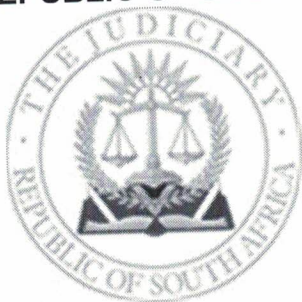


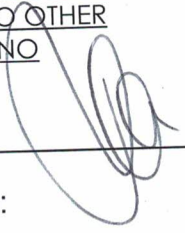
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: EQ2/2017

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER</u>
	<u>JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>



In the matter between:

**THE CHINESE ASSOCIATION, GAUTENG (TCA)**

Complainant

And

**ALICE HENNING (Also known as Alice Pretorius)**  
**ANJA LOCK**  
**CYNTHIA JEANETTE LE ROUX**  
**DAVID CLIVE HORNE**  
**DAWN REEVE**  
**JOY TERMORSHUIZEN**  
**LANA BERGER**  
**MARIETTE VAN DER LINDE DE KLERK**  
**REGINA RICHARDSON**  
**RYAN VAN DER WALT**  
**SHANA MARKRAM**  
**TRACY TERINK**

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
Fifth Respondent  
Sixth Respondent  
Seven Respondent  
Eighth Respondent  
Ninth Respondent  
Tenth Respondent  
Eleventh Respondent  
Twelfth Respondent

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**SUMMARY**

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**Jurisdiction – Application for lack of jurisdiction - Section 21 of the Superior  
Courts Act 10 of 2013 – Court has application**

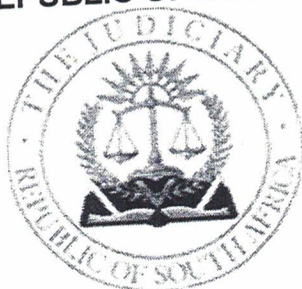
**MAKUME, J:**

The Applicant being the fourth respondent, seeks an order declaring that this court sitting in Johannesburg lacks jurisdiction as he does not reside, work or carry on business within the court's jurisdiction and; none of the other grounds of jurisdiction are present.

The court looked referred to section 21(1) and (2) of the Superior Courts Act 10 of 2013, and concluded that the legislation was clear and contained no ambiguity. The sections provides that a Division has jurisdiction over any person residing or being outside of its area of jurisdiction who is joined as a party to the cause of action in which such court has jurisdiction...if the said person resides or is within the area of jurisdiction of any other division.

The court held that had jurisdiction to deal with the matter as the fourth respondent had been joined to the matter, although he is not within the courts area of jurisdiction. The application was dismissed with costs including costs of two counsel.

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: EQ2/2017

- (1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER  
JUDGES: YES/NO  
(3) REVISED.

2013/2014

In the matter between:

THE CHINESE ASSOCIATION, GAUTENG (TCA)

Complainant

And

ALICE HENNING (Also known as Alice Pretorius)  
ANJA LOCK  
CYNTHIA JEANETTE LE ROUX  
DAVID CLIVE HORNE  
DAWN REEVE  
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First Respondent  
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JUDGMENT ON APPLICATION RE: JURISDICTION

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MAKUME, J:

[1] This is an application by the fourth Respondent Mr David Clive Horne in which he seeks an order declaring that this court sitting at Johannesburg has no jurisdiction over him on the following basis:

1.1 He does not reside, work or carry on business within the jurisdiction of the above honourable court.

1.2 That none of the other recognised grounds of jurisdiction are present in this matter.

[2] Mr Hitchcock appearing for the fourth Respondent made oral submissions supported by fourth Respondent's heads of argument that it is not disputed that the fourth Respondent resides and worked in Cape Town. Mr Hitchcock submitted further that this court could have jurisdiction if there is evidence that the cause of action arose within the jurisdiction of this court. He went on to refer to a decision of this division in **Tsichlas and Another v Touch Line Media (Pty) Ltd 2004 (2) SA 112 (W)**. Whilst maintaining that he has no difficulty with the outcome and the reasons for judgment in that case he argues that the facts therein are not similar to the facts in this matter.

[3] Secondly Mr Hitchcock submitted that fourth Respondent denies that he is the author of the statement posted on the Carte Blanch facebook because his attorney checked the activity log for postings on that day and could not find anything referring to the fourth Respondent.



[4] In conclusion he argues that the case of **Makhanya v University of Zululand 2010 (1) SA 62 (SCA)** on which the complainant relies is of no relevance to the argument raised by the complainant.

[5] Finally in the heads of argument Mr Hitchcock submitted that absent existence of the posting by the fourth Respondent no grounds exists for this court to find that it has jurisdiction over the fourth Respondent and prays that the complaint be dismissed with costs.

[6] Counsel for the complainant dealt with the issues raised by the fourth Respondent in the complainant's heads of argument and also made oral submissions that this court does in fact have jurisdiction over the person of the fourth Respondent on the basis that the cause of action arose within the jurisdiction of this court.

#### FACTUAL BACKGROUND

[7] A brief factual background leading to this application is helpful. The complainant instituted proceedings against the fourth Respondent and eleven others on the 5<sup>th</sup> May 2017 pursuant to comments posted on the facebook page of Carte Blanche. In particular it is alleged that the fourth Respondent posted the following words: "Personally I say wipe them out I'd be the first to be there" It is these words that the complainant seek a final order against the fourth Respondent that the words constitute unfair discrimination, hate speech and harassments.

[8] On the 14<sup>th</sup> November 2018 and the 15<sup>th</sup> November 2018 Mr Horne the fourth Respondent filed his special plea of lack of jurisdiction and on the 15<sup>th</sup> November 2018 filed his answer on the merits. On the 12<sup>th</sup> March 2019 Mr Horne filed a second affidavit in which he repeated the same contentions raised in respect of the special plea. He however did not stop there but for the first time under oath said that he did not make the impugned statement. He further said that he was mistaken when he previously under oath admitted that he had indeed made the impugned statement.

### THIS COURT'S JURISDICTION

[9] Section 21 (1) of the Superior Court Act No 10 of 2013 provides that: "A Division has jurisdiction over all persons residing or being in and in relation to all causes of action arising and all offences triable within its area of jurisdiction and all other matters of which it may according to law take cognisance".

[10] Section 21 (2) of the same act reads as followings "A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause of action in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause if the said person resides or is within the area of jurisdiction of any other Division."

[11] The two sections are clear and unequivocal. There is no ambiguity. It is not surprising that counsel for the fourth Respondent did not deal with the provisions of Section 21 both in the heads of argument and in his oral submissions.

[12] His Lordship Kuny AJ in the Tschilas matter dealt with a similar objection raised as to jurisdiction of this court under almost similar circumstances. The Respondent in that case had argued that its principal plea of business was in Cape Town and that this court did not have jurisdiction. At page 119 the court said the following: "Jurisdiction in this matter does not however rest solely on this ground. Applicant appears to have founded jurisdiction in this court principally on the basis that the cause of action arose within the area of this court's jurisdiction. In this regard it is alleged that the applicant's attorneys accessed the Respondent's website in Sandton in January of this year and in so doing came upon various statements in the discussion forum web pages which he drew to the attention of the Applicant .... I am of the view that the statements were published of and concerning the Applicant within the area of jurisdiction of this court. Once they had been accessed by and thereby published to the attorney there was in my view publication as a requisite element of defamation."

[13] The complainant chairperson deposed to an affidavit confirming that he as well as several members of the complainant who reside in Gauteng specifically in Johannesburg accessed the facebook page of Carte Blanche. Accordingly following the reasons in Tschilas the cause of action arose in this court.

[14] It is perhaps the provision of Section 21 (2) that seals the fate of this application. The fourth Respondent is joined with several other in relation to the same cause of action. Despite misgivings by counsel for the fourth Respondent in connection with the decision in Tschilas was cited with approval by the High Court Free State in the matter of Neil Fichardt vs Phillip Potgieter and 5 Others Case No. 797/2018 a judgment by Loubser J delivered on the 7<sup>th</sup> June 2014.



[15] The lack of jurisdiction sought to be raised by the fourth Respondent is in my view flawed and lacks any basis. It is nothing but a technical attempt to avoid the truth being told in this enquiry. Regulation 10 of the Regulations Promulgated in terms of the Equality Act contains provisions regulating the powers and functions of an Equality Court and specifically provides amongst others that when conducting an enquiry:-

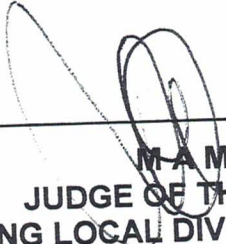
- The court must do so in an expeditious and informal manner which facilitate and promotes participation by the parties
- The law of evidence, including the law relating to competency and compellability as applicable in civil proceedings applies in respect of an enquiry. Provided that in the application of the law of evidence, fairness, the right to equality and the interest of justice should as far as possible, prevail over mere technicalities.

[16] Having considered the purpose, object as well as the guiding principle in the Equality Act and the salient facts in this matter I have come to the conclusion that this court does have jurisdiction to hear this matter and in the result I make the following order:

#### ORDER

- a) The application is dismissed.
- b) The Fourth Respondent is ordered to pay costs of the application which shall include costs of 2 counsel.





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**M.A. MAKUME**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**