

12 Intervention of persons as plaintiffs or defendants

RS 22, 2023, D1 Rule 12-1

Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet.

Commentary

General. The provisions of this rule are applicable to applications by virtue of the provisions of rule 6(14).

The rule has not replaced or overridden the common-law approach to intervention.¹

Though there is a distinct difference between a claim of joinder as of right² and an application for leave to intervene,³ the two matters are closely linked and, in fact, intervention is often treated as a particular facet of joinder.⁴ In regard to joinder certain principles have become established, different principles applying to different circumstances, depending upon whether the court is concerned with a plaintiff's right to join parties as defendants, a defendant's right to demand that parties be joined as co-defendants, the rights of third parties to join either as plaintiffs or defendants, or the court's duty to order the joinder of some other party.⁵

Until the decision in *SA Riding for the Disabled Association v Regional Land Claims Commissioner*⁶ the position in regard to intervention was less clear.⁷ In the *SA Riding* case the Constitutional Court stated the position to be as follows:⁸

'[10] If the applicant shows that it has some right which is affected by the order issued, permission to intervene must be granted. For it is a basic principle of our law that no order should be granted against a party without affording such party a predecision hearing. This is so fundamental that an order is generally taken to be binding only on parties to the litigation.'

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[11] Once the applicant for intervention shows a direct and substantial interest in the subject matter of the case, the court ought to grant leave to intervene. In *Greyvenouw CC*⁹ this principle was formulated in these terms:

"In addition, when, as in this matter, the applicants base their claim to intervene on a direct and substantial interest in the subject matter of the dispute, the Court has no discretion: it must allow them to intervene because it should not proceed in the absence of parties having such legally recognised interests."

In *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom*¹⁰ it was stated¹¹ that our courts have held that a party is entitled to intervene as an applicant in an application where:

- (a) it has a direct and substantial interest in the right that is the subject matter of the application, which could be prejudiced by the judgment of the court. The interest must be such that the intervenor's joinder is either necessary or convenient. But the possibility that a legal interest exists is sufficient, and it is not necessary for the court positively to determine that it exists;
- (b) the allegations made by the intervening applicant constitute a *prima facie* case or defence. It is, however, not necessary for the intervenor to satisfy the court that it will succeed in its case or defence. It is sufficient for the party seeking to intervene to rely on allegations which if they can be proved in the main application, would entitle it to succeed. In assessing the intervenor's standing, then, the court must assume that the allegations it advances are true and correct; and
- (c) the application is made seriously and is not frivolous.

There is a well-established practice with regard to intervention of third parties in insolvency applications, a practice which is unique and differs from conventional intervention.¹² The position is briefly as follows:¹³

- (a) a creditor can intervene at any stage
 - (i) to have a provisional sequestration order set aside, or
 - (ii) where the applicant does not proceed with the case, or drags his feet, to obtain a fresh sequestration order in his own right and name.
- (b) Where the applicant does not proceed the existing sequestration order cannot be confirmed at the instance of any intervening creditor. It must be set aside and a fresh order can be issued with the intervening creditor as applicant, who then becomes *dominus litis* and the original applicant drops out altogether.

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- (c) The intervening creditor must make out a case for sequestration and furnish security as though he had originally been the applicant.

The above-mentioned principles also apply in applications for the winding-up of a company.¹⁴

Both a creditor and a minority shareholder can intervene in liquidation proceedings of a company in order to oppose the liquidation.¹⁵

'Entitled to join as a plaintiff or liable to be joined as a defendant.' As in the case of joinder as of right, the applicant for leave to intervene must show that he has a 'direct and substantial interest' in the subject matter of the action.¹⁶ Such an interest is more than merely a financial interest which is only an indirect interest in the litigation; it is a legal interest in the subject matter of the litigation that may be prejudicially affected by the judgment of the court.¹⁷ This means that the applicant must show that he has a right adversely affected or likely to be adversely affected by the order sought.¹⁸ Thus, apart from the obvious case of a joint financial or proprietary interest which joint owners, joint contractors and partners have,¹⁹ the direct and substantial interest may be that which resides in a tenant and which becomes involved when the landlord sues the sub-tenant for ejectment.²⁰ However, when the landlord sues the tenant, the sub-tenant has no legal interest in the contract between the landlord and the tenant, though he may have a very substantial financial or commercial interest therein which may be prejudicially affected by the judgment.²¹

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In *Smyth v Investec Bank Ltd*²² the Supreme Court of Appeal stated²³ that intervention is also competent on the basis of convenience:

'The learned authors of *Herbstein & Van Winsen – The Civil Practice of the High Courts of South Africa* vol I 5 ed (2009) at 225– point out that in terms of rule 12 the applicant for leave to intervene must be a person "entitled to join as a plaintiff or a defendant". And that joinder is competent either on the basis of convenience or on the basis that the party whose joinder is in question has a direct and substantial interest in the subject matter of the proceedings.'

In *National Director of Public Prosecutions v Zuma*²⁴ the Supreme Court of Appeal considered an application by the former President, Mr Mbeki, and the Government of South Africa to intervene in appeal proceedings concerning a decision by the High

Court which found the existence of a political conspiracy to prosecute the former Deputy President, Mr Zuma. To that end, the High Court made several conclusions implicating Mr Mbeki, which reflected negatively on him and the government. Mr Mbeki sought to intervene in the appeal proceedings to 'set the record straight'. The application was dismissed, with Harms JA saying the following:

'[85] Nevertheless, to be able to intervene in proceedings a party must have a direct and substantial interest in the outcome of the litigation, whether in the court of first instance or on appeal. The basic problem with the application is that the applicants have no interest in the order but only in the reasoning. They are in the position of a witness whose evidence has been rejected or on whose demeanour an unfavourable finding has been expressed. Such a person has no ready remedy, especially not by means of intervention. To be able to intervene in an appeal, which is by its nature directed at a wrong order and not at incorrect reasoning, an applicant must have an interest in the order under appeal. The applicants do not have such an interest.'

In *Siyangena Technologies (Pty) Ltd v Passenger Rail Agency of South Africa* [25](#) the full court (which was specially constituted by the Judge President of the Gauteng Division of the High Court), prior to the hearing of an application by PRASA to have its decisions to conclude certain procurement contracts with the appellant set aside, informed counsel in chambers that the court had decided that the matter would not proceed, as the court was concerned that current and former employees of PRASA, who were implicated in alleged wrongdoing, had not been granted any opportunity to respond to the allegations made against them or to participate in the review proceedings as 'witnesses' or as parties. The full court consequently ordered that those specifically named employees or members of PRASA's Board were entitled to intervene as witnesses and deliver affidavits in defence of their alleged wrongdoing. This was done *mero motu* absent an application by any of the 'intervening witnesses' or the parties themselves.

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The case was eventually heard by a differently constituted full court after the intervening witness filed affidavits. The newly constituted full court ruled the affidavits inadmissible as evidence in the review proceedings. On appeal the Supreme Court of Appeal, amongst other things, stated (footnotes omitted):

'[27] . . . The order by the first court granting leave to witnesses to intervene is unprecedented. Unsurprisingly, there is no support for it in the rules of court or our substantive law. The first court lacked the power to issue such an order, which was to all intents and purposes a nullity. The court below was thus entitled to disregard the affidavits produced in terms of that order on the basis that they were inadmissible.'

In *Lebea v Menye* [26](#) the issue arose whether a witness who was not a party to court proceedings in which he testified was entitled to intervene or should have been granted leave to intervene in those proceedings in terms of rule 28(1) of the magistrates' courts rules for purposes of noting and pursuing an appeal against an adverse credibility finding made against him by the magistrate's court in its judgment. [27](#) In refusing leave to appeal, the Constitutional Court found that:

- (a) There were no longer any *lis* between the parties. [28](#)
- (b) 'The word "interest" in rule 28(1) has been interpreted to mean a direct and substantial interest which a person is required to have in the subject matter before he or she can be said to have *locus standi* in such a matter or before such a person may be joined or be allowed to be joined in proceedings. Direct and substantial interest is a direct and substantial interest in the order that a court is asked to make in a matter. It is not enough if a person has an interest in a finding or in certain reasons for an order. The interest must be in the order or the outcome of the litigation.' [29](#)
- (c) The adverse credibility finding against the applicant did not give him a direct and substantial interest. [30](#)
- (d) The applicant did not challenge the constitutional validity of rule 28. [31](#)
- (e) There was no reason to develop the common law to accommodate the applicant's type of interest. [32](#)

'At any stage of the proceedings.' Provided the requisite notice is given, a new party may intervene at any stage of the action, [33](#) and intervention has been allowed at the trial stage. [34](#) The fact that a judgment or final order has already been issued is not a bar to leave to intervene being granted if the intervention is sought for some legitimate process which can be instituted subsequent to the issue of the judgment or final order. [35](#)

'Apply for leave to intervene.' It is not sufficient for the applicant merely to state that (a) he has an interest in the action: he must make such allegations as would show, (b) that he

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has a *prima facie* case; (c) that his application is seriously made; and (d) is not frivolous. [36](#) In *Shapiro v South African Recording Rights Association Ltd (Galeta Intervening)* [37](#) it was held that, whilst this test applies to persons wishing to intervene as defendants or respondents, the first requirement thereof (i.e. the direct and substantial interest requirement), is too limited, and will be generally inapplicable, for persons wishing to intervene as plaintiffs or applicants. In the latter instance, the approach adopted in *Vitorakis v Wolf* [38](#) (i.e. that the right of the person seeking leave to intervene as a plaintiff or an applicant is dependent upon the determination of substantially the same question of law or fact) should, as a first requirement, be followed.

At the stage of an application for leave to intervene the court need not be overconcerned with the intrinsic merits of the dispute which can be fully canvassed in the main proceedings: it is sufficient for the party seeking leave to intervene to rely on allegations which, if they can be proved in the main action, would entitle him to succeed. [39](#)

An applicant will not be refused leave to intervene in order to defend his interests merely because the court considers that the legal grounds upon which those interests are assailed are bad, for there is always the possibility of an appeal against the court's judgment. [40](#)

'The court may.' Though it has often been said that the court has a discretion where a party seeks leave to intervene, [41](#) there has been no authoritative definition of the limit of that discretion. [42](#) In *SA Riding for the Disabled Association v Regional Land Claims Commissioner* [43](#) the Constitutional Court held that in a case where the applicants base their claim to intervene on a direct and substantial interest in the subject matter of the dispute, the court has no discretion: it must allow them to intervene because it should not proceed in the absence of parties having such legally recognized interests. See further the notes s v 'General' above.

'Make such order . . . as to it may seem meet.' When leave to intervene is granted by the court, the party given it is placed in the same position as and is clothed with the same rights as the other parties, unless of course such rights are specifically curtailed. [44](#) The intervenor is therefore entitled to take any exception or preliminary point which could have been taken by the original parties. [45](#) It would seem that the general rule is not to impose terms upon the

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intervenor but to allow him freedom of action. The rule clearly leaves the court with a discretion to impose conditions upon the intervenor.

Having obtained leave to intervene, the intervenor must file appropriate pleadings according as to whether he is co-plaintiff or a co-defendant.⁴⁶ The court will usually give directions as to the filing of further pleadings⁴⁷ or affidavits.⁴⁸ If the intervention or joinder of a party necessitates amendment of the pleadings already before the court, this will be allowed.⁴⁹

'Including any order as to costs.' If an application for leave to intervene is dismissed, the unsuccessful applicant will be ordered to pay the costs of the application.⁵⁰ In some cases the party obtaining leave to intervene was granted the costs of the application,⁵¹ while in others such costs were ordered to be costs in the cause.⁵² If the application results in the wasting of costs, for example through a postponement,⁵³ or neglect to intervene in time,⁵⁴ the applicant may be ordered to pay the wasted costs. An intervenor will not be deprived of his costs when coming to court to defend his interests merely because the court considers that the legal grounds upon which those interests are assailed are bad.⁵⁵

¹ See *Ex parte Sudurhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd* [1993 \(2\) SA 737 \(Nm\)](#) at 741E-F; and see *Shapiro v South African Recording Rights Association Ltd (Galeta Intervening)* [2008 \(4\) SA 145 \(W\)](#) at 150A and 152C-D; *Levay v Van den Heever and Another NNO* [2018 \(4\) SA 473 \(GJ\)](#) at 475E; *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom* [2020] 4 All SA 226 (KZP) at paragraph [18].

² For the obligatory joinder of necessary parties, see the notes to rule 10 s v 'General' above.

³ *Morgan v Salisbury Municipality* [1935 AD 167](#) at 170; *Henri Viljoen (Pty) Ltd v Awerbuch Bros* [1953 \(2\) SA 151 \(O\)](#) at 165D; *Brauer v Cape Liquor Licensing Board* [1953 \(3\) SA 752 \(C\)](#) at 760C; *Vitorakis v Wolf* [1973 \(3\) SA 928 \(W\)](#) at 930B.

⁴ *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* [1972 \(4\) SA 409 \(C\)](#) at 415C.

⁵ See *Marais v Pongola Sugar Milling Co Ltd* [1961 \(2\) SA 698 \(N\)](#) at 702A-B.

⁶ [2017 \(5\) SA 1 \(CC\)](#).

⁷ It was often said that the court has a discretion where a party seeks leave to intervene — a discretion which does not appear to exist where the non-joinder of a necessary party is raised by the defendant or the court *mero motu* — and that the power of the court to grant leave to intervene is wider than where joinder of another is demanded as of right (*Venter v Wicht's Garage* 1927 CPD 364 at 365; *Sheshe v Vereeniging Municipality* [1951 \(3\) SA 661 \(A\)](#) at 666; *Marais v Pongola Sugar Milling Co Ltd* [1961 \(2\) SA 698 \(N\)](#) at 702E; *Ex parte Pearson and Hutton NNO* [1967 \(1\) SA 103 \(E\)](#) at 106G; *Khumalo v Wilkins* [1972 \(4\) SA 470 \(N\)](#) at 475H. See also *Bitcon v City Council of Johannesburg and Arenow Behrman & Co* 1931 WLD 273 at 293-4 and *Hetz v Empire Auctioneers & Estate Agents* [1962 \(1\) SA 558 \(T\)](#). There has, however, been no authoritative definition of the limit of that discretion or of the category or categories of cases where the court would grant leave to intervene even though a plea of non-joinder could not succeed (*United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* [1972 \(4\) SA 409 \(C\)](#) at 416A). When some decisions relating to intervention are examined, it appears that, as in the case of joinder as of right, the test of a direct and substantial interest in the subject matter of the action was regarded as being the decisive criterion (*United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* [1972 \(4\) SA 409 \(C\)](#) at 416B).

⁸ At 5A-D.

⁹ Author's note: *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* [2004 \(2\) SA 81 \(SE\)](#) at 89B-C.

¹⁰ [2020] 4 All SA 226 (KZP).

¹¹ At paragraph [18]; and see *Mercantile Bank Limited v MMR (MBR intervening)* (unreported, GJ case no 2020/19791 dated 5 April 2022) at paragraphs 6-7.

¹² *Fullard v Fullard* [1979 \(1\) SA 368 \(T\)](#) at 371F-372E. See also *Flax v Berliner: Houndsditch Warehouse (Pty) Ltd intervening* [1950 \(2\) SA 259 \(W\)](#); *Mahomed & Sons (Pty) Ltd v Economic Clothing Manufacturers (Pty) Ltd* [1955 \(1\) SA 52 \(D\)](#); *Mayet v Pillay* [1955 \(2\) SA 296 \(N\)](#); *Jhatam v Jhatam* [1958 \(4\) SA 36 \(N\)](#); *Hetz v Empire Auctioneers & Estate Agents* [1962 \(1\) SA 558 \(T\)](#); *Storm v Storm; Volkskas Bpk v Storm* [1973 \(2\) SA 382 \(T\)](#); *Shapiro v South African Recording Rights Association Ltd (Galeta Intervening)* [2008 \(4\) SA 145 \(W\)](#) at 151E-152C; *Levay v Van den Heever and Another NNO* [2018 \(4\) SA 473 \(GJ\)](#) at 476G-H and 477F-G; and see *Mercantile Bank Limited v MMR (MBR intervening)* (unreported, GJ case no 2020/19791 dated 5 April 2022) at paragraph 9.

¹³ See *Mars Insolvency* 129; and see *Levay v Van den Heever and Another NNO* [2018 \(4\) SA 473 \(GJ\)](#) at 476G-H and 477F-G; *Mercantile Bank Limited v MMR (MBR intervening)* (unreported, GJ case no 2020/19791 dated 5 April 2022). A debt counsellor acting in terms of [s 86](#) of the National Credit [Act 34 of 2005](#) has no direct and substantial interest in the application for the sequestration of a consumer's estate and is not entitled to intervene in such application (*Investec Bank Ltd v Mutemeri* [2010 \(1\) SA 265 \(GSJ\)](#) at 278F-279B; and see *Naidoo v Absa Bank Ltd* [2010 \(4\) SA 597 \(SCA\)](#) at 600G-601B; *FirstRand Bank Ltd v Evans* [2011 \(4\) SA 597 \(KZD\)](#) at 606B-F).

¹⁴ *Levay v Van den Heever and Another NNO* [2018 \(4\) SA 473 \(GJ\)](#) at 477A and the cases there referred to.

¹⁵ *Levay v Van den Heever and Another NNO* [2018 \(4\) SA 473 \(GJ\)](#) at 475E-480E.

¹⁶ *Henri Viljoen (Pty) Ltd v Awerbuch Bros* [1953 \(2\) SA 151 \(O\)](#) at 167; *Brauer v Cape Liquor Licensing Board* [1953 \(3\) SA 752 \(C\)](#) at 760; *Ex parte Pearson and Hutton NNO* [1967 \(1\) SA 103 \(E\)](#) at 107A; *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* [1972 \(4\) SA 409 \(C\)](#) at 416B; *Wynne v Divisional Commissioner of Police* [1973 \(2\) SA 770 \(E\)](#) at 775D; *Middelburg Rugbyklub v Suid-Oos Transvaalse Rugby-Union* [1978 \(1\) SA 484 \(T\)](#) at 489D; *Suid-Afrikaanse Vereniging van Munisipale Werknemers v Stadsraad van Pietersburg* [1986 \(4\) SA 776 \(T\)](#) at 780; *Minister of Local Government and Land Tenure v Sizwe Development* [1991 \(1\) SA 677 \(Tk\)](#) at 678I; *Ex parte Sudurhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd* [1993 \(2\) SA 737 \(Nm\)](#) at 741I-742B; *National Director of Public Prosecutions v Zuma* [2009 \(2\) SA 277 \(SCA\)](#) at 308G; *Investec Bank Ltd v Mutemeri* [2010 \(1\) SA 265 \(GSJ\)](#) at 278E-F; *SA Riding for the Disabled Association v Regional Land Claims Commissioner* [2017 \(5\) SA 1 \(CC\)](#) at 4F. This approach finds support in Harms Main Binder paragraph B12.3 at B-111. Sed vide *Herbstein & Van Winsen* 6 ed vol 1 7-50 footnote 3.

¹⁷ *Henri Viljoen (Pty) Ltd v Awerbuch Bros* [1953 \(2\) SA 151 \(O\)](#) at 168-70; *Standard Bank of SA Ltd v Swartland Municipality* [2011 \(5\) SA 257 \(SCA\)](#) at 259E-260A; *SA Riding for the Disabled Association v Regional Land Claims Commissioner* [2017 \(5\) SA 1 \(CC\)](#) at 4F-G. See further the decisions referred to in the notes to rule 10 s v 'General' above. Where defamatory allegations are made against a third party in the papers, the third party will be entitled to intervene (*SA Commercial Catering and Allied Workers Union v Lehapa NO (Mostert NO intervening)* [2005 \(6\) SA 354 \(W\)](#)).

¹⁸ *SA Riding for the Disabled Association v Regional Land Claims Commissioner* [2017 \(5\) SA 1 \(CC\)](#) at 4G-5A.

¹⁹ *Morgan v Salisbury Municipality* [1935 AD 167](#) at 171; *Amalgamated Engineering Union v Minister of Labour* [1949 \(3\) SA 637 \(A\)](#) at 656-7; *Vawda v Vawda* [1980 \(2\) SA 341 \(T\)](#) at 348B.

²⁰ *Henri Viljoen (Pty) Ltd v Awerbuch Bros* [1953 \(2\) SA 151 \(O\)](#) at 167D.

²¹ *Sheshe v Vereeniging Municipality* [1951 \(3\) SA 661 \(A\)](#) at 667; *Henri Viljoen (Pty) Ltd v Awerbuch Bros* [1953 \(2\) SA 151 \(O\)](#) at 167E; *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* [1972 \(4\) SA 409 \(C\)](#) at 417A-C. A person having a right of tenure derived from someone else can intervene in an action for ejectment against the person from whom he derives that right, where the ejectment would deprive him of his tenure; or if he had no knowledge of the proceedings at the time they were taken, he can subsequently move to have the writ of ejectment set aside (*Ntai v Vereeniging Town Council* [1953 \(4\) SA 579 \(A\)](#) at 592G).

In *Vitorakis v Wolf* [1973 \(3\) SA 928 \(W\)](#) at 930G-H a different approach was adopted. The entitlement to 'join as a plaintiff' was sought, not in the criterion of a direct and substantial interest in the action, but in the wording of rule 10(1) in terms of which any number of persons may join as plaintiffs against the same defendant or defendants, provided that their right to relief is dependent upon the determination of substantially the same question of law or fact. This approach finds support in *Herbstein & Van Winsen* 6 ed vol 1 7-50 footnote 3, 7-51. It is submitted that the provisions of subrule 10(1) do not apply to the situation contemplated by this rule. Rule 10(1) deals with a situation where several plaintiffs, each with his own claim, join in one action against the same defendant or defendants. Rule 12 deals with the intervention in an action by persons who have a legal interest in the subject matter of litigation between other parties that may be prejudicially affected by the judgment of the court. Such persons must be allowed to intervene as plaintiffs or defendants in the action, not because they have separate claims or because separate claims may be brought against them, but because, as pointed out in the notes to this rule s v 'General' above, their legal interests which may be prejudicially affected coincide with those of the plaintiff or of the defendant in the action.

In *Shapiro v South African Recording Rights Association Ltd (Galeta Intervening)* [2008 \(4\) SA 145 \(W\)](#) it was held (at 150B-151E) that rule 12 covers both scenarios set out in the preceding paragraph and that, generally, the approach followed in *Vitorakis v Wolf (supra)* would apply to plaintiffs/applicants who wish to intervene, whereas the 'direct and substantial interest' approach would apply to respondents who wish to intervene. *Sed quare*.

²² [2018 \(1\) SA 494 \(SCA\)](#).

²³ At 511F; and see *Herbstein & Van Winsen* 6 ed vol 1 7-49.

²⁴ [2009 \(2\) SA 277 \(SCA\)](#).

²⁵ [2023 \(2\) SA 51 \(SCA\)](#).

- 26 2023 (3) BCLR 257 (CC).
- 27 At paragraph [19].
- 28 At paragraph [29].
- 29 At paragraph [30].
- 30 At paragraph [9].
- 31 At paragraph [40].
- 32 At paragraph [42].
- 33 See *Hersch v Esterhuizen* 1946 OPD 370 at 373; *Hetz v Empire Auctioneers & Estate Agents* [1962 \(1\) SA 558 \(T\)](#) at 559G.
- 34 *Trenoweth v Trenoweth* 1907 EDC 268; *Wife v Husband* (1906) 27 NLR 349.
- 35 *Minister of Local Government and Land Tenure v Sizwe Development* [1991 \(1\) SA 677 \(TK\)](#) at 679C. In *Baard v Estate Baard* 1928 CPD 505 and *Jenner v Van Rensburg* [1957 \(2\) SA 236 \(E\)](#) the applicant was granted leave to intervene for purposes of noting an appeal against the judgment.
- 36 *Elliott v Bax: In re Bax v The African Life Assurance Society Ltd* 1923 WLD 228 at 231; *Ex parte Marshall: In re insolvent Estate Brown* [1951 \(2\) SA 129 \(N\)](#) at 131; *Brauer v Cape Liquor Licensing Board* [1953 \(3\) SA 752 \(C\)](#) at 760; *Mgobozi v The Administrator of Natal* [1963 \(3\) SA 757 \(D\)](#) at 760G; *Ex parte Moosa: In re Hassim v Harrop-Allin* [1974 \(4\) SA 412 \(T\)](#) at 414C; *Minister of Local Government and Land Tenure v Sizwe Development* [1991 \(1\) SA 677 \(TK\)](#) at 678J-679A; *Ex parte Sudurhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd* [1993 \(2\) SA 737 \(Nm\)](#) at 742A-J; *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* [2004 \(2\) SA 81 \(SE\)](#) at 89A-C. See also *Shapiro v South African Recording Rights Association Ltd (Galeta Intervening)* [2008 \(4\) SA 145 \(W\)](#) at 153B-C as far as the second, third and fourth requirements are concerned and *SA Riding for the Disabled Association v Regional Land Claims Commissioner* [2017 \(5\) SA 1 \(CC\)](#) at 5A as far as the second requirement is concerned.
- 37 [2008 \(4\) SA 145 \(W\)](#) at 152F-153B.
- 38 [1973 \(3\) SA 928 \(W\)](#) at 930G-H.
- 39 *Ex parte Moosa: In re Hassim v Harrop-Allin* [1974 \(4\) SA 412 \(T\)](#) at 416F; *Minister of Local Government and Land Tenure v Sizwe Development* [1991 \(1\) SA 677 \(TK\)](#) at 678J-679A; *Ex parte Sudurhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd* [1993 \(2\) SA 737 \(Nm\)](#) at 742G-H.
- 40 *Hersch v Esterhuizen* 1946 OPD 370.
- 41 *Venter v Wicht's Garage* 1927 CPD 364 at 365; *Sheshe v Vereeniging Municipality* [1951 \(3\) SA 661 \(A\)](#) at 666; *Marais v Pongola Sugar Milling Co Ltd* [1961 \(2\) SA 698 \(N\)](#) at 702D; *Ex parte Pearson and Hutton NNO* [1967 \(1\) SA 103 \(E\)](#) at 107A; and see *Bitcon v City Council of Johannesburg and Arenow Behrman & Co* 1931 WLD 273 at 293-4; *Hetz v Empire Auctioneers & Estate Agents* [1962 \(1\) SA 558 \(T\)](#) at 559E; *Holzman NO v Knights Engineering and Precision Works (Pty) Ltd* [1979 \(2\) SA 784 \(W\)](#) at 796H.
- 42 *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* [1972 \(4\) SA 409 \(C\)](#) at 416A.
- 43 [2017 \(5\) SA 1 \(CC\)](#) at 5C-D, approving *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* [2004 \(2\) SA 81 \(SE\)](#) at 89B-C.
- 44 According to Voet 5 1 38 the intervenor must take the case as he finds it when he intervenes.
- 45 *Garment Workers' Union v Minister of Labour* 1945 WLD 181 at 184.
- 46 *Golombick v Klein* 1946 WLD 419.
- 47 See, for example, *Blue Cliff Investments (Pty) Ltd v Griessel* [1971 \(3\) SA 93 \(C\)](#) at 98C; *Khumalo v Wilkins* [1972 \(4\) SA 470 \(N\)](#) at 478E-F.
- 48 See, for example, *Ex parte Moosa: In re Hassim v Harrop-Allin* [1974 \(4\) SA 412 \(T\)](#) at 417B-D.
- 49 For examples of such orders, see *Blake v Commissioner of Mines* 1903 TS 784; *Collin v Toffie* [1944 AD 456](#) at 469; *Home Sites (Pty) Ltd v Senekal* [1948 \(3\) SA 514 \(A\)](#) at 521; *Khumalo v Wilkins* [1972 \(4\) SA 470 \(N\)](#) at 478C-F.
- 50 See, for example, *Elliott v Bax: In re Bax v The African Life Assurance Society Ltd* 1923 WLD 228 at 232; *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* [1972 \(4\) SA 409 \(C\)](#) at 418C; *Suid-Afrikaanse Vereniging van Munisipale Werknemers v Stadsraad van Pietersburg* [1986 \(4\) SA 776 \(T\)](#) at 782A; *Minister of Local Government and Land Tenure v Sizwe Development* [1991 \(1\) SA 677 \(TK\)](#) at 683E.
- 51 See, for example, *Brigg and Hall v Galawe* 1919 EDL 122; *Hersch v Esterhuizen* 1946 OPD 370; *Blue Cliff Investments (Pty) Ltd v Griessel* [1971 \(3\) SA 93 \(C\)](#); *Vrystaatse Lewende Hawe Koop Bpk v Oldewage* [1965 \(4\) SA 16 \(O\)](#) at 21.
- 52 *Laws v Laws* [1972 \(2\) SA 1 \(T\)](#) at 6F-H; *Vitorakis v Wolf* [1973 \(3\) SA 928 \(W\)](#) at 933E; *Ex parte Moosa: In re Hassim v Harrop-Allin* [1974 \(4\) SA 412 \(T\)](#) at 417A; *Minister of Local Government and Land Tenure v Sizwe Development* [1991 \(1\) SA 677 \(TK\)](#) at 683E.
- 53 *Golombick v Klein* 1946 WLD 419.
- 54 *Sheba Gold Mining Co v Edwards' Executor* 1921 TPD 85 at 90.
- 55 *Hersch v Esterhuizen* 1946 OPD 370.