

SOUTH AFRICA / JUDGMENT

Symes N.O and Others v Garvelli (Pty) Ltd (2023/037126) [2025] ZAGPJHC 570 (9 June 2025) [2025] ZAGPJHC 570

COURT

South Gauteng High Court, Johannesburg

BEFORE

Dlamini

CASE / FILE NUMBER

2023/037126

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

JOHANNESBURG

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHE OTHER JUDGES: NO

(3)

REVISED: NO

Date:

09 June 2025

Case

Number: 2023-037126

In

the application between: MARYNA
ESTELLE SYMES N.O.
First Plaintiff/Applicant
GONASAGREE
GOVENDER N.O.
Second Plaintiff/Applicant [in their representative capacities
as
the joint liquidators of kings
vision
holdings (pty) ltd (in liquidation),
registration
number 2015/081854/07,
master's
reference g1486/2021]
TARSUS
SHARED SERVICES (PTY) LTD Third
Plaintiff/Applicant
and
GARVELLI (PTY) LTD
Defendant/Respondent

Coram: Dlamini J
Date
of Request for Reasons: 12 February
2025

Delivered: 09 June 2025 – This judgment was handed down electronically by
circulation to the parties'
representatives via email, by
being uploaded to CaseLines and by release to SAFLII. The date
and time for hand-down is deemed to be 10:30 on 09 June 2025.

JUDGMENT

DLAMINI J

INTRODUCTION

- [1] The matter concerns two related interlocutory applications that are to be determined in this court.
- [2] The first application is launched by the applicants seeking an order that it is declared in terms of Rule 7(1) of the Uniform Rules of Court that the applicant's attorneys of record ABS Scarrot Attorneys (ABS), have satisfied the court that they are authorised to act on behalf of the first, second, and third applicants as plaintiffs in the main action instituted by the plaintiffs.
- [3] In the second application, the respondent seeks an order to stay the main action pending the outcome of the Review and Reconsideration application.

BACKGROUND

- [4] The facts surrounding this dispute are largely common cause and can be summarised as follows;
- [5] The first to third applicants are the first to third plaintiffs in the main action. The respondent is the defendant in the main action.
- [6] The first applicant is Maryna Symes N.O., a major female insolvency practitioner and a director of Zebra Liquidators
- [7] The second applicant is Gonasagree Govender, a major female insolvency practitioner at Govender Attorneys. I will refer to the first and second applicants as the Liquidators.
- [8] The third applicant is Tarsus Shared Services, a company with limited liability, duly established in accordance with the company laws of the Republic, and is the creditor of KVH.
- [9] The respondent, Garvelli (Pty) Ltd (in liquidation), is the defendant in the main action and the applicant in the counter-application. It is a company with limited liability, duly incorporated under the company laws of the Republic.
- [10] Ms Symes, Ms Govender, and Tarsus were appointed as joint liquidators of KVH.
- [11] The joint liquidators then brought an action against the respondent as a defendant to set aside a disposition for no value under section 26 of the Insolvency Act.
- [12] On 15 June 2023, Messrs De Vries delivered a notice of intention to defend on behalf of the respondent and also served a notice in terms of Rule 7 (1), challenging the authority of the first and second applicants to have instituted the action and the authority of ABS to represent them.
- [13] Upon receipt of the Rule 7 notice, ABS sent a letter to the defendant's attorneys, clarifying the appointment of the joint liquidators and their authority to institute the action. This response also included a power of attorney authorising ABS to act on behalf of Tarsus.
- [14] Despite the aforementioned letter, the defendants remain steadfast and assert that the applicants lack authority.
- [15] On 20 November 2023, the plaintiffs filed this interlocutory application. The defendant filed a notice to defend and simultaneously launched the counter-application.

ISSUES

FOR DETERMINATION

- [16] The following issues arise for consideration of authority.

16.1 Whether the plaintiffs had the requisite authority to institute the action, thus

16.2 Whether the Liquidators had the requisite authority to represent KVH (the authority question);

16.3 Whether Tarsus has the authority to act on behalf of and in the name of the Liquidators (the Tarsus authority question);

16.4 Whether the plaintiffs had the requisite authority to appoint their attorneys of record to act on their behalf (the ABS authority).

[17] The argument presented by the respondent is that the Master granted the liquidators powers under Section 351 (2) of the 1973 Companies Act, which includes all the powers provided by the Insolvency Act, subject to any directions that may be issued by the creditors.

[18] A priori, the Liquidators must have been appointed in terms of section 369 (1) of the Insolvency Act, which pertains to appointments made in the case of a members' voluntary winding-up. However, the respondent argues that, at the time of the Liquidator's

appointment, KVH had been liquidated pursuant to a court order.

[19] It follows, therefore argues the respondent, that the appointment of the Liquidators was a nullity, meaning they never had the authority to institute the action, act on behalf of KVH, appoint ABS, accept the indemnity, nor could they be indemnified by Tarsus.

[20] As a result, the defendant insists that the Liquidators have failed to establish their necessary authority to represent KVH, to institute the action, and appoint the ABS.

[21] The plaintiffs argue that Rule 17(1) is a procedure whereby the authority of an attorney is challenged, and the rule cannot be used to challenge the locus standi of a party. That this must be dealt with by way of a special plea. I agree with the applicant's submission in this regard. For these propositions, the applicants rely on *Eskom v Soweto City Council*.^[1]

[22] The applicants submit that a power of attorney is not the only means of demonstrating an attorney's authority. They assert that a client can provide an affidavit affirming the attorney's authorisation, as the third applicant did in this case.

[23] The liquidators insist that a liquidator's failure to obtain the necessary authority for instituting proceedings is not fatal to those proceedings. At worst, the liquidators argue, the result is that the first and second applicants may be held personally liable for the incurred costs. For these propositions, the applicants rely on, among others, the following decisions: *Tannenbaum's Executors v Quakley*,^[2] *Patel v Paruk's Trustee*.^[3]

[24] It is apposite to consider the provisions of Rule 7 (1). The rule states the following:

“(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, whether such person may no longer act unless he satisfied the court that he is authorized so to act, and to enable him to do so the court may postpone the hearing of the action or application”.

- [25] The ordinary rules of interpretation apply when interpreting the Uniform Rules of Court. It is a unitary exercise that involves considering the text, context, and purpose of the provision in question. In my view, a sensible interpretation of the rule is whenever any party’s authority to act on behalf of any party is in dispute. Such a party may no longer act unless it satisfies the Court by way of a power of attorney that such party is authorised to act. In this case, the applicants have transmitted all the relevant documents to convince the respondent that ABS was duly authorised to act on behalf of the applicants. The applicants also annexed the power of attorney to ABS to confirm their mandate.
- [26] It seems to me that the issues raised by the respondent clearly relate to the concept of locus standi. Accordingly, the respondent’s complaint ought to be raised by way of a special plea.
- [27] As a result, this Court is satisfied that ABS has the requisite authority to act on behalf of the applicants and has complied with the provisions of Rule 7(1). This concludes the inquiry on this issue. The respondent is entitled, should it choose, to raise its remaining complaints in the main trial.

TEMPORARY STAY APPLICATION

- [28] This counter-application concerns the temporary stay of the current action pending the outcome of the Review and Reconsideration Applications.
- [29] In the counter application, the defendant seeks an order for the court to stay the main action pending a review application in a related matter where issues pertaining to the authority of the plaintiffs are to be determined.
- [30] In the review application, the Trust seeks to set aside the second meeting of creditors and the Tarsus indemnity.
- [31] In the reconsideration application, the Trust seeks reconsideration of the ex parte order obtained by the Liquidators for the extension of their powers and convening a general meeting of creditors.
- [32] The defendant argues that if the indemnity is set aside, then the purpose of Section 32 of the Insolvency Act would not have been met. Therefore, Tarsus would have no right to step into the shoes of the Liquidators for the purpose of the Section 26 (1) (b) claim.

- [33] That even one can assume in favour of the plaintiffs, that the issues raised by the defendant relate to locus standi, nonetheless, there are pending proceedings which will answer those questions, and thus it would be appropriate to stay the action and thus the present application.
- [34] It is an established principle of our law that a court has the discretion to grant a temporary stay or postpone a matter if it is in the interest of justice to do so, upon good cause shown.
- [35] In my view, the respondent's submissions in this regard are without merit. This is simply because the respondent is not a party to the review and reconsideration application. Period.
- [36] As things currently stand, the liquidators have been lawfully appointed and are therefore entitled to proceed and finalise the liquidation. Thus, there is no justification or good cause shown for this Court to stay these proceedings based on the respondent's request. Accordingly, the application for a stay of the proceedings is dismissed.
- [37] In all the circumstances alluded to above, I am satisfied that the applicants have discharged the onus that rested on their shoulders, and they are entitled to the order they seek. Consequently, the applicant's application is granted.

COST

- [41] The final issue to address is cost. The well-established principle of our law is that costs follow the result. I see no reason to deviate from this principle. Therefore, the defendant is ordered to pay the applicants' costs.

ORDER

1. The order marked X, which I signed on 4 October 2024, is made an order of this court.

J DLAMINI

Judge of the High Court

Gauteng Division, Johannesburg

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[1] 1992

(2) SA 703 (W) 705

[2] 1940 WLD 209

[3] 1944 AD 469

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