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**Feb 09 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas  
Scott F. Talley, Special Referee

Appellate Case No. 2025-001073

Angelica Shelest, ..... Respondent,

v.

Martin Maina Gitau and Mark One Freight & Logistics,  
LLC..... Appellants.

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**Appellants’ Return to Respondent’s Motion to Strike Arguments I.a. and I.b.  
of the Initial Brief of Appellants as Violating an Order of the Court,  
and to Stay Deadlines Until the Court Rules on the Motion**

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Appellants hereby file this Return to the Motion to Strike. The motion to strike should be denied without prejudice to Respondents’ ability to include its preservation of error arguments in its brief.

**BACKGROUND**

As is clear from Appellants’ initial brief, Appellants are raising important grounds respecting the exercise of subject matter jurisdiction and fundamental judicial power. Their position, well supported, is that the statute authorizing the appointment of special referees does not permit a clerk of court to appoint them, nor cloak them with circuit court powers, as happened here, and thus that the Special Referee’s rulings declining to set aside the entry of default and awarding the default judgment should be declared void. To date, Respondents have principally answered these arguments by asserting that Appellants’ argument is foreclosed by *Roche v. Young*

*Brothers*, 332 S.C. 75, 504 S.E.2d 311 (1998). Appellants dispute that *Roche* is controlling. Nevertheless, Appellants believe the decision was wrongly decided, and at odds with the relevant statutory and constitutional framework.

For this reason, Appellants first sought to transfer this case to the South Carolina Supreme Court. Appellants believed the Supreme Court was best positioned to consider and decide *Roche*'s continued validity. The fact that the Court declined to transfer or certify the appeal does not impact the merits of the Appellants' legal argument.

It is also true that Appellants sought leave from this Court to file a second motion to set aside the entry of default. Appellants specifically requested in that motion that the circuit court, and not the Special Referee, should hear this second motion to set aside the default challenging the Special Referee's rulings as lacking in subject matter jurisdiction and judicial power. Appellants' hope was that, upon remand and consideration, the circuit court would have properly exercised its jurisdiction over the matter, granted the motion to set aside, and convened a new hearing, precluding the need for additional appellate review. This motion was denied.

Accordingly, Appellants do not dispute that they are now raising this challenge to the Special Referee's jurisdiction as a matter of first impression. In the Motion to Strike, Respondents essentially rest on two procedural points: (1) that Appellants admit they did not make these arguments in the first motion to set aside before Special Referee; and (2) since there was no appeal of the order of reference to the Special Referee, and since the motion to remand was denied, Appellants cannot now dispute the Special Referee's subject matter jurisdiction and judicial authority. Neither of these grounds is sufficient to support Respondents' Motion to Strike.

## ARGUMENT

This Court has made clear that an order of reference under South Carolina Rule of Civil Procedure 53 confers a temporary grant of subject matter jurisdiction. *Bunkum v. Manor Props.*, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (Ct. App. 1996). When a master or special referee’s conferred authority expires – or is legally deficient, such that it never takes effect – subject matter jurisdiction ceases to exist. *See id.*, 321 S.C. at 99, 467 S.E.2d at 761 (holding that the master’s appointment authority expired upon issuance of a final judgment, such that the master “therefore had *no subject matter jurisdiction* to hear” a subsequent motion regarding the assessment of fees and expenses) (emphasis added). Any rulings issued by a master or special referee in the absence of valid legal authority are void. *Id.* (declaring the master’s non-jurisdictional ruling to be void and citing *DeWitt v. S.C. Dept. of Highways & Public Transp.*, 274 S.C. 184, 262 S.E.2d 28 (1980) for the proposition that “all proceedings of a court lacking subject matter jurisdiction are a nullity, and its judgment has no effect”). Furthermore, “[i]ssues related to subject matter jurisdiction may be raised at any time.” *In re Nov. 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009). When a tribunal lacks subject matter jurisdiction, that issue “may not be waived, even by consent of the parties, and should be taken notice of by this Court.” *Id.* (citing *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989)).

Appellants are not barred from contesting the Special Referee’s subject matter jurisdiction for the first time in this appeal. The fact that they previously sought to remand this case to the circuit court – in the interest of judicial economy and with the hope of potentially resolving this dispute – should not now be held against them, and in any event, has no bearing on the question before the Court. Because Appellants’ challenge is valid, this Court must deny Respondents’ Motion to Strike and proceed with consideration on the merits.

Respectfully submitted

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**PROOF OF SERVICE**

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants Martin Maina Gitau and Mark One Freight & Logistics, LLC , do hereby certify that I have served all counsel of record in this action with a copy of the document(s) set forth below under Supreme Court Order dated April 24, 2024.

Pleading(s): **Appellants' Return to Respondent's Motion to Strike Arguments I.a. and I.b. of the Initial Brief of Appellants as Violating an Order of the Court, and to Stay Deadlines Until the Court Rules on the Motion**

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