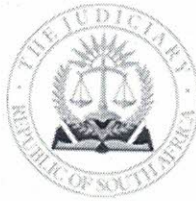


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 446/2013

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
<p>DATE: <u>27/11/19</u> SIGNATURE: <u>[Signature]</u></p>	

In the matter between:

MOKGOTHO BUILDING CONSTRUCTION CC

1ST APPLICANT

MBOYENG THOMAS MOKGOTHO

2ND APPLICANT

And

ILIAD AFRICA TRADING (PTY) LTD

RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The respondent who is the plaintiff in the main action has instituted an action against the applicants who are the defendants in the main action

for alleged breach of contract. The applicants have defended the respondent's action.

- [2] The matter was set down for trial on the 11th September 2017. The applicants failed to attend court on that date and the respondent obtained a default judgment against the applicants.
- [3] The applicants have brought a rescission application seeking an order that the default judgment that was obtained by the respondent on the 11th September 2017 be rescinded. The respondent is opposing the applicants' rescission application. The deponent of the respondent's answering affidavit is one Cornelius Loubser who has stated that he is a Divisional Credit Manager employed by Steinhoff Doors and Building Materials (Pty) Ltd. He has further stated that the respondent is a subsidiary of Steinhoff, and therefore he is authorised to depose the answering affidavit. He has also attached the alleged resolution which authorizes him to act.
- [4] The applicants in their replying affidavit have raised a point in limine challenging the authority of the deponent of the answering to depose it. It is the applicants' contention that the resolution attached to the answering affidavit makes no mention of the respondent. The applicants

did not serve the respondent with a notice in terms of Rule 7(1) of the Uniform Rules of Court (the Rules).

[5] Rule 7(1) provides as follows:

“ (1) Subject to the provisions of sub-rules (2) and (3) a power of attorney to act need not be filed, but authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such a person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such a person may no longer act unless he satisfies the court that he is authorised to so act, and to enable him to do so the court may postpone the hearing of the action or application.”

[6] In **Unlawful Occupiers School Site v City of Johannesburg**¹ Brand JA at 206 G-H said:

“The import of the judgment in Eskom is that the remedy of a respondent who wishes to challenge the authority of a person allegedly acting on behalf of a purported applicant is provided for in Rule 7(1) of the Uniform Rules of Court.”

[7] It is trite that a deponent to an affidavit in motion proceedings need not be authorized by the party concerned to depose to the affidavit. It is the

¹ 2005 (4) SA 199 (SCA)

institution of the proceedings and the prosecution thereof that must be authorized. (**See Ganes and Another v Telecom Namibia Ltd²**).

- [8] The applicants have challenged the authority of the respondent to sign the answering affidavit for the first time in their replying affidavit. They at no stage served the respondent with a Rule 7(1) notice. The applicants are challenging the authority of the deponent to depose the answering affidavit and not the authority to oppose the application.
- [9] The deponent of the answering affidavit has stated that he was duly authorised to depose the affidavit. The affidavit was made under oath which makes it evidence, and he alleges that the evidence is within his personal knowledge. The applicants in their replying affidavit have merely denied the allegations and stated that there is no proof that the deponent has sufficient authority to attest to the affidavit. It did not present the basis for its denial.
- [10] As held in *Ganes supra*, the deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose the affidavit, but it is the institution and the prosecution which but be authorised. In this case it will be the decision to oppose the applicants'

² 2004(4) SA 615 (SCA) at 19.

application that must be authorised, and as I have already pointed out in paragraph 8 above. The applicants did not seem to be challenging the authority to oppose its application, but the authority to depose the answering affidavit. In my view, the challenge of the authority to depose to the answering affidavit is entirely misconceived (**See FirstRand Bank v Fillis³**).

[11] An applicant who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant must not challenge the authority in the replying affidavit, but must do so in terms of Rule 7(1) of the Rules. The applicants did not avail themselves of the procedure provided for in Rule 7(1) and are therefore not entitled to challenge the authority of the deponent of the respondent's answering affidavit in their replying affidavit. The applicants' point in limine has therefore no merit and stand to fail.

[12] In the result I make the following order.

12.1 The applicants' point in limine of lack of authority is dismissed with costs on party and party scale.

³ 2010 (6) SA 565 (ECP)



MF. KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION, POLOKWANE

APPEARANCE:

For the plaintiff	: Adv. S. Makoasha
Instructed by	: Becker Attorneys Unit 2 Proforum Building, Bendor
For the Defendant	: Adv. M. Jacobs
Instructed by	: PMK Tladi & Associates 20 Schoeman Street, Polokwane
Date of hearing	: 04 NOVEMBER 2019
Date of Judgment	: 27 TH NOVEMBER 2019