

REPUBLIC OF SOUTH AFRICA



**SOUTH GAUTENG HIGH COURT
JOHANNESBURG**

CASE NO: 35467/13

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

.....
DATE

.....
SIGNATURE

In the matter between:

NADS STATIONERS CC

First Applicant

SHASHIKA RAGOVAL

Second Applicant

YEGAMBARAM RAGOVAL

Third Applicant

and

FINWOOD PAPERS (PTY)

First Respondent

MOYO INCORPORATED

Second Respondent

SIPHO PHALATSE

Third Respondent

**ADDITIONAL MAGISTRATE JOHANNESBURG
C J COLLIS N.O.**

Fourth Respondent

JUDGEMENT

CARSTENSEN AJ:

1. This is an application to review the proceedings of the Johannesburg Magistrate's Court held on the 6th of September 2012 on the basis that the Applicant's representative, Mr M Phalatse is neither an admitted attorney nor an Applicant.
2. The review was launched on the 20th of September 2013, judgement having been handed down on the 1st of March 2013.
3. The ground of the review is solely the basis set out above and no replying affidavit was filed, neither did the Applicants supplement their papers after receiving the transcript of the record.
4. Notwithstanding this fact, the Applicants then launched an application for the postponement of this application. In the application for a postponement, they were represented by Advocate Erasmus who was briefed by Du Toit Attorneys who had their correspondent attorneys as Bieldermand Inc.
5. Erasmus, however, advised that he was only briefed on the postponement application and although he dealt with both the founding affidavit and the answering affidavit in the review application, he did not have instructions to represent the Applicants in the review or main application.
6. Consequently, once the postponement application was refused, he took no further part in the proceedings.

7. On the facts, it appears that both the deponent to the review application, S Ragoval, gave evidence at the trial as did R Ragoval, who filed a confirmatory affidavit in the review application.
8. They do not state in the founding affidavit that the fact that Mr Phalatse was not an attorney or advocate, affected in any way the outcome of the trial, neither do they complain of his conduct during the trial.
9. They do state, however, that their attorney Mr Moyo was present during the trial, although they say the trial was not conducted by him.
10. The review papers include a transcript of the trial in the Johannesburg Magistrate's Court and that transcript reflects the fact that attorney Moyo himself conducted the trial on behalf of the Applicants and that he was repeatedly called Moyo by the Magistrate, without objection or question from either the representative of the Applicant or from the Applicants themselves.
11. The fact that Moyo, the Applicant's attorney, conducted the trial is confirmed by:
 - 11.1. the transcript of the record of proceedings, annexure AA4, which appears at page 83 of the papers;
 - 11.2. annexure SR8, page 45, being a letter from Moyo Inc. who expressly states that he personally represented the Applicants at the trial and conducted proceedings;

- 11.3. the deponent to the answering affidavit, who appeared at the trial on behalf of the First Respondent;
 - 11.4. the Magistrate who, as stated above, refers to the Applicants' representative as "Moyo" and is not corrected;
 - 11.5. the Applicants' legal representative Mr R Blewett, who attended at the trial and who attaches a confirmatory affidavit.
12. Consequently, on this basis alone and taking into account that there is no replying affidavit or supplementary affidavit, that indeed I am satisfied that Mr Moyo indeed represented the Applicants and not Mr Phalatse.
13. Even if this is not so, as was argued by Mr Erasmus during the postponement application, it is not a matter of course that if a representative of a party who conducts proceedings who is not an admitted attorney or advocate, the proceedings must be set aside on the basis of irregularity, but the court must have regard to the effect of that irregularity and if the court finds that the irregularity affected the outcome, the court should set aside the proceedings.
14. In neither the transcript of the record nor the judgement, is there any evidence that the manner in which the representative of the Applicants conducting the proceedings caused any prejudice, actual or probable, to the Applicants. (Stemmer v Sabina and Sub

Commissioner for Natives Johannesburg, 1910 TPD 479)

15. It is clear from the record and the judgement of the Magistrate that this is not the case. Thus, even applying the test suggested by the Applicants' counsel albeit in the postponement application, the Applicants cannot succeed.
16. In the result, there are no merits in the review application and the application is consequently to be dismissed with costs.
17. In the result, I grant the following order:
- 17.1. the review application is dismissed;
- 17.2. the Applicants are jointly and severally, the one paying the other to be absolved, to pay the First Respondent's costs of this application.

**P L CARSTENSEN
ACTING JUDGE OF THE
HIGH COURT**

HEARD: 14 OCTOBER 2014
DELIVERED: 15 OCTOBER 2014

COUNSEL FOR APPLICANTS:
INSTRUCTED BY:

DU TOIT ATTORNEYS

COUNSEL FOR RESPONDENTS:
INSTRUCTED BY:

D L WILLIAMS
HUTCHEON ATTORNEYS