

Legal update 3 of 2022: Limitations of a power of attorney

Introduction

This update focuses on whether an agent under a power of attorney has the right to represent the person who granted them authority to act on their behalf in a court of law. Below is a summary of and more detail on the case.

Summary

Case: Carelse & Akers vs Standard Bank of South Africa Limited: Western Cape High Court, Cape Town (Case no: 12443/07)

- **The finding:** The court found that the agent had no legal standing to approach the court on behalf of her parents. The agent herself was not a lawyer, which is a requirement to represent a person in a court of law.

The court based this decision on the required minimum standards set by the Legal Practice Council.

- **Practical application:** A person may authorise someone to act on their behalf in the administration of their legal affairs. However, in the event of a legal dispute in a court of law, they must hire a qualified legal practitioner.

Details of the case

Case: Carelse & Akers vs Standard Bank of South Africa Limited: Western Cape High Court, Cape Town (Case no: 12443/07)

The timeline of the events leading up to the case before the High Court was as follows:

- 16 March 2008: Standard Bank obtained a default judgement which allows for the repossession of Mr and Mrs Akers' (the couple's) property, after they fell into arrears with the bond repayments in the amount of R330 992.18.
- November 2016: Standard Bank's attorney communicated with the couple through their daughter, Ms Akers after they fell into arrears again. The couple was notified that the outstanding balance on the account was R170 632.52, excluding future legal costs

and interests. They were further informed that Standard Bank proposed an 80% discount, which would bring the settlement amount to a total of R34 126.52 and that the offer would be valid until December 2016.

- 17 February 2017: Standard Bank's attorneys gave the couple 24-hour notice that their assets may be attached if judgement is obtained against them on their home loan account after they had defaulted on the payment.
- Due to his advanced age and the subsequent passing of his wife, the first applicant sought to have Ms Akers, his daughter, intervene on his behalf. He then signed a power of attorney to enable Ms Akers to represent him in court.

- Mr Akers launched three applications intending to cancel the court order to have his house repossessed.

The High Court found that Ms Akers had no direct and substantial interest to represent her father. The court, however, noted that the willingness of blood relatives to help by doing some of the work and providing information speeds up the litigation process.

The court ruled that representing a person in High Court litigation processes is a serious exercise that requires a person to have a right of appearance as set out in the Legal Practice Act 28 of 2014 ('LPA'). The LPA requires that before representing another in court, the person must have a legal qualification, be a South African citizen or a

permanent resident in the republic, be a fit and proper person and must be registered with the South African Legal Practice Council.

The High Court ruled that Ms Akers not being a legal practitioner could not solely rely on the power of attorney to represent her father in court.

The application by the daughter to represent her father in court was dismissed.

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