



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF  
APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 3 December 2021

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

***Masako v Masako & Another (Case no 724/20) [2021] ZASCA 168 (3 December 2021)***

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Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the North West Division of the High Court, Mahikeng (the high court).

The issue before the SCA was whether an attorney who deposed to an affidavit in support of a rescission application was required to obtain authorisation from her client to do so.

The appellant and the first respondent were previously married, and their marriage was dissolved by a decree of divorce incorporating a settlement agreement on 13 February 2013. One of the terms of the agreement was that each party would 'retain those assets presently in their respective possession and/or under their respective control in settlement of their respective claims in the joint estate.'

Despite this agreement, on 24 May 2016, the first respondent launched an application in the regional court seeking an order, inter alia, '[a]ppointing a Receiver and Liquidator of the assets of the joint estate subsisting between the [first respondent] and the [appellant].' On 17 April 2018, an order was granted in favour of the first respondent in the absence of the appellant, which led to the appellant bringing an application for the rescission of that order on 21 May 2018.

The rescission application was opposed by the first respondent, who raised a point in limine challenging Ms Moduka's locus standi on the basis that, as the attorney for the appellant, she was not the person affected by the judgment sought to be rescinded. The regional court agreed with the first respondent and upheld the point in limine. It found that Ms Moduka had not been authorised to bring the application by the appellant. The appellant appealed that ruling to the high court. The high court dismissed the appeal on the same basis as the regional court. It found that Ms Moduka 'lacked locus standi to bring the application for rescission in the absence of authorisation by the appellant.'

The SCA found that both the regional court and the high court appeared to have conflated (a) the legal standing of the party seeking rescission of judgment; (b) the basis for deposing to an affidavit and (c) the authority to represent a party.

It further found that the rescission application was brought by the appellant, who was the party affected by the judgment sought to be rescinded. The inquiry into the attorney's locus standi was irrelevant. The attorney deposed to an affidavit in support of the rescission application because facts that gave rise to the need for a rescission application lay squarely within her knowledge as the attorney who was dealing with the matter.

In addition, the appellant had confirmed that she had instructed the attorney to institute the rescission application. In any event, in terms of rule 52(2)(a) of the Magistrates' Court Rules, an attorney does not need to allege that they are authorised to act for a party. A party wishing to challenge an attorney's authority to represent a party may do so in terms of the procedure outlined in that rule. The first respondent brought no such challenge. As a result, the SCA upheld the appeal.

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