



Republic of South Africa

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 15587/2013

Before: The Hon. Mrs Justice Traverso  
Deputy Judge President  
and  
The Hon. Mr Justice Binns-Ward

In the matter between:

**THE MINISTER OF POLICE**

Applicant

And

**THE REGIONAL CIVIL MAGISTRATE, OUDTSHOORN**      First Respondent  
**AND THREE OTHERS**      Second to Fourth Respondents

---

**JUDGMENT DELIVERED: 6 NOVEMBER 2014**

---

**BINNS-WARD J:**

[1]      The Minister of Police has applied for the review and setting aside of a decision by the first respondent, who is the civil court regional magistrate at Oudtshoorn, to dismiss his special plea of lack of jurisdiction in an action for compensation for delictual damages

instituted by the second respondent. The summons, in terms of which the second respondent claimed the sum of R100 000 against the applicant for unlawful arrest and detention and R20 000 for malicious prosecution against the Minister of Justice and Constitutional Development, was issued in July 2012. The applicant gave notice of his intention to defend the case on or about 22 August 2012. He delivered a plea on 22 October 2012, in terms of which he denied liability and prayed for the dismissal of the claim. The plea raised no objection to the jurisdiction of the regional court at Oudtshoorn to determine the matter.

[2] On 26 March 2013, the applicant gave notice of his intention to amend his plea by introducing a special plea of jurisdiction. The special plea read as follows (in translation from the original which is in Afrikaans):

First Defendant pleads that the Regional Court does not have jurisdiction to try the abovementioned case seeing that the monetary value of the Plaintiff's claim against the First Respondent in the amount of R100 000 falls within the jurisdiction of the Oudtshoorn Magistrate's Court.

The amount of the Plaintiff's claim of R100 000 thus does not exceed the monetary jurisdiction of the Magistrates' Court in consequence of which the Plaintiff should have instituted his claim in the Magistrate's Court.

(My underlining, for emphasis.)

Notwithstanding its patent excipiability,<sup>1</sup> the amendment was effected, apparently without objection by the second respondent, and the applicant thereafter set down the special plea for hearing on 10 September 2013 as a separate and preliminary issue.

[3] The magistrate dismissed the special plea and held that the costs of the hearing should be costs in the cause. In his extemporaneous judgment dismissing the special plea, the magistrate reasoned as follows:

The situation is very simple. The Act provides that the minister may fix maximum levels of jurisdiction...The notice in which the regulations were issued is in conflict with the Act itself in that it provides a minimum as well as a maximum amount.

....

The problem, however, is that the minister when issuing these regulations was bound by the Act and insofar as these regulations conflict with the Act they are *ultra vires* and of no force and effect.

And therefore the court cannot find that the fact that the sums claimed for below R100 000 excludes them from the jurisdiction of the court. And bound by the Act, the minister was only able to fix a maximum amount.

---

<sup>1</sup> There is no requirement in law that a litigant must sue in a lower court if his claim falls within its monetary jurisdiction, and the implication to the contrary in the special plea was therefore bad in law. Claims are often brought in the High Court that might have been instituted in the magistrates' courts. The appropriate means of discouraging the burdening of higher courts with claims that could have been instituted in lower courts is by way of orders limiting the costs to those that could have been recovered in the lower court.

[4] A finding by a magistrate's court that it has or does not have jurisdiction is a ruling of law that has the effect of a final judgment in the sense meant by s 83(b) of the Magistrates' Courts Act 32 of 1944.<sup>2</sup> A challenge to such a finding thus falls to be made by way of appeal, not review.<sup>3</sup>

[5] Determining whether or not a matter lies within its jurisdiction is undoubtedly within the magistrates' court jurisdiction; the applicant did not contend otherwise. It is trite that an appeal lies against a judgment, not the reasons for it.<sup>4</sup> If the judgment is right, the appeal will fail even if the result was arrived at for the wrong reasons. The application for review brought by the applicant is directed at the magistrate's reasons. There is no point in it if the judgment was right.

[6] The applicant has, however, sought to justify the institution of review proceedings on the grounds of a 'gross irregularity in the proceedings'; see s 22 of the Superior Courts Act 10 of 2013.<sup>5</sup> The alleged gross irregularity is the magistrate's reasoning in support of the dismissal of the special plea; more particularly, his remark that 'insofar as these regulations conflict with the Act they are *ultra vires* and of no force and effect'. 'Gross irregularity in the proceedings' within the meaning of s 24 of the repealed Supreme Court Act, 1959, which has been replicated in s 22 of the currently applicable Superior Courts Act,<sup>6</sup> has been held to

---

<sup>2</sup> Section 83(b) of Act 32 of 1944 provides: 'Subject to the provisions of section 82, a party to any civil suit or proceeding in a court may appeal to the provincial or local division of the Supreme Court having jurisdiction to hear the appeal, against-

....

(b) any rule or order made in such suit or proceeding and having the effect of a final judgment, including any order under Chapter IX and any order as to costs;...'

<sup>3</sup> See Van Loggerenberg et al *Erasmus, Superior Court Practice* at A1-71, at which *Ex parte Kent* 1907 TS 325; *Freemantle v McKenzie* 1915 CPD 568; *Karro & Dansky v Van der Spuy* 1919 CPD 293; *Malherbe v Britstown Municipality* 1948 (1) SA 676 (C); *Nankan v H Lewis & Co (Natal) Ltd* 1959 (1) SA 157 (N); *Tuckers Land and Development Corporation (Pty) Ltd v Perpellief* 1978 (2) SA 11 (T); *Strydom v Chiloane* 2008 (2) SA 247 (T) at 249C–D are cited in support of the proposition.

<sup>4</sup> See e.g. *Tecmed Africa (Pty) Ltd v Minister of Health and Another* [2012] ZASCA 64; [2012] 4 All SA 149 (SCA) at para 17.

<sup>5</sup> Section 22 of Act 10 of 2013 provides:

**Grounds for review of proceedings of Magistrates' Court**

(1) The grounds upon which the proceedings of any Magistrates' Court may be brought under review before a court of a Division are-

- (a) absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
- (c) gross irregularity in the proceedings; and
- (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.

(2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates' Courts.

<sup>6</sup> The applicant, misdirectedly, purported to bring the current review in terms s 24 of the repealed Supreme Court Act.

refer to incidents of the conduct of the proceedings that are grossly irregular and prejudicial.<sup>7</sup> A range of examples of ‘gross irregularity’ is given in Van Loggerenberg et al (ed.), *Erasmus, Superior Court Practice* at A1-72-74. It includes a category of cases in which the lower court has exceeded its powers. That is the category of irregularity under which the applicant has purported to niche the current application. It is not contended, however, correctly so, that the magistrate did not have the power to dismiss the special plea. He thus could not be said to have exceeded his powers in doing so, even if the formulation of his reasons for deciding the issue might be susceptible to criticism. Moreover, there could be nothing cognisably prejudicial for review purposes in the dismissal of the special plea if the magistrate acted within his powers in doing so.

[7] The special plea was premised on an interpretation of the wording of a determination published by the Minister of Justice in terms of s 29(1)(g) of the Magistrates’ Court Act 32 of 1944. Section 29(1)(g) provides as follows:

**29 Jurisdiction in respect of causes of action**

(1) Subject to the provisions of this Act and the National Credit Act, 2005 (Act 34 of 2005), a court in respect of causes of action, shall have jurisdiction in-

- (g) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed the amount determined by the Minister from time to time by notice in the Gazette.

(My underling, for emphasis.)

Notice of the determination was given in GN 670 of 29 July 2010, published in Government Gazette 33418 of 29 July 2010. The object sought to be achieved by the notice was set out in the heading thereto as follows: ‘

Establishment of courts for regional divisions for the adjudication of certain civil disputes (designation of the seat of the said court in each regional division); the appointment of places within each regional division for the holding of a court for the adjudication of certain civil disputes and the local limits within which such courts shall have jurisdiction; and determination of monetary jurisdiction for causes of action in respect of courts for the regional divisions

The notice read as follows in relevant part:

I, Jeffrey Thamsanqa Radebe, Minister of Justice and Constitutional Development....

- (d) determine amounts mentioned in Column B of Schedule 2 for causes of action contemplated in section 29 (a), (b), (d), (e), (f) and (g) of the Act. listed under Column A of the said Schedule in respect of courts for the regional divisions.

---

<sup>7</sup> Judicial review is a discretionary remedy that is ordinarily granted only if the irregularity concerned is shown to be material. Absent demonstrable prejudice to a party, an irregularity will lack materiality.

## SCHEDULE 2

Column A Relevant section of the Magistrates' Courts Act No. 32 of 1944 as amended	Column B Amount
Section 29(1)(g) actions other than those already mentioned in Section 29(1)	Above R100 000 to R300 000

[8] The applicant's counsel submitted that there had been a gross irregularity because the magistrate had acted in conflict with the constraints on his powers imposed in terms of s 110 of the Magistrates' Court Act. Section 110 provides as follows:

**Pronouncements on validity of law or conduct of President**

- (1) A court shall not be competent to pronounce on the validity of any law or conduct of the President.
- (2) If in any proceedings before a court it is alleged that —
  - (a) any law or any conduct of the President is invalid on the grounds of its inconsistency with a provision of the Constitution; or
  - (b) any law is invalid on any ground other than its constitutionality,
 the court shall decide the matter on the assumption that such law or conduct is valid: Provided that the party which alleges that a law or conduct of the President is invalid, may adduce evidence regarding the invalidity of the law or conduct in question.

The submission was misplaced. The magistrate was not seized with determining a question comprehended by s 110. No conduct of the President was involved, and the notice of determination by the Minister was neither a 'regulation', as the magistrate loosely referred to it, nor any other form of 'law'. The notice was merely the manifestation of an administrative act that fell to be taken into account in giving effect to s 29(1)(g) of the Act. The question the magistrate had to ask himself in deciding the special plea was whether the claim fell within his monetary jurisdiction. The Act requires the Minister to determine the upper limit of that jurisdiction. The notice published by the Minister fell to be read sensibly and purposively to ascertain what the upper limit was that he had determined; i.e. the monetary amount which claims in the regional court might not exceed (save with the parties' consent).<sup>8</sup>

[9] The wording of the relevant part of column B of Schedule 2 of the notice was unfortunate. In determining the extent of his monetary jurisdiction in terms of s 29(1)(g) of the Act, the magistrate was entitled to disregard the words 'Above R100 000 to' as of no operative effect, for they plainly had no sensible bearing on the question before him, or, indeed, the exercise of the Minister's power of determination under the relevant statutory

---

<sup>8</sup> Cf. *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) ([2012] 2 All SA 262) at para 18-19.

provision.<sup>9</sup> The wording ‘Above R100 000 to’ does not sensibly fit into a determination in terms of s 29(1)(g). The notice was published as part of the exercise that first extended civil jurisdiction to the regional magistrates’ courts. The apparently incongruous words appear to have been inspired by the fact that the regional courts were being afforded a jurisdiction above the maximum monetary jurisdiction of the other courts regulated by the Act, which was R100 000. When read with s 29(1)(g), however, it is plain that the problematic words have no practical effect on the determination of the regional courts’ monetary jurisdiction. Section 29(1)(g) has nothing whatsoever to do with the determination of a lower limit to the magistrates’ courts’ jurisdiction. The determination by the Minister was not *ultra vires*. Properly interpreted, with appropriate regard to its context and purpose, the notice in terms of which he published that determination fixed the upper limit of the regional courts’ civil jurisdiction at R300 000. The wording does not exclude the second respondent’s claim because his claim does not exceed the amount of R300 000 determined by the Minister. The magistrate’s decision to that effect was correct and did not constitute a gross irregularity, even if the reasons given in support of the conclusion in his extemporary judgment were to some slight degree ineptly expressed.

[10] Construing the notice in the manner contended for by the applicant’s counsel, on the other hand, would lead to the most absurd results. It would imply the introduction of a novel and peculiarly dichotomous concept of jurisdiction; one entirely foreign to the hierarchical structuring of our court system in respect of the monetary jurisdiction of first instance courts. It would mean that a regional court could not try a claim pleaded in an amount within the monetary jurisdiction of the district magistrates’ courts, but it could give judgments within the district courts’ monetary jurisdiction. The alternative would be that the regional court, upon determining that a claim instituted for over a R100 000 fell to be quantified at less than that figure, would have to refuse to give judgment because the amount that fell to be awarded fell below its jurisdiction. It would also imply that if a claim exceeding R100 000 were instituted in a regional court and it were subsequently decided to amend the amount claimed to below R100 000, the court would lose the jurisdiction it had had to entertain the claim when summons had been issued. In a case like this it would also potentially require the two claims involved, which fall sensibly to be tried together, to be pursued and tried in separate courts. It is a well-established canon of statutory interpretation ‘that the lawgiver must not be

---

<sup>9</sup> cf *Majola v Ibhayi City Council* 1990 (3) SA 540 (E) at 542D–545A.

imputed with the intention to enact irrational, arbitrary or unjust consequences'.<sup>10</sup> Analogous principles are applied in respect of the construction of written contracts; courts approach deficiencies and ineptness in their wording to make them work rather than fail, and they sensibly incline to giving the apparent intention of the contracting parties businesslike effect in preference to inappropriate adherence to lexical semantics.<sup>11</sup> Subsidiary legislation falls to be construed to give effect to the purposes and objects of the principal legislation from which it derives.<sup>12</sup> The same contextually sensitive and purposive approach to interpretation is indicated when construing an administrative notice intended to give effect to a legislative provision.

[11] The construction of the notice propounded on the applicant's behalf flies hard in the face of these tenets. It was nothing short of extraordinary in the circumstances to hear the applicant's counsel submit that the belated objection to the regional court's jurisdiction had been raised because of 'rule of law' considerations. It hardly needs stating that the rule of law and patent irrationality do not make for good bedfellows. The irrationality in the approach propounded on the applicant's behalf in the current matter is compounded when it is considered that the legal costs entailed in its fruitless pursuit have already exceeded the amount of the claim in issue, while the trial on the merits has yet to take place.<sup>13</sup>

[12] There is, in any event, another reason why the special plea and the challenge to its dismissal have no merit. The objection to the court's jurisdiction was raised only after *litis contestatio*. The nature of the claim was not outside the court's material jurisdiction. The claim was not of a type in respect of which a regional magistrates' court cannot exercise jurisdiction even with the consent of the parties; cf. s 46 of the Magistrates' Court Act. In *Purser v Sales; Purser and Another v Sales and Another* 2001 (3) SA 445 (SCA) at para 17-18, the Supreme Court of Appeal endorsed the observations of Voet<sup>14</sup> that a litigant may not,

---

<sup>10</sup> *S v Mhlungu* 1995 (3) SA 867 (CC) at para 36 (per Mohamed J, citing *R v Venter* 1907 TS 910 at 914-15 and 921, *Hleka v Johannesburg City Council* 1949 (1) SA 842 (A) at 852; *R v Sachs* 1953 (1) SA 392 (A) at 399; and *Lister v Incorporated Law Society, Natal* 1969 (1) SA 431 (N) at 434).

<sup>11</sup> Cf. e.g. *Picardi Hotels Ltd v Thekwini Properties (Pty) Ltd* 2009 (1) SA 493 (SCA) at para 5 and *Lloyds of London Underwriting Syndicates* 969, 48, 1183 and 2183 v *Skilya Property Investments (Pty) Ltd* [2004] 1 All SA 386 (SCA) at para 14.

<sup>12</sup> Cf. *South African Reserve Bank v Khumalo* 2010 (5) SA 449 (SCA) ([2011] 1 All SA 26) at para 12.

<sup>13</sup> On enquiry from the bench, the applicant's counsel indicated that the applicant had incurred costs in respect of the hearing of the special plea in the regional court in the amount of approximately R30 000. It would be reasonable to assume that the applicant's costs in the review application would at least equal that and that the second respondent would have incurred equivalent costs for which the applicant will be liable.

<sup>14</sup> *Commentarius ad Pandectas* at 2.1.18-20. As Mpati AJA noted at para 17 of *Purser*, 'Voet, at 2.1.18, asserts that "once *litis contestatio* has taken place the jurisdiction of him before whom the proceeding was in this way started can no longer be declined by one of the litigants". And further that an objection to jurisdiction "must be put forward before *litis contestatio* at the origin and among the very preliminaries of the suit". (*Gane's*

in general, raise a point of jurisdiction after *litis contestatio*.<sup>15</sup> By failing to take the point before pleadings had closed, the applicant was taken to have submitted to the court's jurisdiction.

[13] It remains to deal with the costs of the application. The litigation at the instance of the applicant in the current matter has been so wholly unmeritorious as to border on the vexatious. It has also unnecessarily delayed the trial of the real issue between the parties and, in consequence, impacted adversely on the administration of justice and the second respondent's human rights under s 34 of the Constitution. All of this, at the instance of the state, is to be strongly deprecated.<sup>16</sup> That the second respondent, who was the only respondent who took an active role in the application, is likely, at least to some degree, to be left out of pocket in consequence of the exceptionally ill-advised course taken by the applicant only adds to the injustice. As a mark of the court's disapproval, costs against the applicant will be awarded on the attorney and client scale.

[14] The application is dismissed with costs on the attorney and client scale.

**A.G. BINNS-WARD**  
**Judge of the High Court**

**TRAVERSO DJP:**

I concur.

**J.M.H. TRAVERSO**  
**Deputy Judge President**

---

translation.) It does not matter, says *Voet* at 2.1.19 (*Gane's* translation), whether or not *litis contestatio* took place in error (of either party) the result is the same'.

<sup>15</sup> Cf. also *Zwelibanzi Utilities (Pty) Ltd Adam Mission Services Centre v TP Electrical Contractors CC* [2011] ZASCA 33 (25 March 2011).

<sup>16</sup> See s 7(2) of the Constitution.