

SOUTH AFRICA / JUDGMENT

Kurt Robert Knoop and Others v Tegeta Exploration and Resources (Pty) Ltd and Others (312/2024) [2025] ZASCA 96 (30 June 2025)

[2025] ZASCA 96**COURT**

Supreme Court of Appeal

BEFORE

Hughes, Weiner, Unterhalter, Baartman, Molitsoane

CASE / FILE NUMBER

312/2024

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Source record**FLYNOTES:**

COMPANY – Business rescue – Authorization of litigation – Appointment of attorneys by company directors – Business rescue practitioners assume full management control of company – Superseding board of directors – Directors have limited rights in their capacity – Cannot independently initiate litigation or appoint legal representatives without practitioners' approval – Only practitioners could authorize litigation – Directors lacked authority – Actions rendered invalid – Appeal succeeded.

THE SUPREME COURT OF
APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 312/2024

In the matter between:

KURT ROBERT KNOOP

FIRST APPELLANT

JOHAN LOUIS KLOPPER

SECOND APPELLANT

JUANITO MARTIN DAMONS

THIRD APPELLANT

KGASHANE CHRISTOPHER MONYELA FOURTH APPELLANT

and

TEGETA EXPLORATION

AND RESOURCES (PTY) LTD FIRST

RESPONDENT

KOORNFONTEIN MINES (PTY) LTD

SECOND RESPONDENT

OPTIMUM COAL MINE (PTY) LTD

THIRD RESPONDENT

OPTIMUM COAL TERMINAL (PTY) LTD

FOURTH RESPONDENT

RONICA RAGAVAN

FIFTH RESPONDENT

DHANASEGARAN ARCHERY

SIXTH RESPONDENT

Neutral citation: Kurt Robert Knoop and Others v Tegeta Exploration and Resources (Pty) Ltd and Others (312/2024)

[2025] ZASCA 96 (30 June 2025)

Coram: HUGHES, WEINER, UNTERHALTER and BAARTMAN JJA and MOLITSOANE AJA

Heard: 19 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The time and date for hand-down is deemed to be 11h00 on 30 June 2025.

Summary: Uniform Rules of Court – Rule 7 – whether the court a quo erred in issuing a declaratory order that the attorneys for the second respondent were authorised to represent such respondent in the main application – business rescue – whether a director has power to appoint attorneys on behalf of a company in business rescue – whether the declaratory order is a ‘decision’ within the meaning of s 16(1)(a) of the Superior Courts Act 10 of 2013 – whether the ‘decision’ is appealable.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Phooko AJ sitting as court of first instance):

1 The appeal succeeds with costs including the costs of two counsel where so employed.

2 The order of the high court is set aside and replaced with the following:

‘(a) The application in respect of prayers 1, 2, 3 and 4 are dismissed.

(b) The fifth and sixth respondents are to pay the costs personally, including the costs of two counsel where so employed, jointly and severally.’

Weiner JA (Hughes, Unterhalter and Baartman JJA and Molitsoane AJA concurring):

Introduction

[1] The appellants are the appointed business rescue practitioners (the BRPs) of the first to fourth respondents (the companies). The fifth respondent, Ms Ragavan, is a director of the first and second respondents, and the sixth respondent, Mr Archery, is a director of the third respondent. This appeal concerns whether or not a director of a company under business rescue has the authority to appoint attorneys to act on behalf of the company.

Background

- [2] On 21 October 2022, Ms Ragavan and Mr Archery, purporting to act on behalf of the companies, launched an application in the Gauteng Division of the High Court, Pretoria (the high court) for, inter alia, the removal of the first and second appellants as the BRPs of the companies. They also sought a declarator that the third and fourth appellants were not properly appointed as BRPs. The companies were joined as co-applicants. Purporting to exercise their powers as directors of the companies, Ms Ragavan and Mr Archery appointed Van der Merwe and Van der Merwe Attorneys (VDM) to act for the companies in the application.
- [3] The BRPs disputed the authority of VDM to act for the companies. They delivered a notice in terms of Rule 7 of the Uniform Rules of Court on 2 November 2022. On 21 November 2022 the respondents filed resolutions and powers of attorney from Ms Ragavan as the director of the companies, purportedly authorising VDM to act for the companies. The BRPs also disputed these documents and the authority of VDM.

[4] The respondents sought the following relief:

- ‘1. That, insofar as it may be necessary, that leave be granted in terms of section 133(1)(b) of the Companies Act, 71 of 2008 (as amended) (“the Companies Act”), for the Applicants to bring this application;
2. That the First Respondent be removed as Business Rescue Practitioner of the First to Fourth Applicants;
3. That the Second Respondent be removed as Business Rescue Practitioner of the First to Third Applicants;
4. That it be declared that the Third Respondent is not a Business Rescue Practitioner of the Second to Fourth Applicants;
5. That it be declared that the Fourth Respondent is not a Business Rescue Practitioner of the Second and Third Applicants;
6. That Companies and Intellectual Property Commission be ordered to update their records to reflect the orders in prayers 2 to 5 above;
7. That the First to Fourth Respondents, and any other Respondent who opposes the application, pay the costs of the application on an attorney and client scale including the costs of two counsel.’

[5] The high court found that VDM was not authorised to represent the first, third and fourth respondents but was authorised to represent the second respondent (Koornfontein). On 11 December 2023, the BRPs applied for leave to appeal against the order in relation to Koornfontein. On 20 February 2024, the high court granted leave to appeal to this Court. The appeal is only in relation to the order contained in paragraph 78(c) of the judgment, which states:

‘It is declared that the authority of Van der Merwe and Van der Merwe attorneys have been established and that Van der Merwe and Van der Merwe attorneys are authorized to represent the Second Applicant [Koornfontein] in the removal application.’

Appealability

[6] The respondents firstly raised the issue of appealability of the judgment, stating that the decision was not final but interlocutory and accordingly did not pass the test set out in *Zweni v Minister of Law and Order*[1]. In *DRDGOLD Ltd and Another v Nkala and Others* (*DRDGOLD*),[2] this Court referred to the judgment of Harms AJA in *Zweni* where he held:

‘...“The expression ‘judgment or order’ in s 20(1)[3] of the Act has a special, almost technical, meaning; all decisions given in the course of the resolution of a dispute between litigants are not ‘judgments or orders’ . . .”[4]

...

Harms AJA famously concluded at 532I-533A:

“A ‘judgment or order’ is a decision which, as a general principle, has three attributes, first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings”.

[7] The respondents sought to rely on this Court’s judgment in *Unica Iron and Steel (Pty) Ltd v Minister of Trade and Industry (Unica)*,^[5] where this Court referring to Zweni, held that if ‘the order is not final nor definitive of the rights of the parties to the action and does not have the effect of disposing of any portion of the relief claimed in the main proceedings’ it is interlocutory and not appealable.

[8] In *Unica*, the question raised had become academic and it was therefore not susceptible to an appeal. That position is clearly distinguishable

from the situation in this case. The appellants, however, contended that, in any event, the issue went beyond simply whether or not the power of attorney was valid. The effect of the judgment is final in that the order granted by the high court allows the company to proceed with unauthorised litigation in terms of s 139. It is not an interlocutory application. It is definitive of the party's rights in this regard. Unauthorised litigation cannot be permitted to proceed. Thus, I am of the view that the order of the high court is appealable.

Legislative regime

Rule 7(1)

[9] Rule 7(1) provides:

‘7 Power of Attorney

(1) Subject to the provisions of subrules (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 satisfied 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.’

[10] The respondents’ submissions turned on the interpretation of Rule 7. It is their view that all that is required to satisfy the requirements of the rule is the production of a power of attorney. A court, it contended, cannot go behind the power of attorney to enquire whether the person who instructed the attorney, had the power or authority to do so.

[11] However, Rule 7 specifically states that the person claiming the right to act on behalf of the companies (VDM in this case), must satisfy the court that he is authorised so to act. To be so satisfied, the power of attorney must issue from a person vested with the authority to give the power of attorney. If the person lacks the authority to do so, the power of attorney does not evidence that its bearer is authorised to act.[6] The respondents' submission cannot be accepted.

The Companies Act

[1] Zweni v Minister of Law and Order 1993

(1) SA 523 (A);

[1993] 1 All SA 365 (A) (Zweni).

[2] DRDGOLD Ltd and Another v Nkala and Others [2023] ZASCA 9; 2023 (3) SA 461 (SCA).

[3] The previous iteration of s 16 which provides 'An appeal from a judgment or order of the court of a provincial or local division in any civil proceedings or against any judgment or order of such a court given on appeal shall be heard by the appellate division or a full court as the case may be.'

[4] Zweni para 532C-D.

[5] Unica Iron and Steel (Pty) Ltd and Another v The Minister of Trade and Industry and Another (1332/21)

[2023] ZASCA 42 (31 March 2023) para 11 (Unica).

[6] Unlawful Occupiers, School Site v City of Johannesburg

[2005] 2 All SA 108 (SCA); 2005 (4) SA 199 (SCA) para 16.

[7] All sections referred to in this judgment are references to the Act, unless otherwise stated.

[8] Ragavan and Others v Optimum Coal Terminal (Pty) Ltd (in Business Rescue) and Others [2023] ZASCA 34; 2023 (4) SA 78 (SCA) para 7-27 (Ragavan); Prinsloo v S [2015] ZASCA 207; [2016] 1 All SA 390 (SCA); 2016 (2) SACR 25 (SCA) para 46; Tayob v Shiva Uranium (Pty) Ltd 2020 JDR 2672 (SCA) para 24 (Tayob).

[9] National Director of Public Prosecution v Sharma and Others [2021] ZAFSHC 172; 2022 (1) SACR 289 (FB) (Sharma).

[10] Ibid para 29.

[11] Section 150 provides: 'Proposal of business rescue plan

(1) The practitioner, after consulting the creditors, other affected persons, and the management of the company, must prepare a business rescue plan for consideration and possible adoption at a meeting held in terms of section 151.'

[12] Sharma para 30.

[13] Ragavan Op cit fn 1.

[14] An affected person as defined in s 128(1)(a) is ‘(i) a shareholder or creditor of the company;

(ii) any registered trade union representing employees of the company; and

(iii) if any of the employees of the company are not represented by a registered trade union, each of those employees or their respective representatives.’

[15] Islandsite Investment (Pty) Ltd v The National Director of Public Prosecutions and Others [2023] ZASCA 166; 2024 (5) SA 20 (SCA) (Islandsite).

[16] Ibid para 15.

[17] Ibid para 22.

[18] Ibid para 23.

[19] Tayob para 23.

[20] Islandsite para 11.

[21] Islandsite para 14.

[22] Ragavan para 18.

[23] Tayob para 23.

[24] Ragavan para 27.

[25] Islandsite para 21.

[26] ‘130 Objections to company resolution

(1) Subject to subsection (2), at any time after the adoption of a resolution in terms of section 129, until the adoption of a business rescue plan in terms of section 152, an affected person may apply to a court for an order-

(a) setting aside the resolution, on the grounds that-

(b) setting aside the appointment of the practitioner, on the grounds that the practitioner-

(i) does not satisfy the requirements of section 138;

(ii) is not independent of the company or its management; or

(iii) lacks the necessary skills, having regard to the company's circumstances; or

(c) requiring the practitioner to provide security in an amount and on terms and conditions that the court considers necessary to secure the interests of the company and any affected person.’

[27] Islandsite para 25.

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