



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

CASE NO: 38791/21

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
30/08/2021	<i>PJ Malindi</i>
DATE	SIGNATURE

In the matter between:

PACIFLEX COAL MINING (PTY) LTD

Applicant

and

NATIONAL TREASURE MINERALS

First Respondent

MOJALEFA DOUGLA MONGWE

Second Respondent

MGUZALALA WALTER MONGWE

Third Respondent

PB TSHABALALA INVESTMENT

Fourth Respondent

POLITE BONGANI TSHABALALA

Fifth Respondent

XOLANI KEVIN MABANGA

Sixth Respondent

KKK RESOURCES (PTY) LTD

Seventh Respondent

ERENS LODEWIKUS KLEINHANS

Eighth Respondent

QUINTIN KLEINHANS

Ninth Respondent

**REGIONAL MANAGER: MPUMALANGA REGION,
DMRE**

Tenth Respondent

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 30 August 2021.

JUDGMENT

MALINDI J:

[1] The applicant applied for prospecting rights for coal at Kromdraai, in Mpumalanga in 2016 with the Department of Mineral Resources and Energy (DMRE). The application was pending at the time of launching this application. However, before this application was heard the DMRE issued a letter dated 12 August 2021, received by the applicant on 19 August 2021, to the effect that the applicant has been granted such a prospecting right in terms of section 17(1) of the Mineral and Petroleum Resources Development Act, 28 of 2002, to prospect for coal on Portion 43 of the Farm Kromdraai, Magisterial District of Witbank (Emalahleni), Mpumalanga.

[2] The applicant seeks an order interdicting and restraining the first to ninth respondents, or any other person, from entering or mining for coal and conducting any mining activities at Portion 43 of Kromdraai pending the final determination and the execution of its prospecting right application.¹

¹ CaseLines: 001-2, notice of motion, prayer 2.

[3] The first to third respondents and fourth and fifth respondents have, *inter alia*, pleaded lack of jurisdiction of this Court on the basis that the cause of action arose in Mpumalanga.

[4] The applicant relies on section 21(2) of the Superior Court Act, 10 of 2013 ("the Act") to found jurisdiction. It provides that:

"(2) 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 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."

[5] The first respondent has its registered address within the jurisdiction of this Court. The second and third respondents use the same address as the first respondent and are cited as directors of the first respondent and in their personal capacities. The question is whether the three, being resident in the Gauteng Division, are being joined to any cause in relation to which the Mpumalanga Division has jurisdiction.

[6] Section 21(2) provides for a Court to have jurisdiction also over *"any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction ... if the said person resides or is within the area of jurisdiction of any other Division"*. In other words a Court within whose jurisdiction a cause of action arises will also have jurisdiction over persons who reside or are outside its territorial jurisdiction but within the country.

[7] The primary ground of jurisdiction is section 21(1) which provides that:

"(1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power –"

- [8] Counsel for the applicant submitted that the *ratione domicilii* which gives effect to the general principle that the plaintiff/applicant must follow the defendant/respondent to the latter's place of domicile or residence, and institute process against the defendant/respondent there applies. This is the principle that the plaintiff/applicant follows the defendant's/respondent's court.
- [9] However, where the subject matter involves immovable property the courts have made a number of pronouncements. For a brief account see Henri-Willem van Eetveldt² where he summarises the position as follows:

"Jurisdiction is 'the power vested in a court to adjudicate upon, determine and dispose of a matter' (Gallo Africa Ltd and Others v Sting Music (Pty) Ltd and Others 2010 (6) SA 329 (SCA) at para 6). This power is territorial. In other words, 'it does not extend beyond the boundaries of, or over subjects or subject-matter not associated with, the Court's ordained territory' (Ewing McDonald & Co Ltd v M & M Products Co 1991 (1) SA 252 (A) at 256G – H). ...

In a long line of cases, the phrase 'in relation to all causes arising' has been interpreted to refer to proceedings in which the court has jurisdiction under the common law, with the result that a court's jurisdiction is determined by reference to the common law or any relevant statute (Gulf Oil Corporation v Rembrandt Fabrikante en Handelaars (Edms) Bpk 1963 (2) SA 10 (T) at 17G; Bisonboard Ltd v k Braun Woodworking Machinery (Pty) Ltd 1991 (1) SA 482 (A) at 486H – J)."

- [10] Counsel for the forth and fifth respondents relied on *Eilon v Eilon*³ for the proposition that the court within whose territorial limits the property is situated has exclusive jurisdiction in proceedings involving title to immovable property. In *Gallo Africa Ltd and Others v Sting Music (Pty) Ltd And Others*⁴ the Supreme Court of Appeal referred to *Eilon* and agreed with the judgment, stating that:

² PAJA-what jurisdiction does the court have?: De Rebus (DR 36)

³ 1965 (1) SA 703 (A)

⁴ 2010 (6) SA 329 (SCA) at [11]

“The reason was that in relation to real actions directly raising the title of property the forum rei sitae has exclusive jurisdiction. The court rejected the view that the court of the defendant’s domicile had any jurisdiction to determine the rights to immovable property situated in Israel.”

[11] It is clear that section 21(1) confers jurisdiction over all persons who reside or are in the Court’s jurisdiction and in which the cause of action arose, and that subsection (2) is a resort to joining persons from another Division if they are joined to that cause of action.

[12] In *Gallo Africa* the SCA found that copyright, as a form of intellectual property, is an immovable right and could not be justiciable in South Africa where the respondents reside when the right is registered in a foreign country. Territoriality applies to intellectual property rights.

[13] In *Mfwethu Investments CC t/a Recharger Prepaid Meters v Citiq Meter Solutions (Pty) Ltd t/a Citiq Prepaid*⁵ Rogers J said:

“For purposes of s21(1) of the Superior Courts Act 10 Of 2013 (formerly s19(1)(a) of the Supreme Court Act 59 of 1959), the question whether a cause ‘arises’ within a court’s area of jurisdiction is determined by common law. The provision that the court has jurisdiction ‘over all persons residing or being in’ such area does not enlarge the jurisdiction endowed by the words ‘causes arising’.”

[14] The applicant does not explain why it chose to sue out of the Gauteng Division even though the fourth to ninth respondents are resident in Mpumalanga by virtue of their registered addresses except that section 21(2) provides for jurisdiction over them.

⁵ 2020 (6) SA 578 (WCC) at [9]

As stated in *Mfwethu* the words “over all persons residing or being in” in section 21(1) do not enlarge the jurisdiction arising from the cause of action, and the same should also apply to the words in section 21(2) regarding “any person residing or being outside”. Such persons in both subsections are joined in litigation arising from the cause of action being heard in a Division endowed with jurisdiction even if such persons are in another Division.

[15] I conclude therefore that the authorities dictate that the Mpumalanga Division of the High Court has exclusive jurisdiction over this cause of action being the one ordained or endowed with jurisdiction. The application stands to be dismissed for that reason. Costs will follow the result.

[16] I therefore make the following order:

1. The application is dismissed.
2. The applicant is to pay the costs of the first to third respondents and the fourth and fifth respondents.



G MALINDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Date of the Hearing: 26 August 2021

Date Judgment Reserved: 26 August 2021

Date of Judgment: 30 August 2021

APPEARANCES:

Counsel for the Applicant: Adv. W Maodi

Instructed by: Maponya (K) Associates Attorneys

Counsel for the 1st, 2nd and 3rd Respondents: Adv. L Motsusi

Instructed by: Matsepe Attorneys

Counsel for the 4th and 5th Respondents: Mr T.C Pilusa

Instructed by: TC Pilusa Attorneys