

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 13374/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 10 November 2021 E van der Schyff

In the matter between:

BIZZ TRACERS (PTY) LTD

1ST APPLICANT

R P C RAFADI

2ND APPLICANT

and

ESKOM HOLDINGS SOC THD

RESPONDENT

In re

ESKOM HOLDINGS SOC LTD

PLAINTIFF

and

BIZZ TRACERS (PTY) LTD

1ST DEFENDANT

R P C RAFADI

2ND DEFENDANT

JUDGMENT

Van der Schyff J

Introduction

- [1] This is an application in terms of Rule 7 of the Uniform Rules of Court. In the notice of motion, the applicants seek that the attorney of the plaintiff provides the Power of Attorney, furnished to it by the plaintiff's Board of Directors, as well as the Board Resolution, authorising the plaintiff's attorneys of record to institute these proceedings.
- [2] In their founding affidavit, the applicants take the stance that they do not regard the filing of a 'Power of Attorney' and the accompanying "Delegation of Authority" filed by the respondent, as proper compliance with the requirements of Rule 7. The applicants insist on being provided with a Board Resolution because the attorneys of record are not reflected on ESKOM's Legal Panel as approved by the National Treasury. In addition, the applicants submit, the mere fact that the respondent is a company necessitates a Board Resolution granting the attorneys of record the authority to act on its behalf. The applicants are of the view that a Letter of Authority furnishing the attorneys with an instruction to litigate on behalf of the Company, must be produced in order to prove its authority to act.
- [3] The applicants also challenge the validity of the Power of Attorney, as it is signed by Ms. Monica Makume who, below her signature, warrants that "he/she" has the authority to sign. The alternative gender reference, the applicants submit, renders it unclear as to whom the authority has been granted
- [4] The respondent submits that, with reference to Rule 7(4), the application is without merit. The applicants were provided not only with a copy of the Power of Attorney but also with a copy of the Delegation of Authority. Ms. Macume deposed to the answering affidavit.

Rule 7

- [5] In *Eskom v Soweto City Council*, Flemming DJP succinctly dealt with Rule 7. The learned judge explained that if an attorney is authorised to bring an application on behalf of the applicant, the application necessarily is that of the applicant, and continued:

'As to how the attorney's authority should be proved, the Rule-maker made a policy decision. Perhaps because the risk is minimal that an attorney will act for a person without authority to do so, proof is dispensed with except only if the other party challenges the authority. See Rule 7(1). Courts should honour that approach. Properly applied, that should lead to the elimination of the many pages of resolutions, delegations and substitutions still attached to applications by some litigants, especially certain financial institutions.'

- [6] In the present matter the respondent's attorneys of record produced a Power of Attorney signed by Monica Macume, who warrants that she has the authority to act. The fact that it is stated beneath her signature that "he/she" has the authority to act', is typographical and of no consequence.

- [7] Ms. Macume's authority to provide a power of attorney flows from the Delegation of Authority (the DoA), which was issued by Mr. J Mthembu, and in terms of which he delegated to Ms. Macume –

'in her capacity as Senior Legal Advisor – Eskom Legal and Compliance, the authority to sign all the necessary pleadings, affidavits and other documents incidental thereto, on behalf of Eskom SOC Limited (Eskom), in respect of actions and applications by Bizz Tracers (Pty) against Eskom Holdings SOC Limited.'

- [8] I am satisfied that the respondent has shown that it mandated its present attorneys of record. The Delegation of Power and the Power of Attorney, confirmed under oath

by Ms. Macume, taken cumulatively, properly constitute sufficient proof of the mandate, and further resolutions and delegations would have been superfluous.

- [9] The respondent argued that this application amounts to an abuse of process, warranting a punitive costs order. Parties should refrain from unnecessarily challenging the authority of attorneys to act. However, the Constitutional Court emphasised in *Public Protector v South African Reserve Bank*¹ that:

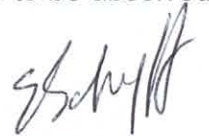
‘To mulct a litigant in punitive costs ... requires a proper explanation grounded in our law.’

- [10] The general principle that costs follow the result applies.

ORDER

In the result the following order is granted:

1. The application is dismissed.
2. The applicants shall jointly and severally, the one paying the other to be absolved, pay the costs of the application.



E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date for hand-down is deemed to be 10 November 2021.

Counsel for the applicant:	Adv. M. J. Mpshe SC
Instructed by:	Rababalela Attorneys
For the respondent:	Adv. X Hilita
Instructed by:	Mamatela Attorneys

¹ [2019] ZACC 29.

Date of the hearing:

8 November 2021

Date of judgment:

10 November 2021