

D3 Regulations Governing the Administration of an Oath or Affirmation

RS 23, 2024, D3-1

The State President has, in terms of section 10 of the Justices of the Peace and Commissioners of Oaths Act, 1963 ([Act 16 of 1963](#)), been pleased to make the following regulations:

1 [GN R1258](#) of 21 July 1972, amended by GN R1648 of 19 August 1977, by GN R1428 of 11 July 1980 and by GN R774 of 23 April 1982.

1.

(1) An oath is administered by causing the deponent to utter the following words: 'I swear that the contents of this declaration are true, so help me God.'

(2) An affirmation is administered by causing the deponent to utter the following words: 'I truly affirm that the contents of this declaration are true'.

2.

(1) Before a commissioner of oaths administers to any person the oath or affirmation prescribed by regulation he shall ask the deponent,

- (a) whether he knows and understands the contents of the declaration;
- (b) whether he has any objection to taking the prescribed oath; and
- (c) whether he considers the prescribed oath to be binding on his conscience.

(2) If the deponent acknowledges that he knows and understands the contents of the declaration and informs the commissioner of oaths that he does not have any objection to taking the oath and that he considers it to be binding on his conscience the commissioner of oaths shall administer the oath prescribed by reg 1(1).

(3) If the deponent acknowledges that he knows and understands the contents of the declaration but objects to taking the oath or informs the commissioner of oaths that he does not consider the oath to be binding on his conscience the commissioner of oaths shall administer the affirmation prescribed by reg 1(2).

3.

(1) The deponent shall sign the declaration in the presence of the commissioner of oaths.

(2) If the deponent cannot write he shall in the presence of the commissioner of oaths affix his mark at the foot of the declaration: Provided that if the commissioner of oaths has any doubt as to the deponent's inability to write he shall require such inability to be certified at the foot of the declaration by some other trustworthy person.

4.

(1) Below the deponent's signature or mark the commissioner of oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date 1 of taking the declaration.

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(2) The commissioner of oaths shall —

- (a) sign the declaration and print his full name and business address 2 below his signature; and
- (b) state his designation and the area for which he holds his appointment or the office held by him if he holds his appointment *ex officio*. 3

1 In *Rogal Holdings (Pty) Ltd v Victor Turnkey Projects (Pty) Ltd* (unreported, GP case no 53473/2021 dated 28 March 2022) the court stated:

'[5] I found it a serious concern that the supplementary answering affidavit and confirmatory affidavit that was only handed up when the proceedings commenced on 4 March 2022, was commissioned by the counsel representing the respondents. I indicated that in the absence of the applicant continuing with the objection and in order to prevent an undue delay and a possible postponement of the matter, I would provisionally accept the documents but that independently commissioned affidavits needed to be uploaded to the electronic case file. I note, however, that although the respondents subsequently uploaded documents that purport to be affidavits by the second respondent and the first respondent's director, the date of commissioning of the affidavits by the independent commissioner of oaths precedes the hearing of the matter. It is factually impossible for the content to have been confirmed as true under oath on 3 March 2022 before the independent commissioner of oaths and the mere appending of an independent commissioner of oaths' stamp does not render the document properly commissioned. The documents are also not initialled on all the respective pages by either the deponent or the commissioner. Although the supplementary answering affidavit and accompanying confirmatory affidavit were admitted conditionally, the respondents did not utilise the opportunity to remedy the defect and as a result the affidavits delivered on behalf of the respondents remains [sic] defective. The statements were accepted but the probative value thereof is diminished by it not being confirmed under oath or affirmed.'

2 'Business address' in this context denotes the address at which a person carries on business and not merely the address to which post may be directed so as to reach the business: the furnishing of a private bag number is, accordingly, not full compliance with the requirement of the regulation (*Dawood v Mahomed 1979 (2) SA 361 (D)* at 367). In *Standard Bank of SA Limited v Redmond* (unreported, GP case no 80438/2015 dated 2 June 2016) the certificate of the commissioner of oaths indicated that the deponent to the applicant's affidavit appeared before the commissioner at 'Johannesburg' when depositing to the affidavit. The stamp of the commissioner of oaths which was appended to the certificate, however, showed that the business address of the commissioner was at 'Pretoria'. The court (at paragraph [12]) rejected the respondent's contention (referred to at paragraph [5]) that the affidavit was defective as it did not appear therefrom to have been signed before the commissioner of oaths. The court held (at paragraphs [10]–[12]) that the commissioner of oaths is required (a) in terms of regulation 4(1), to 'state the manner, place and date of taking the declaration'; and (b) in terms of regulation 4(2)(a), to 'sign the declaration and print his full name and business address below his signature'. Accordingly, the business address 'has got nothing to do with the manner, place and date of taking the declaration which is provided for in the commissioner's certificate' (at paragraph [12]). See also *Standard Bank of South Africa Limited v Barnard* (unreported, GP case no 41826/21 dated 23 November 2023) at paragraphs [5]–[10]. In *FirstRand Bank Limited t/a FNB Home Loans v Freddie* (unreported, FB case no 4075/2016 dated 16 November 2016) it was held (at paragraphs [5]–[14]) that the plaintiff was entitled to file supplementary affidavits of the deponent to the plaintiff's affidavit in support of its application for summary judgment and the commissioner of oaths before whom the deponent appeared, explaining that the deponent in fact appeared before the commissioner at Johannesburg (as stated in the commissioner's certificate) despite the latter's stamp having reflected her business address as being at Boksburg. See also *Limpopo Province Voluntary Group Scheme Board v Mahubane* (unreported, LP case no HCAA14/2019 dated 28 January 2021) at paragraphs [36]–[42]; *Mndiyata v Umgungundlovu CPA* (unreported, ECM case no 1606/20 dated 28 January 2021) at paragraphs [8]–[18] and the cases there referred to; *Standard Bank of South Africa Ltd v Pit Dog Trading CC In re: Pit Dog Training CC v Likweti Home Owners Association* (unreported, MM case no 2709/2019 dated 22 August 2022) at paragraphs [5]–[8].

3 In *Broodie NO v Maposa 2018 (3) SA 129 (WCC)* an objection by the respondents to a further affidavit that the applicant sought to introduce on the grounds that the attesting commissioner of oaths' qualification to commission the affidavit did not appear on the face of the document, as required in terms of reg 4(2), was not upheld by the court (at 136D–137B); see also *Q4 Fuel (Pty) Ltd v Ellisras Brandstof En Olie Verspreiders (Pty) Ltd* (unreported, LP case no HCAA 08/2021 dated 11 November 2021) at paragraphs [2] and [13]–[19].

5.

...

6.

A commissioner of oaths shall not charge any fee for administering any oath or affirmation or attesting any declaration.

7.

(1) A commissioner of oaths shall not administer an oath or affirmation relating to a matter in which he has an interest.

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(2) Subregulation (1) shall not apply to an affidavit or a declaration mentioned in the Schedule.

8.

Government Notice R 1206, dated 15 December 1961, is hereby withdrawn.

Schedule

Declarations exempted from the provisions of regulation 7(1)

[Schedule substituted by GN R1428 of 11 July 1980.]

1. A declaration taken by an attorney which —

- (a) is required for the obtaining of registration in a deeds registry referred to in [section 1\(1\)](#) of the Deeds Registries Act, 1937 ([Act 47 of 1937](#));
- (b) should be furnished to a Minister or an administrator or an officer in the service of the State (including a provincial administration, the South African Railways and Harbours and the Department of Posts and Telecommunication), or to someone who is an officer or employee of the Government Service referred to in section 2 of the Government Service Act, 1980 (Act 2 of 1980), of the National Assembly of South-West Africa.

2. A declaration taken by a commissioner of oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty.

Commentary

General. An earlier regulation which prescribed a much more elaborate procedure was held to be plainly directory and not peremptory.¹ The same applies to regulations 1–4 of the present regulations. The court has a discretion to refuse to receive an affidavit attested otherwise than in accordance with the regulations depending upon whether substantial compliance with them has been proved or not.²

Regulation 2(1)(c): It has been held that the provisions of this regulation are directory.³

Regulation 3(1): Although it is practice in some divisions of the High Court for both the deponent and the commissioner to initial all pages of an affidavit on which their signatures do not appear, including the annexures to the affidavit,⁴ it is not a requirement for the validity of the affidavit.⁵

It has been held that the provisions of this regulation do not require the commissioner of oaths to certify that the deponent signed the declaration in his presence.⁶

Where an objection is taken that the provisions of this regulation have not been complied with, there is an onus on the person who disputes the validity of the affidavit to prove by evidence such failure.⁷

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The following examples demonstrate the approach of the High Court to objections taken in regard to the alleged non-compliance with this regulation:⁸

- (a) commissioner of oaths not certifying that deponent was in his presence; no evidence to prove deponent did not sign declaration in presence of commissioner of oaths; no prejudice — objection not sustained;⁹
- (b) deponent declaring that she was a female but commissioner of oaths certifying that deponent was a male; no evidence to explain inconsistency — objection sustained;¹⁰
- (c) deponent, a male, describing himself as a ‘Legal Manageress’ and commissioner of oaths using ‘she’ in the commissioner’s certificate; party raising objection not employing rule 30 and filing opposing affidavit but presenting no evidence in support of objection — objection not sustained.¹¹

In *Q4 Fuel (Pty) Ltd v Ellisras Brandstof En Olie Verspreiders (Pty) Ltd*¹² the full court held¹³ that the regulations did not make provision for signing or initialing of the annexures to the affidavit by the deponent and commissioner of oaths. Although it was desirable and advisable for the deponent and commissioner of oaths to sign or initial the annexures to show that they form part of the affidavit, it was not a requirement in terms of the regulations.

The question arises whether there is compliance with this regulation if the deponent signs the declaration in circumstances where the deponent and the commissioner of oaths are in each other’s presence on a virtual platform, and the commissioner’s certificate reflects what transpired or an affidavit by the commissioner, explaining what transpired, accompanies the deponent’s affidavit. So too when a virtual platform and electronic signatures provided for

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in the Electronic Communications and Transactions [Act 25 of 2002](#) are used by the deponent and the commissioner of oaths. There are conflicting decisions in this regard.¹⁴

In *Knuttel NO v Bhana*¹⁵ the deponent to the founding affidavit was infected with Covid-19 and the affidavit was accordingly not deposed to and signed in the physical presence of the commissioner of oaths. An affidavit by the deponent’s legal practitioner explaining what transpired was filed together with the affidavit. The explanation given by the legal practitioner was that:

- (a) an unsigned draft founding affidavit was e-mailed to the deponent with instructions to read, initial and sign it before e-mailing it back to the legal practitioner;
- (b) the deponent carried out the instructions;
- (c) on receipt of the signed document, the legal practitioner engaged the services of a commissioner of oaths who, in the legal practitioner’s presence in the office of the commissioner, spoke to the deponent via a video WhatsApp call;
- (d) having identified the deponent as the person she professed to be, the commissioner of oaths then posed the usual questions before she administered the oath in the conventional way.

The court held that the regulations had been substantially complied with and dismissed an objection by the respondents that the founding affidavit was not signed by the deponent in the presence of the commissioner of oaths.

In *Tinashe v University of Limpopo (Turfflopo Campus)* [16](#) the founding and replying affidavits of the applicant were signed by the applicant in Zimbabwe and commissioned in South Africa. The applicant explained that her failure to be physically present for the commissioning of the affidavits were due to a lack of financial resources and having a sick parent to take care of. The material facts relating to the actual commissioning of the affidavit, and whether or not the applicant and the commissioner were in the presence of each other by means of, for example, a video WhatsApp call, do not appear from the judgment of Monene AJ. Despite the lack of facts in the judgment, the applicant's reliance on the *Knuttel* case was rejected in the following terms:

'[13] The question is whether *Knuttel* is now a magic wand or a cure-all vaccine for all situations where deponents are for some reason or another unable to travel to where the commissioner of oaths is such reasons including alleged financial difficulties or any other pressing competing interests. Put differently, are we to understand and interpret *Knuttel* to be allowing everyone who raises a concern about their ability to be physically present at commissioning to do it by whatsapp video regardless of the gravity of the cause of inability to be physically present? I think not.'

It is respectfully submitted that in the absence of the material facts, and the application of the law to those facts, the judgment seems, at best, to be an *obiter dictum*.

In *FirstRand Bank Ltd v Briedenhann* [17](#) the affidavit filed in accordance with rule 14A of the Eastern Cape Rules in support of an application for default judgment, founded on a written loan agreement under the National Credit [Act 34 of 2005](#), was signed by the deponent utilizing an electronic signature and was commissioned by way of virtual conference. The papers included an affidavit, also deposed to virtually, which set out averments that

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sought to establish compliance with the provisions of the Electronic Communications and Transactions [Act 25 of 2002](#) ('ECTA'). In addition to the affidavit filed in terms of rule 14A, a further affidavit deposed to by the same deponent was filed. The further affidavit concerned the production in evidence of copies of the mortgage bond and loan agreement as data messages in accordance with s 15(4) of ECTA. The affidavit also set out the circumstances in which the affidavits were signed by electronic signature and commissioned in the virtual presence of a commissioner of oaths via a video conference using the Microsoft Teams platform. The deponent to the said two affidavits stated that the plaintiff had, in line with its adoption of digital record keeping systems and the adaptation of its business practices to accord with local and global digitalization trends, also sought to limit the spread of the Covid 19 virus. It had therefore embarked upon a process of having affidavits signed and commissioned electronically. In doing so, it sought to rely upon the provisions of ECTA relating to electronic signatures. The deponent stated that the plaintiff had, in co-operation with LexisNexis (a global legal publishing company), set up a LexisSign digital platform for the purpose of commissioning affidavits. That system was explained in some detail by the senior manager of legal recoveries of the plaintiff, in a supplementary affidavit. He stated that the LexisSign platform is a 'cloud'-based software system used by the plaintiff's legal recoveries department. It operates as follows:

- (a) The plaintiff's designated employee (the deponent to an affidavit) logs onto the system using a secure username and password.
- (b) The deponent uploads their affidavit in digital form to the LexisSign platform.
- (c) The deponent arranges a virtual meeting, using Microsoft Teams, with an appropriate commissioner.
- (d) During the virtual meeting the commissioner logs onto the LexisSign platform.
- (e) The deponent grants the commissioner access to the digital affidavit.
- (f) The deponent then attests to the affidavit by taking the prescribed oath whilst in the virtual presence of the commissioner on Microsoft Teams.
- (g) The deponent then appends their electronic signature to the affidavit.
- (h) The commissioner in turn attaches their advanced electronic signature as required by s 18(1) of ECTA.
- (i) Once both have attached their signatures the digital file is encrypted on the LexisSign platform and stored.
- (j) The plaintiff is then able to retrieve the encrypted digital affidavit as a data message.

The senior manager pointed out that, on the configuration of the platform, it was not possible to initial each page of the affidavit, as High Court practice requires in the Eastern Cape. However, the encryption of the digital affidavit rendered it unalterable and secure. That provided assurance that the multiple pages of the affidavit were not susceptible to alteration once the affidavit had been signed.

The court held that:

- (a) The regulations had been promulgated in terms of [s 10](#) of the Justices of the Peace and Commissioners of Oaths [Act 16 of 1963](#) ('the Act'); [18](#)
- (b) Sections 5 and 8 of the Act reflected a clear concern with physical or territorial jurisdiction. Commissioners were appointed for defined areas and could only exercise their powers within such areas, unless they exercised such powers by virtue of their office. In that event, their authority to administer oaths or affirmations was not area bound. The concern with territoriality was relevant to contextual interpretation of the regulations. [19](#)

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- (c) The words 'in the presence of' in regulation 3(1) meant 'the fact or condition of being present; the state of being with or in the same place as a person or thing; attendance, association' and 'the place or space around or in front of a person.' The phrase 'in the presence of' suggested 'in the company of, observed by'; [20](#)
- (d) '[25] The language of reg 3(1), when read in the context of the Regulations as a whole, suggests that the deponent is required to append their signature to the declaration in the physical presence or proximity of the commissioner. This accords with the concern for place, insofar as the exercise of the authority to administer an oath is concerned, as appears from the Act. Regulations 2, 3 and 4 must be read as a whole since they provide for the manner in which an oath or affirmation is administered. The process follows a logical sequence which requires the commissioner to satisfy themselves that the deponent understands the nature of the oath; to administer it; to obtain confirmation of the taking of the oath by signature on the document; and thereafter to append their signature with details of place, area and designation. These latter steps are to occur in the presence of the commissioner. It is apparent that the entire process is envisaged to occur in the presence of the commissioner. The essential purpose of the Regulations is to provide assurance to a court receiving an affidavit, that the deponent, properly identified as the signatory, has taken the oath. The signature to the declaration in the presence of the commissioner establishes a guarantee that the consequences of oath-taking are understood and accepted.'
- (e) '[29] In my view, the plain meaning of the expression "in the presence of" within its context in reg 3(1), requires that the deponent to an affidavit take the oath and signs the declaration in physical proximity to the commissioner. The regulation does not therefore cover such deposition in the "virtual presence" of a commissioner.'

- (f) There existed no legal impediment to the type of 'digital affidavit' to which the senior manager referred. Nor could there be any difficulty with the employment of electronic signatures for the signature of such a digital affidavit as contemplated in ECTA. There was therefore no reason why digital affidavits could not be employed, subject to deposition as provided by regulation 3(1).²¹
- (g) In distinguishing *Knuttel NO v Bhana*,²² the finding by the court in *Knuttel* was, essentially, *obiter*. The court specifically found that the challenge to the founding affidavit was moot and served no practical effect, since the averments set out therein were before the court in another affidavit which had been properly deposed. A further point to note is that the question of substantial compliance with the Regulations arose because it was not possible for the deponent to comply with the Regulations. That is not the situation in the present matter.²³
- (h) The regulations, save where couched in negative terms, were directory. Accordingly, where the directory regulations had not been followed and adhered to, a court had a discretion whether or not to admit the affidavit. In such circumstances the court would determine whether there had been substantial compliance with the regulations. That determination was one of fact having regard to the circumstances of the case.²⁴

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- (i) In the exercise of its discretion whether or not to allow the affidavits, two factors had to be highlighted. First, rule of law considerations. Secondly, the function of courts in dealing with novelty and innovation that fell outside of the ambit of an existing regulatory framework;²⁵
- (j) As regards the rule of law consideration, it was not open to a person to elect to follow a different mode of oath administration to that which was statutorily regulated; legislative action would be required to recognize and legitimize the use of new technologies in the preparation of affidavits.²⁶
- (k) As regards the function of the courts in dealing with new innovations, it was not the function of the courts to legislate and the regulations were not subject to court-based rule making powers.²⁷
- (l) In the exercise of its discretion, having regard to all the relevant facts and the interests of justice, it would admit the affidavits on the basis that they substantially complied with the provisions of the regulations.²⁸

In *Ed Food SRL v Africa's Best (Pty) Ltd*²⁹ the respondent took the point that the founding and confirmatory affidavits of the applicant had been commissioned via video conference call whilst the deponents were in Italy, and the commissioner of oaths was in South Africa. The court expressed the opinion that courts should 'open themselves to the modern trend of technology'. It held that in the particular case there had been substantial compliance with the regulations, and the affidavits were admitted in evidence.³⁰

In *LexisNexis South Africa (Pty) Ltd v Minister of Justice and Correctional Services*³¹ the applicant sought an order in the following terms in the unopposed motion court:

- [3.1] That it be declared that the words "*in the presence of*" in Regulation 3 of the Regulations Governing the Administering of an Oath or Affirmation, published under Government GN 1258 in GG 3619 dated 21 July 1972 are to be broadly interpreted and shall include the administration of an oath or affirmation by means of live electronic communication, consisting of simultaneous audio and-visual components;
- [3.2] That it be declared that Regulation 3 does not require the use of an advanced electronic signature as contemplated by section 13 of the Electronic Communications and Transactions Act 25 of 2002'.

Swanepoel J, in dismissing the application:

- (a) Distinguished both *Knuttel* and *Ed Food* referred to above on the basis that in them the court was not asked to declare that regulation 3 should be broadly interpreted, so that the words 'in the presence of' include deponents appearing virtually by electronic means. In those two matters the court was asked to accept the affidavits on the basis that they complied substantially with regulation 3, notwithstanding that the affidavits were commissioned virtually. 'In the application before me, however, I am asked to find that the Act and Regulations must be broadly interpreted, and that that the administration of oaths by a virtual platform accords with the provisions of Regulation 3'.³²

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- (b) Agreed with the finding in *Briedenhann*³³ that '[t]he language of reg 3(1), when read in the context of the Regulations as a whole, suggests that the deponent is required to append their signature to the declaration in the physical presence or proximity of the commissioner. This accords with the concern for place, insofar as the exercise of the authority to administer an oath is concerned, as appears from the Act' and held that the wording of the regulation did not allow for any other interpretation.³⁴
- (c) Held that to find for the applicant would require of the court to ignore the clear meaning of the words in the regulations, and, in so doing, 'I would be "crossing the divide between interpretation and legislation".³⁵

An application for leave to appeal against the order made by Swanepoel J was dismissed on 13 June 2024.³⁶

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In *SB Guarantee Company (Pty) Ltd v De Sousa and Similar Matters*³⁷ orders to execute against the residential property of the respondents in terms of rule 46A of the Uniform Rules of Court were sought. The applications were not opposed and were set down by the applicants on the unopposed motion roll. The valuations in each instance appeared to be attested to under the oath of an expert valuer. On closer inquiry by the court some anomalies emerged. The applications were accordingly postponed and the court invited further information as to the process of the sworn valuations in each instance. The following facts, amongst others, are the product of such further information being provided on affidavit by the applicants and their witnesses:

- (a) In two of the applications, the valuations of Mr Brian Leslie Butler were relied on by the applicant as evidence of the market value in each instance. Mr Butler is a professional associate valuer in Gqeberha whose services are regularly used by GAP (Pty) Ltd, which is on the panel of valuers regularly used by the applicants and other financial institutions.
- (b) What are referred to as 'bulk valuations' of Mr Butler, are routinely commissioned by warrant officer ('w/o') Mornay van der Berg, who is stationed at Humewood police station, which is near to where Mr Butler lives and conducts his business.
- (c) W/o Van der Berg confirms that he acts as commissioner of oath for 'bulk affidavits' for Mr Butler. He says that he commissions up to 30 valuations at a time.
- (d) It was assured baldly by w/o Van der Berg's affidavit that 'all formalities relating to the Justices of the Peace and Commissioner of Oaths Act 16 of 1963 were complied with' in the commissioning of Mr Butler's oath. This later emerged to be inaccurate.
- (e) It was ultimately conceded by Mr Butler that it was his habit to append his signature on each valuation form electronically before the oath was administered.

- (f) It was not initially explained by either Mr Butler or w/o Van der Berg how the electronic signature was appended in relation to the oath being taken on the occasion of the attestation of these 'bulk affidavits' or indeed that the signature was electronic and the administration of the oath did not follow the usual procedure. It was only when the heads of argument which were filed on the court's invitation, that Mr Butler explained that he habitually signed the affidavits electronically and not in the presence of w/o Van der Berg.
- (g) The affidavit attached to the third application makes provision for the signatures of a candidate valuer and a professional valuer. The oath appears immediately below a space for the signature of a 'deponent' and a 'valuer'. The document was apparently commissioned before Mr Smith of *Eyesure Auditors* some five months later on the basis that the signature of one Ms Ngengebula, a candidate valuer, was apparently appended thereto in confirmation of the oath. No explanation of the circumstances under which the signature was electronically appended to the purported affidavit is provided.
- (h) In summary, in two of the applications the signature to the purported affidavits were appended electronically by Mr Butler in the absence of the commissioner of oaths and in the third application the document reflects that it was commissioned under oath by a candidate valuer who appended her signature electronically under circumstances which were not disclosed.

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At odds with the *Briedenhann* case, the electronic signature in each of the applications was not disclosed by the deponents in the original application papers.

Under the above-mentioned circumstances it was held that the requirement in regulation 3(1), that a deponent sign a declaration in the physical presence of a commissioner of oaths, is not met where the signature is appended to the affidavit electronically and not in the presence of the commissioner of oaths.³⁸ The following orders were made:

1. Case numbers 2023/035447; 2023/022259 and 2023/028511 are removed from the roll.
2. The applicant in each case is given leave to file fresh valuations under oath and the applications may not be set down again without such valuations.
3. The respondents are to be given notice of set down of the next hearing of the application which service shall be personal save as otherwise directed by this court.
4. There is no order as to costs and the wasted costs of the postponement of the hearings in all the cases are not to be charged to the respondents' account with the applicant.
5. The Registrar is directed to deliver a copy of this judgment to the Council of Property valuers established under the Property Valuers Profession [Act 47 of 2000](#).
6. The Registrar is directed to deliver a copy of this judgment to the Station Commander: Humewood Police Station Gqbertha.'

It is submitted that the regulations are outdated and in need of urgent revision to cater for modern-day means.³⁹

Regulation 4(1): The provisions of this regulation are directory and not peremptory; failure to comply with the provisions can be condoned at the discretion of the court where it is clear from other indications in and on the document that an oath was in fact administered by the commissioner of oaths.⁴⁰ The requirement of a certificate that the deponent has acknowledged that he knows and understands the contents of the affidavit is directory, and failure to comply has been condoned in a number of cases.⁴¹ In *Parys-Aan-Vaal Woonstelle (Pty) Ltd v Plexiphon* 115 CC⁴² the commissioner of oaths certified the answering affidavit as follows:

'I certify that the Deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn to before me at NIGEL on this 15 day of SEPTEMBER 2021, the regulations contained in Government Gazette Notice R1258 dated 21st July 1972 (as amended) and Government Notice Number R1648 dated 19th August 1977 (as amended) having been complied with.'

The commissioner of oaths omitted to delete the inapplicable gender. The applicant raised an objection, premised on this regulation, that the answering affidavit was invalid because the certification of the commissioner of oaths did not specify the gender of the deponent. In response to the applicant's objection the deponent filed a supplementary affidavit in which he averred

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that it was evident from the papers that he was a male. He further stated that the omission by the commissioner of oaths to delete the word 'she' in the certification was a bona fide error. This was apparently confirmed by the commissioner of oaths in an affidavit filed at the hearing of the case. The court held that the fact that the gender of the deponent did not appear anywhere in the answering affidavit supported the inference that he did not appear in person before the commissioner of oaths.⁴³ The court held that the affidavit was not properly commissioned in substantial compliance with this regulation, refused to condone the non-compliance and adjudicated the application without having regard to the answering affidavit.⁴⁴

In *Phumelela Local Municipality v Telkom SA SOC Limited*⁴⁵ the deponent stated:

'I, the undersigned,
AMAN BALWANTH
Do hereby make oath and say that . . .'

At the end of the document the commissioner of oath stated:

'I hereby certify that the deponent has acknowledged that he knows and understands the content of this affirmation, which was signed to before me at Midrand on this the 7th day of March 2023, the regulations contained in government notice number 3619 of 21 July 1972 and 1648 of 19 Aug 1977 having been complied with.'

The court held that the commissioner did not confirm whether the deponent was making a declaration under oath, or an affirmation that the declaration is true. The failure to ascertain whether the deponent was taking the oath or making an affirmation, supported the inference that the commissioner did not properly administer the oath or an affirmation.⁴⁶ The court therefore made the following order:

- '[33] The following order is made:
1. The Founding Affidavit attached to Respondent's Application for Summary Judgment delivered on 07 March 2023 does not meet the requirements to constitute an Affidavit or an Affirmation.
 2. The Respondent's Application for Summary Judgment is struck out.
 3. The Respondent is ordered to pay the costs of this Application.'

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Regulation 4(2)(a): 'Business address' in this context denotes the address at which a person carries on business and not

merely the address to which post may be directed so as to reach the business: the furnishing of a private bag number is, accordingly, not full compliance with the requirement of the regulation.⁴⁷

Regulation 4(2)(b): In *Q4 Fuel (Pty) Ltd v Ellisras Brandstof En Olie Verspreiders (Pty) Ltd*⁴⁸ the commissioner of oaths instead of completing his full names, business address and designation on the template, put an office stamp next to where the commissioner of oaths has signed. The office stamp had the following details:

'Daniel Paul Viller; Vermaak Beeslaar Attorneys Inc; commissioner of oaths *ex officio*; 358 Serene Street; Garsfontein, Pretoria; Tel 012 361 9970.'

The corporate office stamp did not state the designation of the commissioner of oaths. The court *a quo* had issues in relation to failure by the commissioner of oaths to insert his designation below his signature, and also as to who might have affixed the corporate office stamp of the commissioner of oaths next to the signature of the commissioner of oaths. The court *a quo* held that regulation 4(2) was peremptory, leaving no room for a commissioner of oaths to impress a corporate law firm on the affidavit when administering an oath or affirmation. On appeal it was held that regulation 4(2) is directory and not peremptory and that there had been substantial compliance with its provisions by the commissioner of oaths. The decision of the court *a quo* was accordingly reversed.⁴⁹

In *Van As NO v Jacobs NO*⁵⁰ the court *a quo* upheld a point *in limine* that the founding affidavit did not comply with regulation 4(2) and dismissed the application with costs. The founding affidavit reflected that the deponent had signed the affidavit. Directly below it was printed:

'I certify that on the 26th (entered in manuscript) day of July 2019 at Pretoria (entered in manuscript) and in my presence the deponent signed the Affidavit and declared that he knows and understand the contents hereof, has no objection to taking this oath and considered the oath to be binding on his conscience, and I further certify that the requirements of Regulation GN 1258 of 21 July 1972, amended by GN R1648 on 19 August 1977, and as further amended by GN R1428 of 11 July 1980, and as further amended by GN R774 of 23 April 1982 in terms of Section 10 of the Justices of the Peace and Commissioners of Oaths Act, [Act 16 of 1963](#) have been complied with in all respects.'

Below this paragraph was printed 'Commissioner of Oaths' and above the print a signature was appended. The affidavit and all the attachments were initialled on each page with two different initials. It was undisputed that one set of the initials was that of the deponent and the other that of the unidentified commissioner of oaths.⁵¹

It was not in the answering affidavit disputed that the oath was in fact administered. It was common cause that the full names of the commissioner, his or her designation and the area for which appointment was held, or his or her office appointed *ex officio*, were absent from the affidavit.⁵²

The applicants responded with a replying affidavit stating that the commissioner of oaths was Mr Derik Greyling, a practising attorney employed by Makole Osman Attorneys at 1st Floor, King's Gate, 5 10th Street, Menlo Park, Pretoria. The deponent's attorney, Ms Magdel van Biljon was present and simultaneously deposed to her confirmatory affidavit in front

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of Mr Greyling. In Ms Van Biljon's confirmatory affidavit the details of Mr Greyling are reflected in full as required in terms of regulation 4(2). Mr Greyling's affidavit was attached to the replying affidavit and in it he confirmed that (a) the deponent, Mr Van As, took the oath in front of him on 26 July 2019; and (b) that the signature reflected above the words 'Commissioner of Oaths' was indeed his signature. He explained that he had omitted to stamp the details of his business address and his designation on the founding affidavit, but did so on the confirmatory affidavit.

On appeal it was held that with nothing to gainsay the above-mentioned facts, the court *a quo* should have dismissed the point *in limine*.⁵³ The order of the court *a quo* was accordingly set aside and replaced with an order dismissing the point *in limine* with costs and referring the matter back to the High Court for adjudication on the merits.⁵⁴

Regulation 7(1): In regard to the question whether regulation 7(1) is peremptory, it has been held that both precedent and principle point to an affirmative answer.⁵⁵ The reason for the regulation is that a person attesting an affidavit is required to be unbiased and impartial in relation to the subject matter of the affidavit. If his position is such that this qualification is *prima facie* absent, there is danger that he may have influenced the deponent in regard to the subject matter of the affidavit.⁵⁶

It is therefore necessary that in civil matters an affidavit be attested by a commissioner who is entirely independent of the office of the attorneys where the affidavit was drawn.⁵⁷ A failure

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to observe this requirement can in certain cases be condoned, however. In *Tambay v Hawa*⁵⁸ it was held that 'interest' in regulation 7(1) must be given a limited meaning and cannot be extended to cover the remote and indirect interest which an employee of an attorney has in the matters dealt with in that attorney's office. Consequently, a request for the dismissal of an application on the ground that the applicant's affidavits had all been attested before an attorney in the employ of the applicant's attorney was refused. However, where the attorney attesting the affidavit is the attorney in the suit, the attestation is defective.⁵⁹ If the attesting attorney is appearing *pro Deo* in the matter, he has an interest therein in so far as he may succeed in getting his costs on winning: he is therefore debarred from attesting affidavits therein.⁶⁰ It would appear that he would not have an interest if appearing *pro amico*, as no matter what the result, he would receive no fees; but the onus of proving that his services were given *pro amico* would be upon the party alleging it.⁶¹

It may be in order to have a faultily attested affidavit reattested before an independent commissioner before filing it with the court; this was done and allowed in *Abromowitz v Jacquet (1)*,⁶² where this course caused no prejudice: but the court said that there might be cases where it might be inadvisable to follow this course.

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Regulation 7(2): The provisions of the schedule were considered in *East Cape Consumers Co-operative Ltd v National Liquor Board*⁶³ and *Drop-Inn Group of Liquor Supermarkets (Pty) Ltd v Chairman, Liquor Board*,⁶⁴ both decided under the former Liquor Act 87 of 1977.⁶⁵

¹ *S v Kahn* [1963 \(4\) SA 897 \(A\)](#) at 900C.

² *S v Munn* [1973 \(3\) SA 734 \(NC\)](#); *S v Msibi* [1974 \(4\) SA 821 \(T\)](#); *Dawood v Mahomed* [1979 \(2\) SA 361 \(D\)](#) at 367A-B; *Lohrman v Vaal Ontwikkelingsmaatskappy (Edms) Bpk* [1979 \(3\) SA 391 \(T\)](#) at 396H-397A; *Nkondo v Minister of Police* [1980 \(2\) SA 362 \(O\)](#) at 365A-B; *Standard Bank of South Africa Ltd v Malefane: In re Malefane v Standard Bank of South Africa Ltd* [2007 \(4\) SA 461 \(TK\)](#) at 465A-D; *Petersen v Gqosha* (unreported, ECEL case no 1574/2022 dated 25 April 2023) at paragraphs [28] and [30]; *F.A.E.K v M.G.K* (unreported, GJ case no 2021/44071 28 August 2023) at paragraph [10].

³ *S v Munn* [1973 \(3\) SA 734 \(NC\)](#); *S v Msibi* [1974 \(4\) SA 821 \(T\)](#); *Nkondo v Minister of Police* [1980 \(2\) SA 362 \(O\)](#) at 365; but see *S v*

[Khoza 1973 \(4\) SA 511 \(T\).](#)

[4](#) See, for example, *Hlazi v Buffalo City Metro Municipality 2023 (6) SA 464 (ECEL)* at paragraph [74].

[5](#) *Minister of Safety and Security v Mohamed* [2010] 4 All SA 538 (WCC) at paragraph [26].

[6](#) *Ladybrand Hotels (Pty) Ltd v Stellenbosch Farmers' Winery Ltd 1974 (1) SA 490 (O)* at 492G–493A; *Nkondo v Minister of Police 1980 (2) SA 362 (O)* at 365A; *Cape Sheet Metal Works (Pty) Ltd v J J Calitz Builder (Pty) Ltd 1981 (1) SA 697 (O)* at 699B.

[7](#) *Ladybrand Hotels (Pty) Ltd v Stellenbosch Farmers' Winery Ltd 1974 (1) SA 490 (O)* at 493C–D.

[8](#) See also the notes to regulation 4(1) below.

[9](#) *Ladybrand Hotels (Pty) Ltd v Stellenbosch Farmers' Winery Ltd 1974 (1) SA 490 (O).*

[10](#) *Absa Bank Ltd v Botha NO 2013 (5) SA 563 (GNP).* In *Macsteel Service Centres SA (Pty) Ltd v Profin Trading 35 CC* (unreported, GP case no 96119/2015 dated 17 June 2016) the affidavit opposing summary judgment was deposed to by a male person but the certificate of the commissioner of oaths read as if the deponent were a female. In allowing an affidavit by the commissioner of oaths explaining the error, the court (at paragraphs [5]–[9]) distinguished *Absa Bank Ltd v Botha NO 2013 (5) SA 563 (GNP)* and was not prepared to adopt 'a highly technical approach to the affidavit' (at paragraph [9]). In *Tower Property Fund Limited v Fit 24 Gyms (Pty) Ltd* (unreported, KZP case no 886/2021P dated 28 November 2022) the court also declined to follow *Absa v Botha (supra)* and allowed an affidavit under circumstances where any uncertainty over the gender of the deponent was erased when the commissioner of oaths himself deposed to an affidavit confirming that the applicant's deponent, Mr 'Rivaaj Singh', had appeared before him and signed the founding affidavit (at paragraph [17]). In *FirstRand Bank Limited t/a FNB Home Loans v Freddie* (unreported, FB case no 4075/2016 dated 16 November 2016) it was held (at paragraphs [5]–[14]) that the plaintiff was entitled to file supplementary affidavits of the deponent to the plaintiff's affidavit in support of its application for summary judgment and the commissioner of oaths before whom the deponent appeared, explaining that the deponent in fact appeared before the commissioner at Johannesburg (as stated in the commissioner's certificate) despite the latter's stamp having reflected her business address as being at Boksburg. In *Standard Bank of South Africa v Mokoena* (unreported, FB case no 4150/2021 dated 3 February 2023) the deponent to the founding affidavit in an application for summary judgment described herself as 'an adult female' but the commissioner of oaths in his certificate referred to the deponent as 'he'. In dismissing the defendant's point *in limine* that the affidavit was fatally defective, the court held (at paragraph [7]) that *ex facie* the affidavit it was clear that the deponent was a female and that the court was 'satisfied that the error does not render the plaintiff's affidavit fatally defective in the sense that the court would be unable to give effect to the presumption of regularity for the purposes of assuming that the oath was sworn to and signed in the presence of the commissioner of oaths'.

[11](#) *Firstrand Auto Receivables (RF) Ltd v Makgobatlou* (unreported, GJ case no 12908/2020 dated 8 September 2021).

[12](#) Unreported, LP case no HCAA 08/2021 dated 11 November 2021.

[13](#) At paragraph [20].

[14](#) See also Robyn Snyman and Bokhobethu Matyeni 'Sign on the virtual line — commissioning of affidavits in the digital era' 2022 (April) *De Rebus* 14; Danielle Hugo 'Determining what "in the presence" means for the virtual commissioning of oaths' 2022 (November) *De Rebus* 16.

[15](#) [2022] 2 All SA 201 (GJ); and see *Corwil Investments Holdings (Pty) Ltd v Investec Securities (Pty) Ltd* (unreported, GJ case no 11126/2021 dated 5 April 2022) at paragraphs [22]–[31]

[16](#) Unreported, LP case no 9938/2022 dated 28 July 2023.

[17](#) [2022 \(5\) SA 215 \(ECGa\).](#)

[18](#) At paragraph [16].

[19](#) At paragraphs [17]–[20].

[20](#) At paragraph [21].

[21](#) At paragraph [34].

[22](#) [2022] 2 All SA 201 (GJ).

[23](#) At paragraph [47].

[24](#) At paragraph [48].

[25](#) At paragraph [49].

[26](#) At paragraphs [50]–[53]; approved and followed in *SB Guarantee Company (Pty) Ltd v De Sousa and Similar Matters* (unreported, GJ case nos 2023/035447; 2023-022259; 2023-028511 dated 29 April 2024) at paragraph [56].

[27](#) At paragraph [54].

[28](#) At paragraphs [56]–[58].

[29](#) Unreported, GJ case no 2022/1245 dated 14 March 2022.

[30](#) At paragraph 32.

[31](#) Unreported, GP case no 2023-010096 dated 29 April 2024.

[32](#) At paragraph [11].

[33](#) At paragraph [25].

[34](#) At paragraph [17].

[35](#) At paragraph [19].

[36](#) See also *Nedbank Limited v Altivex 15 (Pty) Limited* (unreported, GP case no 042994/2023 dated 18 June 2024) where K Strydom AJ stated (footnotes omitted):

'6. The Applicant has placed reliance on the judgment in *Firstrand Bank Limited v Briedenhann* as authority for its submission that this Court should "condone" the virtual commissioning of the affidavit. It was submitted that this Court should, on the basis of *Briedenkann* [sic], exercise its discretion based primarily on considerations of substantial compliance with the provisions of the Justices of the Peace and Commissioners of Oaths Act, [No. 16 of 1963](#) ("the Justice of the Peace Act").

7. It has become almost par for the course, for large institutions such as banks, in these types of applications, to have such affidavits commissioned remotely. Justices of the Peace and Commissioners of Oaths Act, [No. 16 of 1963](#) ("herein after referred to as the Commissioners Act").

8. I disagree with the submission that *Briedenhann* is authority for the position that as long as there has been substantial compliance, the non-compliance with the Justices of the Peace Act should be "condoned." In *Briedenhann* as well as the cases referred to therein, Goosen J made it abundantly clear that the exercise of the Court's discretion in that matter was based on the relevant factual matrix presented to him by the Applicant as explanation for the non-compliance ...

9. Since the decision in *Briedenhann*, it has almost become par for the course in the motion courts (of this division, at least) for large institutional litigants (such as banks), to depose to affidavits in support of summary judgment virtually and then, on the strength of *Briedenhann*, to simply ask for condonation at the hearing of the application. However, contrary to the widely held opinion that substantial compliance trumps form, in *Briedenhann*, the exact opposite was stated:

"[51] *The advantages of the system used by the plaintiff are, however, not a basis upon which an existing Regulation may be ignored. It is, in my view, not open to a person to elect to follow a different mode of oath administration to that which is statutorily regulated. That is true even if in doing so every effort is made to substantially comply. The regulations stipulate that the declaration is to be signed in the presence of the commissioner. Unless that cannot be achieved, the Regulations must be followed. The fact that the Regulation is directory does not mean that a party can set out to achieve substantial compliance with such regulation rather than to comply with its requirements.*"

[Underlining my own]

10. Whilst it might be so that the Applicant would have deposed to the exact same affidavit and have placed the same facts before this Court (regardless of the method of commissioning) and whilst it may equally be so that remote commissioning would be more expedient, the simple fact of the matter is that, since *Briedenhann*, no legislative changes have been made to the Justices of the Peace Act or the Regulations.

11. One of the major legal advancements, since 1963, was the crystallisation of the doctrine of separation of powers in the Constitution. Incumbent to the doctrine is that the Judicial branch should not, under the guise of a general discretion or in the interest of justice, circumvent the authority of the legislature by condoning non-compliance with laws or regulations simply because said law or regulation may be considered archaic or outdated.

12. Simply put, discretions need to be exercised judicially. If there are no facts placed before a Court upon which to exercise its discretion, it cannot make a generalised finding on the commonly held views of litigants (or even the Court itself) as to what is expedient and in keeping with the latest technological advancements.

13. Under the circumstances, for a Court to exercise its discretion in favour of Applicants in each instance where virtual commissioning is used, regardless of a proper explanation for such non-compliance, would constitute impermissible judicial overreaching.

14. I am fortified in this view by the findings of Swanepoel J [Author's note: In *LexisNexis South Africa (Pty) Ltd v Minister of Justice and Correctional Services* (unreported, GP case no 2023-010096 dated 29 April 2024).] earlier this year, where he too was called upon to interpret the provisions of the Regulation 3 of the *Regulations Governing the Administering of an Oath or Affirmation*, in view of *Briedenhann*. In declining to uphold a broad interpretation of the words "in the presence of" in favour of remote commissioning, he stated as follows:

"[19] However, to find for applicant would require me to ignore the clear meaning of the words in the Regulations. In so doing I would be 'crossing the divide between interpretation and legislation', as Wallis JA warned of in *Endumeni*. It is not for a Court to impose its view of what would be sensible or businesslike where the wording of the document is clear."

[37](#) Unreported, GJ case nos 2023/035447; 2023-022259; 2023-028511 dated 29 April 2024.

[38](#) At paragraph [85].

[39](#) See, in this regard, the observations of the court in *FirstRand Bank Ltd v Briedenhann* [2022 \(5\) SA 215 \(ECGa\)](#) at paragraphs [50], [51] and [53]–[55].

[40](#) *Parys-Aan-Vaal Woonstelle (Pty) Ltd v Plexiphon* 115 CC (unreported, FB case no 3489/2021 dated 20 January 2022) at paragraph [15]; *Land and Agricultural Development Bank of South Africa v Winsbeslis Vfy (Pty) Ltd* (unreported, GP case no 28604/21 dated 16 February 2022) at paragraphs 11 and 12, referring with approval to *Malan v Minister of Police NO 2019 (2) SACR 469 (GJ)* at paragraphs 43 and 44; *Petersen v Gqosha* (unreported, ECEL case no 1574/2022 dated 25 April 2023) at paragraphs [26]–[30].

[41](#) See, for example, *Ex parte Vaughan* 1937 CPD 279; *R v Mtembu* 1940 NPD 7; *Van Rensburg v Van Rensburg* 1941 (1) PH F9; *Ex parte Lombard* 1942 CPD 98; *R v Pietersen* 1944 CPD 340 at 345; *Swart v Swart* [1950 \(1\) SA 263 \(O\)](#) at 265–7; *Ex parte Du Toit* [1962 \(1\) SA 445 \(E\)](#); *S v Munn* [1973 \(3\) SA 734 \(NC\)](#).

[42](#) Unreported, FB case no 3489/2021 dated 20 January 2022.

[43](#) At paragraph [18].

[44](#) At paragraphs [19]–[20]. For cases where a different decision was made, see *Land and Agricultural Development Bank of South Africa v Winsbeslis Vfy (Pty) Ltd* (unreported, GP case no 28604/21 dated 16 February 2022) and *Swat SOS 247 (Pty) Ltd t/a SOS SA v Jones* (unreported, GJ case no 2023-027536 dated 18 April 2023).

[45](#) Unreported, FB case no 5327/2022 dated 31 May 2023.

[46](#) At paragraphs [31]–[32].

[47](#) *Dawood v Mahomed* [1979 \(2\) SA 361 \(D\)](#) at 367A.

[48](#) Unreported, LP case no HCAA 08/2021 dated 11 November 2021.

[49](#) At paragraphs [18]–[19] and [26].

[50](#) Unreported, GP case no A194/2021 dated 1 December 2022 — a decision of the full court.

[51](#) At paragraph [3].

[52](#) At paragraph [4].

[53](#) At paragraph [20].

[54](#) At paragraph [21].

[55](#) In *Nochomowitz v Bellville Liquor Licensing Board* [1956 \(2\) SA 228 \(C\)](#) at 230H; and see *Naidoo v Perumal* 1937 NPD 251; *Ex parte Broli* 1938 EDL 287; *Erasmus v Erasmus* 1938 OPD 7; *R v Mtembu* 1940 NPD 7; *Pettersen v Burnside* 1940 NPD 403 at 410; *Tambay v Hawa* 1946 CPD 866 at 868; *Swart v Swart* [1950 \(1\) SA 263 \(O\)](#) at 265; *Erasmus v Marx* [1950 \(3\) SA 520 \(O\)](#); *Royal Hotel, Dundee v Liquor Licensing Board, Area No 26*; *Durnacol Recreation Club Liquor Licensing Board, Area No 26* [1966 \(2\) SA 661 \(N\)](#); *Radue Weir Holdings Ltd t/a Weirs Cash & Carry v Galleus Investments CC t/a Bargain Wholesalers* [1998 \(3\) SA 677 \(E\)](#) at 679H–I. The question was left open by the Appellate Division in *R v Rajah* [1955 \(3\) SA 276 \(A\)](#). In *Louw v Riekert* [1957 \(3\) SA 106 \(T\)](#) an affidavit was attested by a professional assistant employed by the applicant's attorneys on conveyancing and estate work only. It was held that, although the assistant had no interest in the matter within the meaning of the regulation, the court had to apply English law as to admissibility of evidence, viz that no affidavit was acceptable as evidence if sworn before a clerk of the party's attorneys, even where the clerk was not employed on court work.

[56](#) *R v Brummer* [1952 \(4\) SA 437 \(T\)](#) at 439; and see *Radue Weir Holdings Ltd t/a Weirs Cash & Carry v Galleus Investments CC t/a Bargain Wholesalers* [1998 \(3\) SA 677 \(E\)](#) at 680E–681G (a case where the commissioner of oaths who attested the answering affidavit of the defendant not only shared the same business address as the attorneys for the defendant in a summary judgment application, but where it was also obvious that the commissioner of oaths was practising in association with the defendant's firm of attorneys). The *Radue* case was distinguished in *Nedbank Limited v Hatting* (unreported, FB case no 4136/2020 dated 7 March 2022) in which the objection was that '[t]he relationship between the deponent and the commissioner of oaths (albeit that she does not work for the firm of attorneys presently on record), is one where clearly they have a personal association of such a nature that the commissioner of oaths is an attorney for the Plaintiff in many other matters and on their litigation panel, and thereby clearly has an interest in the Plaintiff's general business and the success of their litigation' (at paragraph [11]). The court held that there was no conceivable basis on which it could be held that the attorney who acted as commissioner of oaths had an interest in the litigation, or that she would have wanted to, or could have influenced the deponent in regard to the issue at hand (at paragraph [16]). A similar finding was made in *Swat SOS 247 (Pty) Ltd t/a SOS SA v Jones* (unreported, GJ case no 2023-027536 dated 18 April 2023) under circumstances where the respondent's answering affidavit was attested to by the wife of the respondent's attorney of record who was a chartered accountant not in any way involved with the practice of her husband.

[57](#) *In re Attestation of Affidavits* 1926 WLD 89; *Whyte's Stores v Bridle NO 1936 TPD 72; Hersman v Angilley* 1936 CPD 386, followed in *Boshoff v Manack* 1937 NPD 192, and in *Ex parte Van Zyl* [1963 \(2\) SA 311 \(GW\)](#); *Royal Hotel, Dundee v Liquor Licensing Board, Area No 26; Durnacol Recreation Club v Liquor Licensing Board, Area No 26* [1966 \(2\) SA 661 \(N\)](#); *Papenfus v Transvaal Board for the Development of Peri-Urban Areas* [1969 \(2\) SA 66 \(T\)](#) at 69H–70A; *Radue Weir Holdings Ltd t/a Weirs Cash & Carry v Galleus Investments CC t/a Bargain Wholesalers* [1998 \(3\) SA 677 \(E\)](#) at 679I–J; *Kouwenhoven v The Minister of Police* (unreported, SCA case no 888/2020 dated 22 September 2021) at paragraph [41].

In *Rogal Holdings (Pty) Ltd v Victor Turnkey Projects (Pty) Ltd* (unreported, GP case no 53473/2021 dated 28 March 2022) the court stated: '[5] I found it a serious concern that the supplementary answering affidavit and confirmatory affidavit that was only handed up when the proceedings commenced on 4 March 2022, was commissioned by the counsel representing the respondents. I indicated that in the absence of the applicant continuing with the objection and in order to prevent an undue delay and a possible postponement of the matter, I would provisionally accept the documents but that independently commissioned affidavits needed to be uploaded to the electronic case file. I note, however, that although the respondents subsequently uploaded documents that purport to be affidavits by the second respondent and the first respondent's director, the date of commissioning of the affidavits by the independent commissioner of oaths precedes the hearing of the matter. It is factually impossible for the content to have been confirmed as true under oath on 3 March 2022 before the independent commissioner of oaths and the mere appending of an independent commissioner of oaths' stamp does not render the document properly commissioned. The documents are also not initialled on all the respective pages by either the deponent or the commissioner. Although the supplementary answering affidavit and accompanying confirmatory affidavit were admitted conditionally, the respondents did not utilise the opportunity to remedy the defect and as a result the affidavits delivered on behalf of the respondents remains [sic] defective. The statements were accepted but the probative value thereof is diminished by it not being confirmed under oath or affirmed.'

[58](#) 1946 CPD 866; but see *R v Brummer* [1952 \(4\) SA 437 \(T\)](#) and *Louw v Riekert* [1957 \(3\) SA 106 \(T\)](#), a case extending the rule to exclude also clerks and partners of the attorney acting for the litigant as well as attorneys employed by such an attorney as professional assistants.

[59](#) *In re Attestation of Affidavits* 1926 WLD 89; *Whyte's Stores v Bridle NO 1936 TPD 72; Hersman v Angilley* 1936 CPD 386; *Ex parte Van Zyl* [1963 \(2\) SA 311 \(GW\)](#); *Royal Hotel, Dundee v Liquor Licensing Board, Area No 26; Durnacol Recreation Club v Liquor Licensing Board, Area No 26* [1966 \(2\) SA 661 \(N\)](#); *Papenfus v Transvaal Board for the Development of Peri-Urban Areas* [1969 \(2\) SA 66 \(T\)](#) at 69H–70A; *Radue Weir Holdings Ltd t/a Weirs Cash & Carry v Galleus Investments CC t/a Bargain Wholesalers* [1998 \(3\) SA 677 \(E\)](#) at 679I–J. This rule has been extended to exclude not only attorneys acting for the litigant but also legal advisers in the employ of a statutory board (*Papenfus v Transvaal Board for the Development of Peri-Urban Areas* [1969 \(2\) SA 66 \(T\)](#)) and attorneys acting as correspondents for the attorney of record of a party (*Abromowitz v Jacquet* (1) [1950 \(2\) SA 247 \(W\)](#)). See further *Louw v Riekert* [1957 \(3\) SA 106 \(T\)](#) referred to in n 7 on p D3–3 above.

[60](#) *Erasmus v Marx* [1950 \(3\) SA 520 \(O\)](#) at 523.

[61](#) *Erasmus v Marx* [1950 \(3\) SA 520 \(O\)](#).

[62](#) [1950 \(2\) SA 247 \(W\)](#).

[63](#) [1986 \(4\) SA 612 \(E\)](#).

[64](#) [1986 \(4\) SA 1042 \(C\)](#).

[65](#) Repealed by the Liquor [Act 27 of 1989](#).