

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2015/17438

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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

.....
SIGNATURE

.....
DATE

In the matter between:

WILLIAM MATLHASA

Applicant

And

MR E. A. MAKDA

First Respondent

RAFH MOTORS CC t/a AUTO WHOLESALERS

Second Respondent

JUDGMENT

MPHAHLELE J

[1] This is an application for review and setting aside of the decision of the 1st

respondent, a magistrate for the district of Vereeniging.

[2] The applicant instituted an action against the 2nd respondent in the regional court, Vereeniging for damages. The matter became defended. On 13 June 2013 and by agreement between the parties, the court granted an application in terms section 35(1) of the Magistrate's Courts Act 32 of 1944 ("the Act") for the transfer of the matter to the district court, Vereeniging. The file contents were then duly transferred from the regional court to the district court as per the court order. The district court refused to allocate a trial date in the matter as it was contended that the matter was not properly transferred to that court. Upon application, the 1st respondent on 18 March 2015 made the following findings:

1. *"There is no provision in our law specifically allowing any matter to be transferred from a regional court to a district court; and*
2. *Since the matter was already instituted in the regional court, the matter cannot be transferred subsequently to a district court according to section 45."*

[3] The question in this review is whether the 1st respondent was correct in its conclusion.

[4] In its judgment, the 1st respondent simply stated the background and the law and thereby failed to apply the legal principles to the merits of this case. It is therefore difficult to appreciate the reasoning for the order granted.

[5] It is trite that magistrate's courts are creatures of statute and are therefore bound by the Act. Section 35 (1) of the Act states as follows:

"[A]n action or proceeding may, with the consent of all the parties thereto, or upon the application of any party thereto, and upon its being made to appear that the trial of such action or proceeding in the court wherein summons has been issued may result in undue expense or inconvenience to such party, be transferred by the court to any other court."

[6] The Act defines 'court' as *"a magistrate's court for any district or for any regional division"*. It is very clear that this definition encompasses both the regional and district

courts. It is further clear that where parties have consented to transfer of the matter there is no need to show that undue expense or inconvenience may result if the action is not transferred. Therefore, in *casu*, the regional court was correct in transferring the matter to the district court based on the consent thereto by the applicant and the 2nd respondent.

[7] In his judgment, the 1st respondent cited the decision of the Supreme Court of Appeal in the matter of **Oosthuizen v Road Accident Fund (258/10) ZASCA 118 (06 July 2010)**. The Oosthuizen decision is distinguishable from the present case as it deals with section 50 of the Act. Section 50 provides for the removal, under certain circumstances, of actions from a Magistrate's Court to the High Court. Clearly the 1st respondent's reliance on the Oosthuizen decision is misplaced.

[8] It is therefore evident that the finding of the 1st respondent that there is no provision in our law specifically allowing any matter to be transferred from the regional court to the district court is unfounded and therefore incorrect.

[9] As intimated before, the 1st respondent's judgment lacks detail; therefore it is unclear as to why he made reference to section 45 of the Act in his judgment. It is apparent from the record of the proceedings that the regional court granted the order in terms of section 35(1) of the Act.

[10] A disconcerting fact is that the applicant's main case is in limbo. The regional court has granted an order for the case to be transferred to the district court; however the 1st respondent has, without good cause, refused the case to be heard in the district court. Further the 1st respondent's order failed to provide a directive on the further handling of the matter. In the result, the applicant is unreasonably being denied the right to be heard.

[11] In the end, I hereby make the following order:

1. That the decision of the 1st respondent made on the 18th of March 2015 is hereby set aside.
2. The applicant is granted leave to proceed with the main case in the district

court, Vereeniging as per the order granted by the regional court on 13 June 2013.

S S MPHAHLELE
JUDGE OF THE HIGH COURT

Appearances:

Counsel for applicant: Mr A. S. Marais

Instructed by: HW Smith & Marais Attorneys

Counsel for the respondent: No appearance

Date of hearing: 25 August 2015

Date of judgment: 4 September 2015