IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case number: 567/2017

In the matter between:

SAREL JOHANNES WESSELS 1st Intervening Party

ELIZABETH MARIA VENTER 2nd Intervening Party

In the application of

MATSEPE N.O. 1st Applicant

O.A. NOORDMAN N.O. 2nd Applicant

and

THE MASTER OF THE HIGH COURT, FREE STATE DIVISION, BLOEMFONTEIN 1st Respondent

P. FOURIE N.O. 2nd Respondent

HEARD ON: 10 February 2017

JUDGMENT BY: CHESIWE, AJ

DELIVERED ON: 13 APRIL 2017

REASONS FOR JUDGMENT

INTRODUCTION

[1] The intervening party's instituted proceedings to be granted leave to intervene in the main action under case number 567/2017. On 3 February 2017 the applicants launched an urgent application for an interim interdict in terms of which the 1st respondent is interdicted from removing the applicants as liquidators of the Estate of Sebal Beleggings (hereinafter Sebal). The intervening parties are not yet considered parties to the main action as a court order has not yet been granted.

[2] On 10 February 2017, before the intervening application could proceed, the intervening parties made an application for certain documents from the applicants, namely that:

- The creditors consent to appoint Matsepe Inc as attorneys on behalf of the estate.
- The written mandate from the liquidation appointing Matsepe Inc as attorneys of record of the estate of Sebal Beleggings.

Alternatively

- Prior written consent of the Master of the High court that Matsepe Inc may represent the applicants

THE PARTIES

[3] Intervening parties are cited as Sarel Johannes Wessels and Elizabeth Maria Venter, as they have a material and substantive interests in the application.

APPLICANTS

[4] First applicant is Mr Tsiu Vincent Matsepe and the second applicant is Mr Ottlie Anton Noordman. They are appointed as liquidators in the insolvent estate of Sebal Beleggings (Pty) Ltd (Sepal) with Masters Reference number: B98/2012.

RESPONDENTS

[5] First respondent is the Master of the High Court, Free State Division Bloemfontein (hereinafter the Master) and the second respondent is Phillips Fourie, an insolvency practitioner at Corporate Liquidation, Pretoria.

[6] The issue is whether the applicants have *locus standi* to bring the application in their official capacity, in the absence of power of attorney in terms of Rule 7 (1) of the Uniform Rules of court.

[7] On the 10 February 2017, I granted an order that the intervening application be postponed to the16 February 2017 and that the applicants provide the requested documents. The costs were in the cause. The applicants launched an application for leave to appeal against my order as well as reasons to it.

BACKGROUND

[8] The intervening parties seek an order directing the first respondent to execute his duties in terms of section 379(1) of the Companies Act 61 of 1973 to remove the applicants as liquidators of Sebal Beleggings with immediate effect.

[9] The Master wrote a letter to the applicants dated 29 March 2016 and it stated that:

"In terms of section 381 of the companies Act, the matter shall take cognizance of the conduct of liquidation and shall, if the matter has reasons to believe that (the liquidator) is not performing his duties faithfully and duly observing all requirement imposed on him by any Law, the matter may enquire into the matter and take such actions as the master may think expedient.

"The letters addressed to yourselves by the master, Bloemfontein, constitute a lawful request and require you to adhere to such request. From subsequent events it is clear that such instructions by the master, Bloemfontein were ignored."

"The master therefore holds the view in terms of section 379(1) (c), that you are no longer suitable to be liquidators on the National list of liquidators."

[10] On the 3 February 2017 before the intervening application could proceed, the intervening parties questioned the *locus standi* of the applicants before court.

[11] Counsel on their behalf Mr Janse Van Rensburg in his oral argument submitted that, the applicants were removed as liquidators on 29 October 2015 but were reappointed on 16 June

2015. Their request was simply that the applicants should provide written authorization of their reappointment in terms of Rule 7(1) of the Uniform Rule of court. (Power of attorney)

[12] In the intervening parties' heads of argument, it was submitted that the applicants have no *locus standi* to bring the application in their official capacities in the absence of consent from the Master and the second respondent. Further that the applicants have no *prima facie* right not to be removed by the Master as liquidators of Sebal and that the applicants failed to join the intervening parties who have a material interest in the outcome of the matter

[13] On behalf of the applicants, Adv. Halgryn SC argued and objected to the issue of Rule 7(1) that the intervening parties seek. Adv Halgryn submitted that the applicants are in their personal capacity before court and that Rule 7(1) provides that a power of attorney need not be file, but it has to be filed 10 days before judgment.

[14] The applicants in their head of argument reiterated that they are in their personal capacity before court, and that Sebal is not involved and will not be burdened financially with the applicants legal costs. The applicants submitted that they produced their written authority that Matsepe Inc. may act on their behalf. Further that the applicants produced a written consent by Mr Y Wessels who is the major creditor in Sebal.

[15] The applicants submitted that they have complied with the request by the intervening parties. Furthermore that the

intervening parties and Mr Janse Van Rensburg mislead the court and that it was disingenuous of the intervening parties to submit to court the court that the litigation involves Sebal Estate.

[16] The judgment will not deal with the issue of urgency neither with the application to intervene as these were not argued, but rather postponed to 3 March 2017, in order for the court to deal with the issue of Rule 7(1).

[17] Rule 7(1) and (4) of Uniform Rules of Court – Power of attorney, provides that:

> "(1) Subject to the provisions of sub-rules (2) and (3) a power of attorney to act need not be filed, but the 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 person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfies the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.
>
> (4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to Law; provided that where a power of attorney is signed on behalf of the party giving it proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power."

[18] Rule 7(1) is the procedure a party may follow if it disputes the authority of anyone to act on behalf of a party. In the event of

such a challenge the person may no longer act unless he satisfies the court that he/she is authorized to act.

[19] It is trite that the Rule prescribed procedure for challenging the authority of a party to act[1]. The intervening parties are challenging the authority of the applicants to act. They argued that the applicants have no *locus standi* and that the applicants must produce written proof to that effect that they have been mandated to act in the proceedings. Applicants submitted that they are before court in their personal capacity and have instructed Matsepe Inc. to act on their behalf. The applicants in their supplementary affidavit expressed their amazement at the intervening parties and surprised that they seek documents which the have given to the intervening parties. The applicants submitted that they have complied with Rule 7 (1).

[20] In the unanimous decision of **ANC Umvoti Council Caucus v Umvoti Municipality**[2], full bench observed that:

> "The Legislative intended the authority of "anyone" who claimed to be acting on behalf of another in initiating proceedings and not only attorneys, to be dealt under Rule 7(1)."

[21] I agree with the full bench that Rule 7(1) requires a broad interpretation having regard to the purpose of the rule. The purpose of the rule is, on one hand to avoid overburdening the pleadings unnecessarily with correspondence between the parties

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[1] *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624

[2] *ANC Umvoti Council Caucus v Umvoti Municipality* 2010 (3) SA 31 (KZP) para 13-29. See also *Eskom v Soweto City Council* 1992 (2) SA 703 (WLD) at 705 E-706 C and *Ganes and Another v Telecom* above

and power of attorney on the other hand it provides a safeguard to prevent a person who is cited from repudiating the process or denying his or her authority for issuing the process.

[22] Rule 7(1) can be invoked any time before judgment, so did the intervening parties invoke it before the intervening application could proceed. Rule 7(1) requires the court to be satisfied that the party in whose authority is disputed is authorised to act. The application in terms of Rule 7(1) was made in court, and the rule does provide that it be before judgment.

[23] In Eskom v Soweto City Council,[3] the court stated that:

> "If the attorney is authorised to bring the application on behalf of the applicant, the application necessarily is that of the applicant..... As to when and how the attorney's authority should be proved, the Rule-maker made a policy decision."

Proof is dispensed with except only if the other party challenged the authority. The court should honour the approach of Rule (1).

[24] The intervening parties disputed the authority to act of the applicants, even though the applicants submitted that they were acting in their personal capacity and were not representing Sebal.

[25] Therefore properly mandated powers of attorney are required for the applicants to proceed with the litigation.

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[3] 1992 (2) SA 703 (WLD) at 705f.

The challenge of Rule 7(1) is that the hearing of the application be postponed, in this case the intervening application, to give the applicants notice to prove their authority by way of delivering a power of attorney and the required documents. The remedy for a person who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant is provided for in rule 7 (1)[4]. In the event of such a challenged the person may no longer act unless he satisfies the court that he is authorised to act. Case law confirms that Rule 7 is the prescribed procedure for challenging the authority of a party to act.

[26] In the matter of Royal Bafokeng Nation v Minister of land Affairs and 15 others,[5] the court listed the following principles to be applicable where the authority of a person to act is in in dispute:

- An Artificial legal person is obliged to provide that it is authorised to initiate the litigation in question;
- Any challenged should be mounted in terms of Rule 7 (1);
- Rule 7 can be invoked at any time before judgement;
- While it is a practical rule which mostly turns out to be compliance with a procedural formality, it can in some cases, impact substantially on the rights of litigants.

[27] Rule 7 (1) therefore requires the court to be satisfied that the party whose authority is disputed is authorised to act. In this matter the applicant's authority to act is disputed. Any party to legal proceedings bears the onus of proving that its legal

[4] Unlawful Occupiers, School Site v City of Johannesburg 2005 (4) SA 199, para 14
[5] [2013] NWHC 999

representative is properly authorised and that it has the authority to instruct its legal representative.

[28] The Intervening parties were accordingly entitled to challenge the authority of the applicant's authority to act. Once the challenged was put forth, it was then for the applicants to satisfy the court that the concerned attorneys did have the requisite authority to act. (See Gainsford and Others NNO v Haib AB 2000 (3) 635 (WLD) at 640A.)

[29] In my view, I need to be satisfied that the applicants are properly before court and also mandated to do so. The intervening parties had an issue that the Master had removed them as liquidators and even though the applicants indicated that they have been re-instated, the intervening parties disputed this and wanted written proof thereof.

[30] The rest of the other documents will follow if the applicants comply with Rule 7 (1).

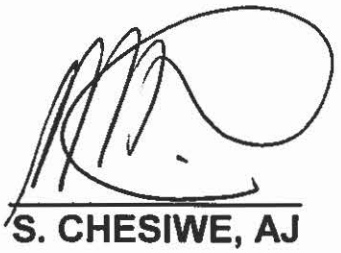
Order

[31] Under these circumstances, the following order is made.

1. The matter is postponed to the opposed roll on 2 March 2017.

2. The applicants to provide the requested documentation as set out in the court order dated 10 February 2017.

3. Costs in the cause.



S. CHESIWE, AJ

On behalf of applicants:	Adv. Halgryn SC
Instructed by:	Matsepe Attorneys Bloemfontein
On behalf of respondents:	Adv. P.F. Rossouw SC
Instructed by:	Phatshoane Henney Inc Bloemfontein