

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**APPEAL CASE NO: A69/2021**

**DATE HEARD: 15 February 2022**

(1) REPORTABLE: Yes/No

(2) OF INTEREST TO OTHER JUDGES:  
Yes/No

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(3) REVISED.

(4) SIGNATURE

DATE

09/03/2022

In the matter between:

**DR E.F. ERASMUS**

Appellant/Plaintiff

and

**KERINE SNYDERS**

Respondent/Defendant

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be **09 MARCH 2022**.

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**JUDGMENT**

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**PHOOKO AJ (with N V KHUMALO J concurring)**

**A. INTRODUCTION**

[1] This is an appeal against the judgment and order granted by the Magistrate T Mokome sitting in the Magistrate's Court for the District of Tshwane Central dismissing the Plaintiff's/Appellant's claim, for payment for medical services he rendered to the Respondent/Defendant at Mediclinic Kloof, Pretoria.

**B. PARTIES**

- [2] The Appellant/Plaintiff, Dr. E.F. Erasmus, is a male Specialist Physician who is registered with the Medical and Dental Council of South Africa. His place of business is Mediclinic Kloof in Pretoria, Gauteng Province.
- [3] The Respondent/Defendant, Keryn Synders, lives in Lephalale, Limpopo Province. (The parties would be referred to as in the main action)

**C. JURISDICTION**

- [4] The Plaintiff resides within the jurisdiction of this Court where he launched his appeal against the judgment of the Court *a quo*.<sup>1</sup>

**D. ISSUE**

- [5] The main issue to be determined by this Court is whether the Court *a quo* was correct in law to refuse the Plaintiff's claim on the basis that it had no jurisdiction to preside over the case.

**E. FACTS**

- [6] According to the Plaintiff's particulars of claim, on 17 April 2018, the Plaintiff and the Defendant entered into a written agreement. In terms of the agreement, the Plaintiff would perform a medical procedure on the Defendant. Post the medical procedure, the Plaintiff was to furnish the Defendant with an invoice. The agreement further provided that if the Defendant's Medical Aid paid only a certain portion of the amount, the Defendant would still be liable for the amounts not catered for by the Medical Aid. The medical procedures were rendered, and an invoice in the sum of R1448.61 for the shortfall that was not paid by the medical aid was issued to the Defendant via her registered address in Lephalale. On Defendant's failure to pay, the Plaintiff issued a summons commencing action against the Defendant to recover the outstanding money. The Defendant did not serve a notice to defend the action. Consequently, the Plaintiff proceeded with an application for default judgment, which was refused. The Plaintiff is now appealing the judgment of the Magistrates' Courts.
- [7] In an attempt to persuade the Court *a quo* that it had jurisdiction to receive and determine whether to or not grant a default judgment, the attorney for the Plaintiff extensively relied on the contract

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<sup>1</sup> See Section 19(1)(a) of the Supreme Court Act 59 of 1959.

concluded between the Plaintiff and the Defendant.<sup>2</sup>

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He further indicated that the Plaintiff relied on the invoice sent to the Defendant. In particular, he argued that the contract was concluded at Kloof Hospital in Pretoria, the services were rendered in Kloof Hospital in Pretoria, payment was to be made in Pretoria, the Defendant's breach was committed in Pretoria, and that the demand was made in Pretoria.<sup>3</sup> All in all, the Plaintiff argued that the aforesaid factors were testimony that the contract and its breach occurred in Pretoria. It is the said contract that formed one of the basis for the Court *a quo* to conclude that it had no competency and/or authority to adjudicate over the case. I address this issue later in the judgment.

- [8] The grounds of appeal are set out set out in the Notice of Appeal and need not be repeated herein save to say that the Plaintiff, *inter alia*, alleges that the Court *a quo* erred in finding that it had no jurisdiction over the case because the Section 129 Notice was sent outside its jurisdiction and/or that the "Appellant's/Plaintiff's particulars of claim did not contain all the essential allegations in respect of an action where the Court's jurisdiction is founded on a cause of action which arose wholly within the Court's area of jurisdiction".<sup>4</sup>

#### F. LAW ON JURISDICTION BASED ON CONTRACT

- [9] Jurisdiction is a license for an aggrieved individual to enter a court of law and persuade it that it has the power and competency to receive and determine his or her case. In the matter between *Gallo Africa Ltd & others v Sting Music (Pty) Ltd & 7 others*,<sup>5</sup> Harms DJ supported by other members of the court opined as follows:

"Jurisdiction means the power vested in a court to adjudicate upon, determine and dispose of a matter. Importantly, it is territorial. The disposal of a jurisdictional challenge on exception entails no more than a factual enquiry, ***with reference to the particulars of claim, and only the particulars of claim, to establish the nature of the right that is being asserted in support of the claim.*** In other words, jurisdiction depends on either the nature of the proceedings or the nature of the relief claimed or, in some cases, on both. It does not depend on the substantive merits of the case or the defence relied upon by a defendant" (Own emphasis added).

- [10] It goes without saying that, amongst others, the particulars of claim play a pivotal role in establishing that a certain court has jurisdiction to preside over a legal dispute. The court "will have jurisdiction in respect of any person, whether or not he resides, carries on business or is employed within the district,

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<sup>2</sup> See Particulars of Claim, Civil Appeal Record at 001-7 and 8.

<sup>3</sup> Ibid.

<sup>4</sup> See Particulars of Claim, Civil Appeal Record at 001-46.

<sup>5</sup> *Gallo Africa Ltd & others v Sting Music (Pty) Ltd & 7 others* 2010 (6) SA 329 (SCA) para 6.

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if the cause of action arose wholly within the district”.<sup>6</sup> Additionally, it is settled in our law that where the contract was concluded and/or where the breach occurred, this will be enough to warrant the basis for jurisdiction.<sup>7</sup> This will become more relevant when the issue of the contract under discussion is dealt with.

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## **G. EVALUATION OF EVIDENCE BY THE TRIAL COURT**

- [11] This Court will be slow to interfere with the judgment of a trial court unless it can be shown that the magistrate had misdirected himself or herself in some material way concerning either fact or law amongst others.
- [12] In light of the foregoing, the perusal of the learned Magistrate’s judgment and order shows some errors that would justify interference by this court. I am of the view that the Magistrate erred when he, *inter alia*, placed more emphasis on the fact that the contract was “silent on the due date for performance” including that there was “neither an agreement on the due date for payment or the place for payment” and/or the amount to be paid.<sup>8</sup> I do concede that the contract in question is probably not one of the best contracts to have ever been drafted especially in so far as it relates to the jurisdictional clause. For example, Clause 6 of the contract states that “this agreement is subject to and shall be interpreted and construed in terms of the laws of the Republic of South Africa and is subject to the jurisdiction of a competent court in the Republic of South Africa”.<sup>9</sup> This is broad and does not assist anyone in this case.
- [13] However, a closer perusal of the contract that was signed by the Defendant reveals that it was signed in Pretoria.<sup>10</sup> A fact that was missed by the court a quo. Further, the contract stipulates that the performance was to take place (which occurred) in Pretoria. The invoice was also issued in Pretoria. These are factors stated in the Plaintiff’s particulars of claim where he makes his submissions about jurisdiction. The Plaintiff further indicates that the breach was committed in Pretoria and that the demand was made in Pretoria.<sup>11</sup> In my view, these are sound reasons that ought to have empowered the Court a quo with the basis to deal with this matter. The issue of a fixed price is in my view not determinable prior to the conclusion of the medical procedure because of complications that may arise during surgery and/or post-surgery and require further medical intervention. Consequently, I do not find the basis for hesitating in finding that the contract was *inter alia* concluded, performed, and

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<sup>6</sup> See also Section 28(1)(d) of the Magistrates Court Act 32 of 1944.

<sup>7</sup> See *Tel Peda Investigation Bureau (Pty) Ltd v Van Zyl* 1965 4 SA 475 (E); *National African Federation for the Building Industry and another and Safety and Security Sector Education and Training Authority* Case No: 7094/2016 (12 December 2017) (unreported).

<sup>8</sup> Judgment of the Trial Court paras 11-2, Civil Appeal Record 001-42.

<sup>9</sup> Clause 6 of the Terms and Conditions of the Contract, Civil Appeal Record 001-15.

<sup>10</sup> Civil Appeal Record 001-14.

<sup>11</sup> *Ibid* at 001-8.

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breached in Pretoria. The whole cause of action, therefore, arose in Pretoria. I find myself persuaded by Chetty J in *National African Federation for the Building Industry and another and Safety and Security Sector Education and Training Authority*<sup>12</sup> where he said:

“I am in agreement with counsel for the respondent that as the *claim of the applicants is based on a breach of the contract, the only conclusion to be drawn is that the right of either party to sue on the contract must of necessity have regard to where the contract was concluded. This constitutes the basis for jurisdiction*” (own emphasis added).

[14] The above observation is pivotal in this case, and it assist towards the resolution of the matter through the ascertainment of the place where the contract was concluded. In this case, Pretoria serves as a place where the parties concluded the contract, for the performance of medical services and payment of the same amongst other things.

[15] Accordingly, having considered the Appellant’s/Plaintiff’s written and oral submissions, I am of the view that the learned Magistrate erred in his decision when he stated that “it cannot be said that the whole cause of action arose within the district of the Tshwane Central Magistrates’ Court in circumstances where the invoice alternatively the section 129 notice was sent outside the court’s district”.<sup>13</sup> On the contrary, the evidence before this Court indicates otherwise. The Plaintiff’s particulars of claim clearly set out the basis for jurisdiction.

## H. CONCLUSION

[16] Ultimately, I am of the view that the learned Magistrate erred in dismissing the Plaintiff’s action for lack of jurisdiction. I, therefore, propose the following order:

### ORDER:

(a) The appeal is upheld,

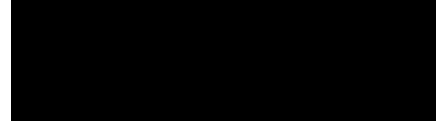
(b) The Order of the Court a quo is set aside and replaced with the following order:

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<sup>12</sup> *National African Federation for the Building Industry and another and Safety and Security Sector Education and Training Authority* para 6.

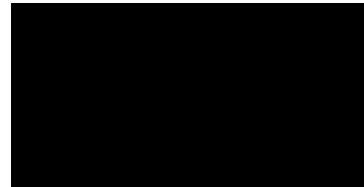
<sup>13</sup> Magistrate’s Judgment at para 19.

- (i) Default Judgment is granted in favor of the Appellant/Plaintiff in the sum of R1,448 61, **009-6**
- (ii) Interest at a rate of 10.25% calculated from 18 February 2019 to date of payment, and
- (iii) Appellant/Plaintiff is awarded costs of the suit on a scale as between attorney and own client.



**M R PHOOKO AJ**  
**ACTING JUDGE OF THE HIGH**  
**COURT, GAUTENG DIVISION:**  
**PRETORIA**

I agree and it is so ordered.



**N V KHUMALO J**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**APPEARANCES FOR THE APPELLANT: MR THOMAS MINNIE (ATTORNEY)**

**Email: [thomasminnie@mweb.co.za](mailto:thomasminnie@mweb.co.za)**

**FOR THE RESPONDENT:**

**n/a**