7 Power of attorney

RS 22, 2023, D1 Rule 7-1

(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.

[Subrule (1) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.

[Subrule (2) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(3) An attorney instructing an advocate to appear in an appeal on behalf of any party other than a party who has caused the appeal to be set down shall, before the hearing thereof, file with the registrar a power of attorney authorising him so to act.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power.

(5)*(a)* No power of attorney shall be required to be filed by the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or a deputy state attorney or any attorney instructed, in writing, or by telegram by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting in his capacity as such by virtue of any provision of the State Attorney Act, 1957 (Act 56 of 1957).

[Paragraph *(a)* substituted by GN R2021 of 5 November 1971.]

(b) . . .

[Paragraph *(b)* deleted by GN R2021 of 5 November 1971.]

Commentary

General. The purpose of rule 7(1) is, on the one hand, to avoid cluttering the pleadings unnecessarily with resolutions and powers of attorneys. On the other hand, it provides a safeguard to prevent a cited person from repudiating the process and denying his or her authority for issuing the process. [1]

Prior to the amendment of rule 7(1) in 1987, an attorney was obliged to file a power of attorney whenever a summons was issued in an action, but not in application proceedings. [2]

RS 22, 2023, D1 Rule 7-2

The underlying reason for the distinction, so it was said, was that in motion proceedings there is always an affidavit signed by the applicant personally or by someone whose authority appears from the papers. [3] On the basis of that reasoning the Supreme Court of Appeal in *Unlawful Occupiers, School Site v City of Johannesburg* [4] held [5] that it was readily understandable why, before 1987, the challenge to authority could have been directed only at the adequacy of the averments in the applicant's papers, and pre-1987 decisions regarding proof of authority had to be read in that light.

In *Eskom v Soweto City Council* [6] Flemming DJP, referring to rule 7(1) as currently framed, held: [7]

> 'The care displayed in the past about proof of authority was rational. It was inspired by the fear that a person may deny that he was party to litigation carried on in his name. His signature to the process, or when that does not eventuate, formal proof of authority would avoid undue risk to the opposite party, to the administration of justice and sometimes even to his own attorney. (Compare *Viljoen v Federated Trust Ltd* 1971 (1) SA 750 (O) at 752D–F and the authorities there quoted.)
>
> The developed view, adopted in Court Rule 7(1), is that the risk is adequately managed on a different level. If the attorney is authorised to bring the application on behalf of the applicant, the application necessarily is that of the applicant. There is no need that any other person, whether he be a witness or someone who becomes involved especially in the context of authority, should additionally be authorised. It is therefore sufficient to know whether or not the attorney acts with authority.
>
> As to when and 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.'

In *Unlawful Occupiers, School Site v City of Johannesburg* [8] one of the issues raised by the appellant in an appeal to the Supreme Court of Appeal was that the respondent had failed to prove that the deponent to its founding affidavit had the requisite authority to institute the application on its behalf. [9] The statement in the founding affidavit of the respondent (i e the applicant in the High Court) was confined to the following: [10]

RS 22, 2023, D1 Rule 7-3

> 'I am duly authorised by delegated power to bring this application and to make this affidavit on behalf of the applicant.'

The response to this statement in the answering affidavit was: [11]

> 'I deny that . . . Lefatola is duly authorised to make the founding affidavit . . . or to bring proceedings for eviction on behalf of the applicant. The applicant is put to the proof thereof.'

In reply, Mr Lefatola produced a resolution of the municipal council which authorized him to launch proceedings of the kind involved on behalf of the respondent in consultation with the Executive Director: Corporate Services or the Director: Legal Services. [12] The Supreme Court of Appeal, pointing out that the *Eskom* decision had been cited with approval in *Ganes v Telecom Namibia Ltd*, [13] held [14] that the issue raised had been decided conclusively in the *Eskom* case, the import of which was that the remedy of a respondent who wished to challenge the authority of a person allegedly acting on behalf of a purported applicant, was now provided for in rule 7(1). [15] In this regard Brand J stated: [16]

> 'However, as Flemming DJP has said, now that the new Rule 7(1) remedy is available, a party who wishes to raise the issue of authority should not adopt the procedure followed by the appellants in this matter, i e by way of argument based on no more than a textual analysis of the words used by a deponent in an attempt to prove his or her own authority. This method invariably resulted in a costly and wasteful investigation, which normally leads to the conclusion that the application was indeed authorised. After all, there is rarely any motivation for deliberately launching an unauthorised application. In the present case, for example, the respondent's challenge resulted in the filing of pages of resolutions annexed to a supplementary affidavit followed by lengthy technical arguments on both sides. All this culminated in the following question: Is it conceivable that an application of this magnitude could have been launched on behalf of the municipality with the knowledge of but against the advice of its own director of legal services? That question can, in my view, be answered only in the negative.'

The wording of rule 7(1) makes it clear that the subrule applies to both action and application proceedings. [17]

RS 22, 2023, D1 Rule 7-4

In *Wilge Hervormde Gemeente v Nederduitsch Hervormde Kerk van Afrika* [18] the plaintiffs' rule 7(1) notice, challenging the authority of the attorney acting for the first defendant, was served some five years out of time. Shortly before the

commencement of the trial, the plaintiffs brought an application to declare that the attorney acting on behalf of the first defendant did not have the necessary authority to act on behalf of the first defendant in the litigation ('the rule 7 application'). The plaintiffs, in addition, raised a point *in limine* in regard to the first defendant's *locus standi*. The court held [19] that rule 7(1) was concerned only with the authority of an attorney to act in instituting or defending legal proceedings on behalf of a party. [20] The court held, further, [21] that in the light of the lengthy history of the litigation between the parties, the lateness of the rule 7 application was fatal. The point *in limine* concerned the question whether the litigation committee of the first defendant was authorized to instruct its attorney of record to defend the action and to institute a counterclaim against the plaintiffs. The court found that the committee was authorized and that the first defendant accordingly had *locus standi*. [22] The point *in limine* was dismissed. [23]

It is submitted that authorization to institute action or motion proceedings should not be conflated with *locus standi in iudicio*. Authorization concerns the question whether a party is properly before the court in legal proceedings. *Locus standi* materially concerns the direct interest of a party in the relief sought in legal proceedings. For this reason rule 7(1) should be applied when 'the authority of anyone acting on behalf of a party' is challenged. Contrary to what was found in the *Wilge Hervormde Gemeente* case, the rule does not limit the challenge to the authority of attorneys to act only; the wording of the rule also contemplates a challenge to a general authority by one person to another to represent him in action or motion proceedings. This is clear from the *Eskom* and *Unlawful Occupiers* decisions referred to above. [24] Properly applied, this interpretation of rule 7(1) in motion proceedings should, in the words of Flemming DJP in the *Eskom* case referred to above, 'lead to the elimination of the many pages of resolutions, delegations and substitutions still attached to applications by some litigants'.

In *HR Computek (Pty) Ltd v DR WAA Gouws (Johannesburg) (Pty) Ltd* [25] the court was called upon to decide whether the first respondent company, and not some unauthorized person, was opposing the application to set aside a liquidation order made against it. The answering affidavit was deposed to by one Dr Gouws, who stated [26] :

> 'I am the general manager of the first respondent and am duly authorised to depose to this affidavit on its behalf as is evident from the resolution attached hereto as annexure "AA1" . . .'

Annexure AA1 purported to be a resolution of the first respondent which read as follows: [27]

> 'RESOLUTION
>
> MINUTES OF THE BOARD OF DR. WAA GOUWS (JOHANNESBURG) (PTY) LTD ("THE COMPANY") HELD AT JOHANNESBURG ON 1 OCTOBER 2021.
>
> 1. It was resolved to oppose the application of HR Computec [*sic*] (Pty) LTD to set aside the winding up order obtained by the company.
> 2. It was further resolved that Willem Andries Adrianus Gouws be authorised to sign all documents and do whatever else is required to give effect to 1. Above.
> 3. Finally, it was resolved that Malesela Ngoasheng of Mashabane & Associates be appointed as the company's attorneys of record.'

The purported resolution, which was apparently a copy, bore the signature of' 'WAA GOUWS' above the words 'Certified a true extract'. [28] It was not in dispute that the second respondent was the sole shareholder and director of the first respondent, and hence its only board member. She did not file any affidavit. [29] Dr Gouws was an unrehabilitated insolvent and disqualified from being a company director, from chairing a meeting of the first respondent's board, and from being its company secretary. [30] The court held that Dr Gouws's say so was insufficient and that it could not be concluded that he had been empowered by the first respondent to oppose the application on its behalf. Accordingly, the first respondent's opposition to the application had not been proved to be valid or authorized, nor had it been shown that the attorney for the first respondent had been properly authorized to act on its behalf. [31] The first respondent and its attorneys were, however, given an opportunity by the court to deliver a valid resolution and proper mandate. [32] As regards compliance with rule 7, the court stated: [33]

> 'Since the very existence of a valid resolution is in issue, and since the same had not been produced thus far, despite the point having been raised by the applicant in its replying affidavit that had been delivered as long ago as November 2021, and since Dr Gouws, clearly, if not, in all probability, instructed the attorneys in this matter on such purported basis, it may not have been sufficient for the applicant to have proceeded in terms of Rule 7.'

The practice of unnecessarily challenging the authority of individuals to bring applications, etc has been decried. [34]

Rule 16 deals with representation of parties and, amongst other things, the steps to be taken on termination of an attorney's authority to act for a party. See further rule 16 and the notes thereto below.

Subrule (1): 'The authority of anyone acting on behalf of a party.' In various decisions of the High Court it has been held that the type of authority contemplated by this subrule, as currently phrased, means the special type of power which is given by a client to his attorney to authorize him to institute or defend legal proceedings, and to act in matters incidental to such proceedings, on the client's behalf; it does not contemplate a general authority by one

person to another to represent him in legal proceedings. [35] On the other hand, it has been held that, given the words 'authority of anyone acting on behalf of a party', no distinction is to be drawn under this subrule between an attorney's mandate to institute legal proceedings and an authorization given to, for example, an agent by an artificial person to institute legal proceedings. [36] The position is now established that the manner to challenge the authority of a litigant is to utilize rule 7(1). [37] See further the notes s v 'General' above.

'Within 10 days after it has come to the notice of a party that such person is so acting.' In terms of rule 1 a party includes such party's attorney with or without an advocate, as the context may require. It has been held that a delay in challenging authority in terms of this subrule is *'inimical to the efficient administration of justice'*; that such challenges to the authority of an attorney to represent a litigant, *'if they are to be raised at all, should be raised promptly at the earliest opportunity . . .'*; and that it is for this reason that the subrule provides that a challenge must be made within the 10-day period, save where the party raising the challenge obtains the leave of the court to do so outside of this time period on *'good cause shown'*. [38]

'Be disputed.' This subrule does not lay down the procedure to be followed by the party challenging the authority of a person acting for a party. [39] In previous revision services of this work the following view was adopted:

> 'It would seem that the challenge, which may be brought at any time before judgment, may be raised in a variety of ways: [40]
>
> *(a)* in appropriate circumstances, by notice, with or without supporting evidence; [41]

(b) in the defendant's plea or special plea; [42]

(c) in an answering affidavit;

(d) orally at the trial. [43] '

On reconsideration, and in the light of the cases referred to in the notes to rule 7 s v 'General' above, in which it was held that rule 7(1) is now the appropriate remedy available to a party (in both action and application proceedings) who wishes to raise the issue of authority, it would rather seem that the challenge in terms of rule 7(1) should be raised by means of a notice or letter, or orally, [44] with or without supporting evidence, depending on the circumstances and the stage of the proceedings, and not in pleadings or application papers. [45] Where the party raising the challenge does so outside the 10-day period provided for in the subrule, it must obtain the leave of the court, on good cause shown, to do so outside that period. This would necessitate an application to court supported by a founding affidavit in which good cause is shown. This means, it is submitted, that the applicant should furnish a full and reasonable explanation as to why it is bringing the application at that particular stage of the proceedings and set out the nature and grounds of the challenge, and the material facts relied upon therefor.

It is submitted that, regardless of what procedure is followed in challenging the authority of a person acting for a party, the challenge should be raised promptly at the earliest opportunity, [46] and should be bona fide. The grounds on which the challenge is based should be stated clearly and unambiguously, and with sufficient detail in order for both such person and party, as well as the court, to fully understand the challenge, and for such person and/or party to satisfy the court that such person is authorized to act. A bare denial of authority would not suffice. A challenge based on a lack of knowledge of authority coupled with a challenge to satisfy the court that proper authority exists would not amount to a bare denial.

The challenge may also be brought in interlocutory proceedings such as an application for summary judgment, or in an application for rescission of a summary judgment. [47]

'**Satisfies the court that he is so authorised to act.'** This subrule does not prescribe the method of establishing authority where such authority is challenged. [48] When such authority is challenged, the requirement of the subrule is that the person concerned shall satisfy the court that he is 'authorised so to act'. [49] This the person concerned may do by adducing any acceptable form of proof and not necessarily by filing a written power of attorney. [50] In the event of any of the parties being a company, a resolution of such company that the proceedings have been properly authorized, may constitute such proof. [51] An application for an order authorizing the person to act on behalf of the party concerned is also a proper method of

responding to the challenge of authority under this subrule. [52] So too an application for a declarator that the person acting on behalf of a party had been duly authorized to represent such party. [53]

The subrule requires that the court must be satisfied that authority exists at the time when proof of it is proffered: there is nothing in the rule which suggests that the court is required to investigate the validity of past acts in the context of the authority to act. [54]

It is submitted that each case should be considered on its own merits and that the court should decide whether enough had been placed before it to warrant the conclusion that it was the applicant that was litigating and not some unauthorized person on its behalf. [55]

The court may, under this subrule, adjourn the hearing of an action or application in order to enable a party to satisfy the court that he has authority to act.

'Action or application.' See the definitions of 'action' and 'application' in rule 1 above.

Subrule (2): 'The registrar shall set down any appeal.' The enrolment of an appeal in the absence of compliance with the provisions of this subrule constitutes an irregular step. [56]

'Shall be filed together with the application for a date of hearing.' The reference is to the written application for a date of hearing made under rule 49(6)*(a)*. An application for a date of hearing is not properly done unless the power of attorney required by subrule 7(2) is filed therewith. [57]

Subrule (3): 'File with the registrar a power of attorney.' The necessity for a respondent to file a power of attorney to defend an appeal is, in terms of this subrule, peremptory. Since the appeal is in such a case before the court, the court has a discretion to postpone the appeal to enable the power of attorney to be filed, subject to the payment of wasted costs. [58] In *Rajah v Pillay* [59] it was held that the intention of the subrule is fulfilled so long as the power of attorney is filed before argument. The ultimate test enunciated by the Appellate Division is whether it is 'in the interests of justice' to give an attorney time to produce proper proof of authority. [60]

Subrule (4): 'Every power of attorney . . . shall be signed.' This subrule requires every power of attorney filed by an attorney to be signed by or on behalf of the party giving it and that such power of attorney 'be duly executed according to law'. No form of attestation is required. [61] In appropriate cases the common-law rules of ratification may be applied to the procedural requirements of this rule. [62] Thus, where the authority of the person who signed the power of

attorney is defective, appropriate steps may be taken to ratify the defective power and therefore it cannot be said that the proceedings prior to ratification were a nullity. [63]

'The registrar shall note that fact on the . . . power.' The attorney must note the fact of the general resolution on the special power of attorney and show the resolution to the registrar who then notes that proof of authority to sign was given to him.

Subrule (5)*(a)*: 'No power of attorney shall be required to be filed by the State Attorney.' The provision of subrule (1) that in general a power of attorney to act need not be filed, clearly also applies to the State Attorney. [64] The import of this subrule is twofold: first, it renders the filing of a power of attorney by the State Attorney unnecessary in an appeal; secondly, it confirms the power to act of any attorney instructed in writing or by telegram (!), by or on behalf of the State Attorney or a deputy state attorney. [65]

1 *Rural Maintenance (Pty) Ltd v Eskom Holdings SOC Ltd* (unreported, GJ case no 2023/027739) dated 20 April 2023) at paragraph [21] and the case there referred to.

2 The purpose of a power of attorney is to establish the mandate of the attorney concerned and 'to prevent a person whose name is being used throughout the process from afterwards repudiating the process altogether and saying he had given no authority, and to prevent persons bringing an action in the name of a person who never authorised it' (*Estate Matthews v Els* 1955 (4) SA 457 (C) at 459; *United Dominions Corporation (SA) Ltd v Greylings' Transport* 1957 (1) SA 609 (T) at 614; *Transvaal Associated Hide and Skin Merchants (Pty) Ltd v Price* 1958 (3) SA 724 (E) at 727A–B; *Viljoen v Federated Trust Ltd* 1971 (1) SA 750 (O) at 752; *Viljoen v Van der Walt* 1977 (4) SA 65 (T) at 66; *Carlkim (Pty) Ltd v Shaffer* 1986 (3) SA 619 (N) at 621E; *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705E–F; *Public Protector of South Africa v Speaker of the National Assembly* [2022] 4 All SA 417 (WCC) (a decision of the full court) at paragraph [47]; *RML Lighting (Pty) Ltd v Vangiflash (Pty) Ltd* (unreported, KZP case no 13682/22 dated 19 October 2023) at paragraph [28]).

3 *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at 207C–E, referring to *Ex parte De Villiers* 1973 (2) SA 396 (NC); *RML Lighting (Pty) Ltd v Vangiflash (Pty) Ltd* (unreported, KZP case no 13682/22 dated 19 October 2023) at paragraph [29].

4 2005 (4) SA 199 (SCA).

5 At 207D–E.

6 1992 (2) SA 703 (W).

7 At 705D–H. See also *Sacramento v City of Tshwane Metropolitan Municipality* (unreported, GP case no 006225/2023 dated 3 February 2023) where the court found (at paragraph 13) that 'it is extremely odd for a state institution to challenge the authority of an attorney who is representing ordinary applicants without any foundation for such'.

8 2005 (4) SA 199 (SCA).

9 At 205H.

10 At 206A.

11 At 206A–B.

12 At 206B–C.

13 2004 (3) SA 615 (SCA) at 624I–625A.

14 At 206F–H.

15 See also *ANC Umvoti Council Caucus v Umvoti Municipality* 2010 (3) SA 31 (KZP) (a decision of the full court) at paragraphs [22]–[29]; *Van der Walt v Van der Walt NO* (unreported, WCC case no 5525/2018 dated 20 October 2020) at paragraph [19]; *Q4 Fuel (Pty) Ltd v Ellisras Brandstof En Olie Verspreiders (Pty) Ltd* (unreported, LP case no HCAA 08/2021 dated 11 November 2021 — a decision of the full court) at paragraph [25]; *MV Andre Builder Joiner CC v Nordien* (unreported, WCC case no 19002/20 dated 6 December 2021) at paragraphs [20]–[24]; *SAMWU obo Members v Mangaung Metropolitan Municipality* 44 *ILJ* 360 (LC) at paragraphs [18] and [23]; *Spartan SME Finance (Pty) Ltd In re: Insurance Underwriting Managers (Pty) Ltd v Zululand Bus Services CC* (unreported, GP case no 38929/2022 dated 7 December 2022) at paragraph 45.1; *Kawasaki Robotics GmbH v Directech* (unreported, GJ case no 43250/2020 dated 12 December 2022) at paragraph [17]; *RML Lighting (Pty) Ltd v Vangiflash (Pty) Ltd* (unreported, KZP case no 13682/22 dated 19 October 2023) at paragraph [29]; *Hohenfelde Dohne Merinos (Pty) Ltd v Louw* (unreported, WCC case no 5852/2022 dated 30 October 2023) at paragraph 12.

16 At 207E–H. See also *Firstrand Auto Receivables (RF) Ltd v Makgobatlou* (unreported, GJ case no 12908/2020 dated 8 September 2021) at paragraphs [27]–[28].

17 *ANC Umvoti Council Caucus v Umvoti Municipality* 2010 (3) SA 31 (KZP) (a decision of the full court) at paragraph [22]. Prior to the amendment of the rule in 1987, the filing of a power of attorney was necessary whenever a summons was issued. No power was required in applications (*Ex parte De Villiers* 1973 (2) SA 396 (NC)). The underlying intention of the amendment of the rule was to make the rules less cumbersome and formalistic (*Administrator, Transvaal v Mponyane* 1990 (4) SA 407 (W) at 409D; and see the remarks of Flemming DJP in *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705H as well as the position in the former Transkei as set out in *Cekeshe v Premier, Eastern Cape* 1998 (4) SA 935 (Tk) at 951A–I). See also *FirstRand Bank Ltd v Fillis* 2010 (6) SA 565 (ECP) at 568J–569A; *Lancaster 101 (RF) (Pty) Limited v Steinhoff International Holding NV* [2021] 4 All SA 810 (WCC) at paragraph [69]; *Barzani 53 (Pty) Ltd v Body Corporate Witfield Ridge* (unreported, GJ case no 2022/9286 dated 14 March 2022) at paragraph [4]; *Motsoeneng v The Public Protector* (unreported, GP case no 76591/19 dated 12 August 2022) at paragraphs [11]–[16]; *Teklehimanote v Free State Gambling, Liquor and Tourism Authority* (unreported, FB case no 3611/2022 dated 22 May 2023 — a decision of the full bench) at paragraph [6]; *SAMWU obo Members v Mangaung Metropolitan Municipality* 44 *ILJ* 360 (LC) at paragraph [19].

18 Unreported, GP case no 5167/2016 dated 13 May 2021.

19 At paragraph [17], with reference to *Eskom v Soweto City Council* 1992 (2) SA 703 (W).

20 It is to be noted that the cases are not harmonious as to the scope of rule 7(1) in this regard. See the notes to rule 7(1) s v 'The authority of anyone acting on behalf of a party' below.

21 At paragraphs [42]–[43].

22 At paragraphs [61] and [62].

23 At paragraph [64].

24 See also the notes to rule 7(1) s v ''The authority of anyone acting on behalf of a party' below.

25 2023 (6) SA 268 (GJ).

26 At paragraph [29].

27 At paragraph [30].

28 At paragraph [31].

29 At paragraph [32].

30 At paragraph [35].

31 At paragraph [37].

32 At paragraph [38].

33 At paragraph [37].

34 See *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705C and 705H–I.

35 *South African Allied Workers' Union v De Klerk* 1990 (3) SA 425 (E) at 436E–F (referred to and discussed in *RML Lighting (Pty) Ltd v Vangiflash (Pty) Ltd* (unreported, KZP case no 13682/22 dated 19 October 2023) at paragraphs [27]–[33]); and see *Gainsford NNO v Hiab AB* 2000 (3) SA 635 (W) at 640D; *Wilge Hervormde Gemeente v Nederduitsch Hervormde Kerk van Afrika* (unreported, GP case no 5167/2016 dated 13 May 2021) at paragraph [17].

36 *ANC Umvoti Council Caucus v Umvoti Municipality* 2010 (3) SA 31 (KZP) (a decision of the full court) at paragraph [22]; *Lancaster 101 (RF) (Pty) Limited v Steinhoff International Holding NV* [2021] 4 All SA 810 (WCC) at paragraphs [34]–[35] and [43]–[44]; and see *Q4 Fuel (Pty) Ltd v Ellisras Brandstof En Olie Verspreiders (Pty) Ltd* (unreported, LP case no HCAA 08/2021 dated 11 November 2021 — a decision of the full court) at paragraph [25]; *Directrix Risk Services CC v Badenhorst* (unreported, GJ case no 55831/2021 dated 30 March 2023) at paragraphs [9]–[26]; *Unica Iron and Steel (Pty) Ltd v The Minister of Trade and Industry* (unreported, SCA case no 1332/21 dated 31 March 2023) at paragraphs [3]–[6]; *Dladla v Ethekwini Municipality* (unreported, KZD case no 2799/2023 dated 4 April 2023) at paragraphs [23]–[29]; *RML Lighting (Pty) Ltd v Vangiflash (Pty) Ltd* (unreported, KZP case no 13682/22 dated 19 October 2023) at paragraphs [34]–[35]; *Sehole v Gaanakgomo* (unreported, NWM case nos CIV APP FB 20/2022; UM87/2021 dated 27 February 2024) at paragraphs [25]–[26].

37 *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at paragraph [14]; reaffrmed in *Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys* (unreported, SCA case no 459/22 dated 26 July 2023) at paragraph [21]; *Minister of Water and Sanitation v Clackson Power (Pty) Ltd* (unreported, WCC case no 4438/2023 dated 20 March 2024) at paragraph 31.

38 *Janse van Rensburg v Obiang* (unreported, WCC case no A338/2018 dated 10 May 2019 — a decision of the full court) at paragraph [17]. In *Lancaster 101 (RF) (Pty) Limited v Steinhoff International Holding NV* [2021] 4 All SA 810 (WCC) condonation for non-compliance with the 10-day period was given in the 'interest of justice' (at paragraph [45]). In *Kaap-Vaal Trust (Pty) Ltd v Speedy Brick & Sand CC* (unreported, GP case no 23143/2020 dated 18 October 2021) the applicant brought an application, which was opposed, for an order in terms of rule 30A to compel the respondent to comply with the notice served on it under rule 7(1). The notice was, however, served out of time. No condonation was sought by the applicant for non-compliance with the 10-day period. In dismissing the rule 30A application, the court, amongst other things, stated that the 10-day period was not merely superfluous. It was set so as to bring certainty to the litigants that no challenge would be mounted against their authority (at paragraph [19]). In *Ensemble Hotel Holdings (Pty) Limited v Swanvest 328 (Pty) Limited* (unreported, GJ case no 2022-058058 dated 6 February 2024) an application for condonation for non-compliance with the ten-day period was refused on the basis that the applicant did not show that its rule 7(1) challenge had any prospects of success (at paragraphs [12], [13] and [31]). See also *SAMWU obo Members v Mangaung Metropolitan Municipality* 44 *ILJ* 360 (LC) at paragraph [25].

39 In magistrates' courts practice rule 52(2)*(a)* requires that the party challenging the authority of a person acting for a party must give notice in writing to the other party.

40 *Lancaster 101 (RF) (Pty) Limited v Steinhoff International Holding NV* [2021] 4 All SA 810 (WCC) at paragraph [22].

41 See *South African Allied Workers' Union v De Klerk* 1990 (3) SA 425 (E) at 437; *FirstRand Bank Ltd v Fillis* 2010 (6) SA 565 (ECP) at

569A.

42 See *Foreign Traders Co Inc v Castle Wine & Brandy Co Ltd* 1921 CPD 541; *Garlicks Wholesale v Magistrate of Sutherland* 1926 CPD 267 and the cases referred to therein.

43 Provided prior notice has been given since the courts have, in the past, tended to disapprove of the failure to give prior notice (*Potchefstroom Board of Executors v Liddle* (1891) 4 SAR 23; *Western Province Bank v Du Toit* (1891) 4 SAR 40; *Barclays Bank v Coetzee* 1933 EDL 7; *Ravden v Beeten* 1935 CPD 269).

44 It is conceivable that circumstances might require the challenge to be raised orally at the trial. It is to be noted, however, that the courts have, in the past, tended to disapprove of the failure to give prior notice in such instances (*Potchefstroom Board of Executors v Liddle* (1891) 4 SAR 23; *Western Province Bank v Du Toit* (1891) 4 SAR 40; *Barclays Bank v Coetzee* 1933 EDL 7; *Ravden v Beeten* 1935 CPD 269).

45 In *RML Lighting (Pty) Ltd v Vangiflash (Pty) Ltd* (unreported, KZP case no 13682/22 dated 19 October 2023) the court pointed out (at paragraph [42]) that the respondent's reliance on statements (in previous revision services of this work) that the challenge could be raised in an answering affidavit was misplaced in the light of the decision of the full court in *ANC Umvoti Council Caucus v Umvoti Municipality* 2010 (3) SA 31 (KZP). See also *Sotomela v Harmony Gold Company Ltd* (unreported, GJ case no A2022-041835 dated 7 February 2024 — a decision of the full bench) at paragraphs 14–15. For a different view, see *Minister of Water and Sanitation v Clackson Power (Pty) Ltd* (unreported, WCC case no 4438/2023 dated 20 March 2024) at paragraphs 34–51.

46 For an extraordinary case, see *Dollar Rent A Car v Moolla NO* (unreported, GJ case no 3536/2022 dated 24 July 2023).

47 In *Creative Car Sound v Automobile Radio Dealers Association 1989 (Pty) Ltd* 2007 (4) SA 546 (D) it was held (at 553I–554D) that the challenge should not be raised for the first time as a technical point in heads of argument; it should be raised in terms of rule 7(1) (and, if necessary, in the answering affidavit).

48 *Gainsford NNO v Hiab AB* 2000 (3) SA 635 (W) at 639J–640A; *Lancaster 101 (RF) (Pty) Limited v Steinhoff International Holding NV* [2021] 4 All SA 810 (WCC) at paragraph [69]; *Directrix Risk Services CC v Badenhorst* (unreported, GJ case no 55831/2021 dated 30 March 2023) at paragraph [17]; *Unica Iron and Steel (Pty) Ltd v The Minister of Trade and Industry* (unreported, SCA case no 1332/21 dated 31 March 2023) at paragraphs [4]–[5].

49 *FirstRand Bank Ltd v Fillis* 2010 (6) SA 565 (ECP) at 569A; *Joubert v Close to Home Trading 546 CC* (unreported, FB case no 2595/2023 dated 21 December 2023) at paragraphs [10]–[11].

50 See *Administrator, Transvaal v Mponyane* 1990 (4) SA 407 (W) at 409; *FirstRand Bank Ltd v Fillis* 2010 (6) SA 565 (ECP) at 569A–B; *Lancaster 101 (RF) (Pty) Limited v Steinhoff International Holding NV* [2021] 4 All SA 810 (WCC) at paragraph [69] and *Silinda N.O. v Master of the High Court, Pretoria* (unreported, GP case no 20553/2021 dated 2 December 2021) at paragraphs [3.8]–[3.11]; *The Public Protector of South Africa v The Speaker of the National Assembly* [2022] 4 All SA 417 (WCC) at paragraphs [43]–[53]; *Silver Manor Prop (Pty) Ltd v Matjhabeng Local Municipality* (unreported, FB case no 630/2023 dated 22 November 2023) at paragraphs [14]–[27]; *Joubert v Close to Home Trading 546 CC* (unreported, FB case no 2595/2023 dated 21 December 2023) at paragraph [10], all decided under this subrule; *Dladla v Ethekwini Municipality* (unreported, KZD case no 2799/2023 dated 4 April 2023) at paragraphs [23]–[29]. See also *Johannesburg City Council v Elesander Investments (Pty) Ltd* 1979 (3) SA 1273 (T) at 1279H–1280A and *Texeira v Industrial and Mercantile Corporation* 1979 (4) SA 532 (O) at 538A (both decided under the similar wording of former magistrates' courts rule 52(2)). In *Van Zyl v Theunissen Town Council* 1943 OPD 127 a letter addressed by a town council to its attorney containing an excerpt from its minutes was held to constitute a sufficient authority.
In *Eriksson v Hollard Insurance Company Limited* (unreported, GJ case no 2021/45339 dated 24 January 2023) Strydom J stated:
'[23] Rule 7(1) does not set out what evidential material should be placed before court by an attorney to satisfy the court that he or she has been mandated to represent clients, in this instance, the plaintiffs. It was argued on behalf of the plaintiffs that "satisfies" does not imply a burden of proof. In my view, a court will reasonably determine whether it is satisfied with the material placed before it to rule whether a mandate has been shown. The court will act subjectively, but as a reasonable judge which brings into the equation an objective yardstick. One of the reasons for a challenge to the authority of an attorney is not to be faced with a situation where an unsuccessful plaintiff, faced with a cost order, denies the authority of the attorney who instituted the proceedings. In my view, a court will consider the documents filed as proof of authority and consider whether, on a balance of probabilities, the attorney was mandated or not.
[24] In a case where an attorney represents a corporate entity, a court would ordinarily require a signed mandate from an authorized representative of the entity in which document, an attorney is mandated to institute legal proceedings against a defendant. To establish the authority to provide a mandate, a court will require the resolution of the entity, which can either provide the representative with a general authority or a specific authority to appoint attorneys to institute proceedings against a defendant or defendants. An example of a specific authority would be where an entity has resolved to appoint a specific attorney to institute legal proceedings against a mentioned defendant. A party can challenge the mandate and/or the resolution. A court may, considering all facts and circumstances, be satisfied that authority has been shown even in a case of imperfect documentation being presented.'
See also *Mahomed NO v Al-Al Shaik NO* (unreported, GJ case no 2023/007716 dated 4 March 2024).

51 *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) SA 347 (C); *Pretoria City Council v Meerlust Investments (Pty) Ltd* 1962 (1) SA 321 (A) at 325E; *Poolquip Industries (Pty) Ltd v Griffin* 1978 (4) SA 353 (W); *K2016507276 (South Africa) (Pty) Ltd v Mahikeng Property Investments (Pty) Ltd* (unreported, NWM case no M 621/2021 dated 7 September 2023) at paragraph [21]; and see *Lancaster 101 (RF) (Pty) Limited v Steinhoff International Holding NV* [2021] 4 All SA 810 (WCC).

52 *Johannesburg City Council v Elesander Investments (Pty) Ltd* 1979 (3) SA 1273 (T) at 1279C–D.

53 *Unica Iron and Steel (Pty) Ltd v The Minister of Trade and Industry* (unreported, SCA case no 1332/21 dated 31 March 2023) at paragraphs [3]–[6].

54 *Johannesburg City Council v Elesander Investments (Pty) Ltd* 1979 (3) SA 1273 (T) at 1280A; *Texeira v Industrial and Mercantile Corporation* 1979 (4) SA 532 (O) at 539F; *Marais v City of Cape Town* 1997 (3) SA 1097 (C) at 1101D.

55 Cf *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) SA 347 (C) at 352A; *Cambridge Plan AG v Moore* 1987 (4) SA 821 (D) at 833B–D; *Tattersall v Nedcor Bank Ltd* 1995 (3) SA 222 (A) at 228F–H.

56 *Smith v Sci Essel Offshore Services Limited* (unreported, GP case no A740/2014 dated 15 February 2024 — a decision of the full court) at paragraph [1].

57 *Smith v Sci Essel Offshore Services Limited* (unreported, GP case no A740/2014 dated 15 February 2024 — a decision of the full court) at paragraph [14], referring to *Corlett Drive Estate Ltd v Boland Bank Ltd* 1978 (4) SA 420 (C) at 425D (a case dealing with rule 7(3) prior to the amendment of rule 7 during 1987).

58 *Solomons v Allie* 1965 (4) SA 755 (T).

59 1966 (2) SA 222 (N). See also *Yunnan Engineering CC v Chater* 2006 (5) SA 571 (T) at 581D–H.

60 *Queensland Insurance Co Ltd v Banque Commerciale Africaine* 1946 AD 272 at 280–281.

61 Older statutory provisions which required powers to be attested by witnesses (Act 10 of 1879 (Cape), s 2; Ord 11 of 1904 (OFS), s 6; Law 7 of 1895 (Transvaal), s 2) were repealed by the Pre-Union Statute Law Revision Act 36 of 1976.

62 *Nampak Products Ltd t/a Nampak Flexible Packaging v Sweetcor (Pty) Ltd* 1981 (4) SA 919 (T) at 924G.

63 See, in general, *MEC for Economic Affairs, Environment and Tourism v Kruisenga* 2008 (6) SA 264 (CkHC) at 294D–299H, confirmed on appeal *sub nomine MEC for Economic Affairs, Environment and Tourism, Eastern Cape v Kruizenga* 2010 (4) SA 122 (SCA).

64 *Nampak Products Ltd t/a Nampak Flexible Packaging v Sweetcor (Pty) Ltd* 1981 (4) SA 919 (T) at 924G.

65 On the authority of the State Attorney to act on behalf of a Minister or a state official, see *Dlamini v Minister of Law and Order* 1986 (4) SA 342 (D); *Moult v Minister of Agriculture and Forestry, Transkei* 1992 (1) SA 688 (Tk GD); *Xatula v Minister of Police, Transkei* 1993 (4) SA 344 (Tk GD).