (AVW) to act for the respondent, The Consortium, in a pending action. It also seeks attorney-and-client costs.
- [2] The decisive issue is not whether the applicant has raised concerns that may warrant investigation. It is whether it has complied with Rule 7(1), or established good cause for leave to mount its challenge outside the prescribed period. For the reasons that follow, it has not.
- [3] The application must accordingly fail. In the circumstances, it is neither necessary nor appropriate to make definitive findings on the disputed internal authority of the Consortium or on the validity of the resolution relied upon by it.

Background

- [4] The respondent instituted the action during February 2023. The applicant entered an appearance to defend on 30 May 2023 and delivered its plea on 3 July 2023. The respondent thereafter applied for summary judgment. The applicant opposed that application, which was dismissed, with costs, and the applicant was granted leave to defend.
- [5] AVW was plainly identified as the respondent's attorneys from the inception of the action and in the ensuing summary-judgment proceedings. Yet no Rule 7 challenge was made at that stage.
- [6] On 28 May 2025, approximately two years after the appearance to defend, the applicant served a Rule 7 notice disputing the authority of the respondent's representative and AVW. It contends that the authority concern crystallised when Mr Daniel Rubenstein, a director of Ann Arbor Capital (Pty) Ltd, one of the three constituent entities of the Consortium, informed it during April 2025 that he had not authorised the action or AVW's appointment.

- [7] On 8 May 2025, shortly before the Rule 7 notice, the respondent filed a notice of amendment attaching proposed amended particulars of claim. The proposed amendment retains the allegation that the Consortium acted as Killarney Country Club's agent, substantially increases the arrear-rental claim, seeks cancellation and ejectment, and adds a hold-over claim.
- [8] The respondent replied that the notice was late and that leave of the Court was required. The applicant thereafter instituted the present application and expressly seeks leave to challenge AVW's authority. The question is whether its affidavits establish the good cause required for that relief. In my view, they do not provide a full and satisfactory explanation for the delay.

The governing principles

- [9] Rule 7(1) does not require a power of attorney to be filed as a matter of course. It furnishes the procedural mechanism by which the authority of a person acting for a litigant may be disputed: within ten days after the challenging party learns that person is acting, or thereafter only with leave of the Court on good cause shown and before judgment.
- [10] The enquiry under the Rule is directed to the attorney's mandate to institute, prosecute or defend proceedings for the litigant. It is not a mechanism for determining every collateral question concerning a deponent's authority or a litigant's internal governance. Rule 7 concerns the special procedural authority conferred by a client upon an attorney.¹ It is the institution and prosecution of proceedings that must be authorised; the deponent to an affidavit need not separately be authorised merely to depose to it.²
- [11] The Supreme Court of Appeal has endorsed Rule 7(1) as the appropriate procedural remedy and cautioned against costly technical disputes about

¹ *South African Allied Workers' Union and Others v De Klerk NO and Others* 1990 (3) SA 425 (E) at 436F–J.

² *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) para 19.

authority.³ The obligation to prove an attorney's authority arises only once that authority has been properly challenged.⁴

- [12] The ten-day period is substantive and purposeful. A late challenge requires leave and good cause. The Court must consider both a satisfactory explanation for the delay and prospects of success in the proposed authority challenge.⁵ The object of the time limit is to bring certainty and to avoid a challenge being raised at the whim of an opponent after substantial litigation has occurred.⁶
- [13] The relevant question is therefore whether the applicant has established good cause for leave to serve the late notice. That requires a reasonable explanation covering the period of non-compliance, considered together with the nature and apparent merits of the intended challenge and the interests of justice.

Application to the facts

- [14] The applicant was aware of AVW's role by no later than May 2023. It was represented in the action, delivered a plea, and opposed the respondent's summary-judgment application without challenging AVW's authority. That was the point at which Rule 7(1) required the applicant either to deliver its notice within ten days or to seek the Court's leave on good cause shown.
- [15] The applicant relies on the later information attributed to Mr Rubenstein in April 2025. That information may explain why the applicant elected to revisit the subject. It does not, however, explain its failure to challenge the authority of the attorneys when it first knew that they were acting, as the Rule requires.
- [16] Even accepting the applicant's version that material information was received on 8 April 2025, the notice was served only on 28 May 2025. The founding affidavit does not explain that intervening period adequately. The replying

³ *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) paras 14–16.

⁴ *FirstRand Bank Ltd v Fillis and Another* 2010 (6) SA 565 (ECP) paras 11–13.

⁵ *Ensemble Hotel Holdings (Pty) Ltd v Swanvest 328 (Pty) Ltd and others* 2024 JDR 0415 (GJ) paras 11–12 and 31–32.

⁶ *Kaap-Vaal Trust (Pty) Ltd v Speedy Brick & Sand CC* 2021 JDR 2625 (GP) paras 17–21.

affidavit refers generally to public holidays and weekends, but it does not provide a complete factual explanation or cure the omission in the founding papers.

- [17] The applicant does seek leave in its notice of motion. It is therefore unnecessary to decide whether a distinct application under Rule 27 was additionally required. The substantive question remains whether the applicant has shown good cause for the leave sought under Rule 7(1). The founding papers do not address the extent of the delay fully, do not provide a satisfactory explanation covering it, and do not set out sufficient facts from which the Court can conclude that the interests of justice favour a departure from the ordinary time limit.
- [18] This conclusion is fortified by the litigation history. The applicant was able to defend the action and oppose summary judgment. The authority challenge was raised after the action had proceeded for approximately two years. A challenge at that stage, without a cogent explanation for non-compliance, is inimical to the procedural certainty which Rule 7(1) is designed to achieve.
- [19] Even if the applicant's proposed challenge is assumed, in its favour, to possess sufficient *prima facie* merit to justify investigation, that cannot compensate for the absence of an adequate explanation. The applicant has not discharged the onus of showing good cause for leave to proceed out of time. The application therefore falls to be dismissed without a determination of the disputed substantive mandate.

The merits need not be decided

- [20] The applicant submits that the resolution dated 17 February 2023 is invalid because it was not signed by Mr Rubenstein. The respondent contends that the resolution was adopted and acted upon: it was signed by Messrs Dinnie and Jones; Mr Rubenstein had knowledge of the intended proceedings and AVW's appointment; and he did not object.

[21] These competing contentions raise factual and legal issues about the Consortium's internal arrangements and the effect of the resolution. They are not fit for final determination in this interlocutory application once the threshold Rule 7 question has been decided against the applicant. I add that the applicant's reliance on the subsequent Killarney Country Club correspondence and the order in the related eviction matter does not alter that conclusion. Those materials may bear upon the merits of the pending action, or upon the Consortium's relationship with Killarney Country Club. They do not dispense with compliance with Rule 7(1), and they do not convert an inadequately explained late authority challenge into one for which good cause has been shown.

[22] It would be inappropriate to make a declaration that AVW lacks authority on this record. The Rule 7 application is dismissed because the applicant has not established the procedural entitlement to pursue its out-of-time challenge, not because the Court has decided the disputed internal mandate finally.

Costs

[23] The respondent has succeeded. The ordinary rule is that costs follow the result. The respondent seeks costs on scale C in its heads of argument but correctly made oral submissions that it seeks costs on scale B at the hearing of the application.

[24] The applicant's conduct does not warrant a punitive order. A costs order on scale B is nevertheless appropriate, having regard to the interlocutory nature of the application and the costs incurred in opposing it.

Order

[25] The following order is made:

1. The application is dismissed.

2. The applicant shall pay the respondent's party and party costs on scale B.



P VERVEEN
Acting Judge of the High Court
Johannesburg

APPEARANCES:

Applicant : L ACKER
Instructed by : SMITH SEWGOOLAM INC

Respondent : JW KLOEK
Instructed by : ALICIA VAN WYK INC

Hearing: 26 August 2026

Judgment: 31 August 2026