

REPUBLIC OF SOUTH AFRICA



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

- | | |
|-----|----------------------------------|
| (1) | REPORTABLE: YES |
| (2) | OF INTEREST TO OTHER JUDGES: YES |
| (3) | REVISED: YES |

2023/05/23

DATE

A handwritten signature in black ink, appearing to be "P. Mokoena".

SIGNATURE

CASE NO: 2021/50947

In the matter between:

MALVERN TRADING CC

APPLICANT

and

ABSA BANK LTD

RESPONDENT

Neutral citation: *Malvern Trading CC V Absa Bank Ltd* (Case No: 2021/50947

[2023] ZAGPJHC 541 (23 May 2023)

JUDGMENT

Summary: *Close Corporations - Close Corporations Act, Act 69 of 1984 – principle of dual jurisdiction generally applicable to close corporations - close corporation deemed to be resident at its registered office or principal place of business – reasoning in Bisonboard Ltd v K Braun Woodworking Machinery (Pty) Ltd 1991 (1) SA 482 (A) applicable – legal position regarding jurisdiction over close corporations unaffected by debate regarding the effect of the 2008 Companies Act on the dual jurisdiction principle applicable to companies under the 1973 Companies Act - recognition of dual jurisdiction in respect of close corporations a constitutional imperative to protect the right of access to courts guaranteed by section 34 of the Constitution of the Republic of South Africa, 1996.*

Close Corporations Act, Act 69 of 1984, s 25 – Uniform Rule 4(1)(a)(v) - service of process on registered office of close corporation – no merit in contention that absence of close corporation from registered office invalidates otherwise valid service – knowledge of absence irrelevant to validity of service.

Domicilium citandi – choice of domicilium citandi does not in itself exclude other legitimate forms of service of process. Question whether parties can by agreement place limitation on form of service of process not decided.

D MARAIS AJ:

INTRODUCTION

[1] The applicant, Malvern Trading CC (a duly incorporated close corporation), applies in this application for the rescission of an order granted in favour of the respondent by default on 3 March 2022, for the delivery of a Mercedes Benz GLS 400d motor vehicle.

[2] The respondent issued a notice of motion in this court on 26 October 2021 against the applicant in which the return of the motor vehicle was claimed. The respondent's case was that it sold the motor vehicle to the applicant in terms of

an installment agreement, that the applicant failed to pay the agreed installments, and that the agreement was cancelled because the applicant failed to remedy its default after proper demand was made.

[3] The applicant's citation included an allegation that the applicant's registered address was situated at an address in Windsor-West, Johannesburg and that the applicant had chosen an address in Polokwane as a *domicilium citandi*.

[4] It appears from the record that the notice of motion was served at the applicant's alleged registered address in Johannesburg, and that an attempted service at the chosen *domicilium citandi* was unsuccessful due to a problem with the description of the address.

[5] An order by default was granted in this matter after the applicant failed to give notice of intention to oppose.

NO DEFENCE ON THE MERITS OF THE CLAIM

[6] It is admitted by the applicant that it failed to pay the agreed installments and that the applicant was in breach of the agreement. It explained the default, which did not raise any defence, but confirmed that the respondent was justified in cancelling the agreement and issuing the application for the return of the motor vehicle.

BASIS OF THE APPLICATION

[7] The applicant's complaint against the order is in essence that the order was erroneously sought and granted in its absence, and ought to be rescinded in terms of Rule 42(1)(a) of the Uniform Rules of Court.

[8] The grounds relied upon by the applicant for the contention that the order was erroneously sought and granted, were the following:

[8.1] It was alleged that because the applicant was allegedly no longer present at the address where service was effected (its principal place of business allegedly having moved to Polokwane), that service at the registered address was invalid;

[8.2] It was contended that because the applicant chose an address as a *domicilium citandi* (being an address in Polokwane), the respondent was not entitled to serve the application at the applicant's registered address in Johannesburg; and

[8.3] It was contended that as the applicant's principal place of business was allegedly situated in Polokwane, this court did not have jurisdiction over the person of the applicant as the respondent's cause of action arose in Polokwane. In this regard it was contended that the location of the applicant's registered office in Johannesburg did not confer jurisdiction on this court.

THE VALIDITY OF SERVICE ON THE REGISTERED ADDRESS

[9] Section 25(1) of the Close Corporations Act, Act 69 of 1984 (“the CCA”) requires a close corporation to have in the Republic a postal address and an office to which all communications and notices may be addressed, subject to the provisions of subsection (2).

[10] Section 25(2) provides as follows:

“(2) Any-

(a) notice, order, communication or other document which is in terms of this Act required or permitted to be served upon any corporation or member thereof, shall be deemed to have been served if it has been delivered at the registered office, or has been sent by registered post to the registered office or postal address, of the corporation; and

(b) process which is required to be served upon any corporation or member thereof shall, subject to applicable provisions in respect of such service in any law, be served by so delivering or sending it.”

[11] It is, therefore, clear that service by delivery to a close corporation’s registered office in principle constitutes valid service. The fact that the close corporation is no longer present at its registered office, as is alleged by the applicant in this matter, is clearly irrelevant.

[12] There is indeed no requirement in the CCA that the registered address must be the same address as its principal place of business. In this regard, the position

of a close corporation is similar, if not identical, to the position of a company under the Companies Act, Act 61 of 1973, which similarly had no such requirement.

- [13] The only further requirement contained in section 25(2) is that service must be effected otherwise in accordance with the law, which brings the provisions of Rule 4(1)(a)(v) of the Uniform Rules of Court into play. This rule provides that service can be effected:

“in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court’s jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law.”

- [14] The return of service in this matter reveals that the notice of motion was served at the registered address of the applicant, by affixing it to the principal door, as no other manner of service was possible. It was recorded by the sheriff that the premises were vacant. There was obviously no employee of the applicant present who could accept service.

- [15] Consequently, valid service was effected in terms Rule 4(1)(a)(v).

- [16] The applicant’s founding affidavit, however, contains a complaint that the respondent knew that the applicant was no longer present at the registered address (the sheriff having reported this fact in his return) and that the respondent was, therefore, not entitled to serve there.

[17] This complaint has no merit. The *rationale* behind a registered address is indeed that third parties can with ease communicate with a company or corporation or serve process at the registered address. This is in the context of the fact that it is often difficult for an outsider to determine the locality of a company or close corporation's principal place of business. Often, with small companies or close corporations it will be almost impossible to determine where its principal place of business is situated. With large enterprises having various branch offices, the question arises as to which office constitutes the principal place of business, a question which is often difficult for an outsider to answer. For this reason, the legislature has deemed it necessary to determine that service at a company or close corporation's registered address is permitted.

[18] The present matter illustrates the *rationale* behind these provisions. The evidence is that the applicant was disarray for various reasons, including regulatory action having been taken against it and its banking accounts having been closed by various commercial banks. There was a suggestion by the applicant's counsel during argument that the applicant at some point ceased operations. It is common cause that the respondent attempted to serve the application at the applicant's chosen *domicilium citandi* but was unable to do so due to a problem with the address description.

[19] There is no legal principle that service is invalidated because the plaintiff or applicant has knowledge that the defendant or respondent is no longer present at the registered address or a chosen *domicilium citandi*. To contrary, the recognition of service on a chosen *domicilium citandi* or registered address is fundamentally based on the acceptance that such service is valid despite the

absence of the party who is served, and despite knowledge on the part of the plaintiff or applicant that the other party is absent.¹

[20] Consequently, the first complaint raised by the applicant falls to be rejected.

THE VALIDITY OF ALTERNATIVE SERVICE WHERE A *DOMICILIUM CITANDI* WAS CHOSEN

[21] The applicant's second point is that the respondent was constrained to serve the application at the applicant's chosen *domicilium citandi* and that any other manner of service was invalid.

[22] The applicant relied in this regard on the decision of a full bench of this court in *Sheppard v Emmerich* in which it was held that if parties to an agreement agreed to a specific method of service, they will be bound to effect service in the agreed manner.²

[23] The decision in *Sheppard* must be seen in the context of the facts of that matter. It was held that where a defendant chose a *domicilium citandi* the service must be effected at the address described in the chosen *domicilium citandi* and if the choice of an address was accompanied by additional requirements, such requirements must be met. Thus, where the chosen address was the address of a firm of attorneys occupying several floors of a building, but the chosen address indicated that service must be effected on a specific floor, it was held that valid

¹ *Hollard's Estate v Kruger* 1932 TPD 134; *United Building Society v Steinbach* 1942 WLD 3; *Shepard v Emmerich* 2015 (3) SA 309 (GJ) par 6

² *Shepard v Emmerich* (*supra*) par 4

service could only be effected at the stipulated floor. Furthermore, to the extent that the chosen address stipulated that the process must be directed at a specific person, it was held that valid service could only be effected if the service was directed at that person. Mere service at the attorneys' office by affixing it to the main door (situated on another floor) was held to be invalid. The issue was simply whether service in that matter was effected in accordance with the description of the agreed chosen *domicilium citandi*.

[24] Given the context, I am not convinced that the *dictum in* Sheppard was intended to cover a situation where the parties agreed that service at the chosen address would be the *only* permissible method, to the exclusion of other lawful methods. Due to the conclusion that I have reached, it is not necessary to decide whether parties can effectively exclude otherwise valid methods of service in favour of service exclusively on a chosen *domicilium*. This question was not adequately canvassed before me, for the simple reason that the applicant's point was, *simpliciter*, that the mere fact that a *domicilium citandi* was chosen, prevented other forms of service.

[25] The applicant's argument, in its simple form, has no merit. In law, the choice of a *domicilium citandi* does not prevent the use of other lawful methods of service.³

[26] Assuming that parties can by agreement limit the lawful methods of service, the question is whether the agreement *in casu* contains such agreed limitation. The applicant, correctly, did not attempt to develop its argument in this regard, as the

³ See *Sandton Square Finance (Pty) Ltd and Others v Biagi, Bertola and Vasco and Another* 1997 (1) SA 258 (W)

relevant clause in the agreement clearly provided an option to the respondent to serve process at the applicant's chosen *domicilium citandi*, as opposed to an obligation.

[27] In the premises, the attack on the service of process in this matter at the registered address of the respondent is without merit and is rejected.

THE ISSUE OF JURISDICTION

[28] On the facts before the court, it must be accepted that the applicant had no actual place of business in Gauteng at the time legal action commenced in this matter. It is also clear that the respondent's cause of action also arose outside this court's jurisdiction.

[29] Consequently, this application hinges entirely on the question of whether in law the location of a registered address of a close corporation within the court's jurisdiction confers jurisdiction on the court. While there is an abundance of authority on this issue in relation to companies, there appears to be no authority on this issue in relation to close corporations.

[30] The point of departure is the provisions of section 21 of the Superior Courts Act, Act 10 of 2013, which in essence re-enacted section 19 of the Supreme Court Act 59 of 1959. This section provides that a Division of the High Court 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 cognizance.

[31] The central question is whether the applicant is deemed to reside within this court's jurisdiction due to the location of its registered office for purposes of section 21 of the Superior Courts Act.

[32] In this regard I shall embark upon an exercise similar to what was done in *Dairy Board v John T Rennie & Co (Pty) Ltd*⁴ in relation to the 1973 Companies Act and analyse the relevant provisions of the CCA. I am mindful of the fact that the reasoning in this judgment was only partially followed by the then Appellate Division in *Bisonboard Ltd v K Braun Woodworking Machinery (Pty) Ltd*.⁵ In this regard I will avoid the English Law notion that jurisdiction is fixed by the valid service of legal process at a location within the jurisdiction of the relevant court, a notion that it not part of our law.

[33] The importance of the provisions of the CCA is that they may shed light on the nature of the connection between a close corporation and its registered office, which may or may not support the conclusion that a close corporation is deemed to be resident at its registered office.

[34] The preamble to the CCA states that the purpose of the Act is to provide for the formation, registration, incorporation, management, control and liquidation of close corporations; and for matters connected therewith. The purpose of the Act is important, as courts are enjoined to interpret legislation purposively, in

⁴ *Dairy Board v John T Rennie & Co (Pty) Ltd* 1976 (3) SA 768 (W) 771B

⁵ *Bisonboard Ltd v K Braun Woodworking Machinery (Pty) Ltd* 1991 (1) SA 482 (A)

accordance with the following principles, as set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁶:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.”

[35] As indicated above, section 25 of the CCA makes provision for the registration of a registered office for a Close Corporation, at which address communication and notices may be sent or delivered, and where process can be served. This section creates a mechanism whereby the outside world can have certainty

⁶ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) 603 to 604

regarding the official whereabouts of a corporation, where the corporation can be validly communicated with and even where legal action can be commenced.

[36] The legislature thereby created a mechanism whereby a corporation is deemed to be present at its place of business. The phrase “deemed to be present” is used in a loose sense, as I am mindful that the use of the concept of “being present” in section 19 of the Supreme Court Act and section 21 of the Superior Courts Act has a history in jurisprudence and is subject to further analysis, which need not be undertaken in this matter. However, the clear intention on the part of the legislature that a corporation must be deemed to be present at its registered office is an important consideration, which supports the legal fiction that a corporation must be deemed to reside at its registered office.

[37] Section 15(3) of the CCA provides that upon failure to register an amended founding statement, the Registrar may send a notice to comply by registered mail to the corporation, and may upon failure to comply, impose a monetary penalty by written notice on the corporation. Importantly section 13(3)(d) gives the Registrar the right to transmit the penalty notice to the clerk of the magistrates’ court in which the corporation’s registered office is situated, who must record it. Such recordal has the effect of a civil judgment against the corporation. The CCA thereby provides territorial jurisdiction to the magistrates’ court where its registered office is situated in this situation.

[38] Section 15A provides that a corporation must file an annual return, confirming the information a corporation is obliged to provide in terms of the Act, which must be kept at the registered office and must be open for inspection in accordance

with section 16. Section 16 provides that a copy of the corporation's founding statement and proof of registration, which is open for inspection to the public during business hours, must be kept at its registered office.

[39] In terms of section 44(2) of the CCA an association agreement, and in terms of section 44(3) a minute book in which resolutions of members are recorded, must be kept at the registered office. The same applies, in terms of section 49(4), to any order issued in terms of that section (providing remedies for unfairly prejudicial conduct). Section 57(4) obliges a corporation to keep its accounting records at either its place of business, or registered office.

[40] These mandatory provisions enjoin a corporation to house those instruments, which are fundamental to its existence and functioning, being the registered founding statement, the minutes of members' resolutions and accounting records (the latter being more flexible) at the corporations registered office. I am of the view that this is also strong support for the notion of deemed residence at the registered office.

[41] Section 69 of the CCA provides that if a demand for payment was delivered to a close corporation's registered office, the close corporation would upon failure to pay, be deemed to be unable to pay its debts. This can support an application for the liquidation of a close corporation.

[42] In my view the provisions of the CCA regarding the powers of individual members also have an important bearing on the issue at hand. Each member of a close corporation in principle has the entitlement to take part in the management of the

corporation, has equal rights regarding the management of the corporation and has equal rights to represent the corporation in the carrying on of the business.⁷

[43] The notion of central control in the case of a close corporation is, therefore, considerably eroded, with the result that it may be difficult, if not impossible, for an outsider to determine where the corporation's central control and principal place of business is situated. This situation may be compounded where the members are at loggerheads with each other, which is not uncommon.

[44] In my view the statutory lessening of central control in the case of close corporations is an important consideration in deeming a close corporation to be resident at its registered office.

[45] Section 7 of the CCA provides that, *for the purpose of that Act*, any High Court and any magistrates' court within whose area of jurisdiction the registered office or main place of business of a close corporation is situated, shall have jurisdiction.

[46] On a literal interpretation, section 7 seemingly only confers jurisdiction on a court *for purposes of the CCA*, in other words, in matters or remedies provided for or regulated by the Act. The section does not purport to confer territorial jurisdiction on a relevant court generally in all causes of action.

[47] This court is, however, obliged to interpret section 7 purposively in accordance with the principles set out above. The language used in section 7 seems to

⁷ See section 46 of the CCA.

indicate a limitation to the matters in which a court is granted territorial jurisdiction. In the process, the legislature conferred territorial jurisdiction on the relevant court over a close corporation in a variety of matters of far-reaching consequence, not the least in applications for the liquidation of close corporations. Clearly the legislature had intended a close connection between a close corporation and its registered office.

[48] Due to the conclusion I have reached in this matter, it is not necessary to decide whether on a proper interpretation of section 7 of the CCA, despite the language used in the section, it confers jurisdiction on the High Court and magistrates' court within whose area a close corporation's registered office is situated *generally*. However, the closeness of the connection created by this section is an important consideration to be brought into account.

[49] The authors of *Erasmus: Superior Court Practice*⁸ is of the opinion that in this regard the same principles apply to close corporations that applied to companies prior to the commencement of the Companies Act, 2008.

[50] The question in this matter is identical to the issue that had to be decided by the then Appellate Division in *Bisonboard Ltd v K Braun Woodworking Machinery (Pty) Ltd*⁹ in relation to companies. In that matter the Appellate Division held that for jurisdictional purposes a company is deemed to have dual residency at its registered office and place of business, where these locations differ. This gave

⁸ See the commentary under section 21 of the Superior Courts Act.

⁹ *Bisonboard Ltd v K Braun Woodworking Machinery (Pty) Ltd* 1991 (1) SA 482 (A)

rise to the dual jurisdiction principle, with different courts having jurisdiction over a company at the same time.

[51] The notion of dual jurisdiction became the subject matter of a judicial debate after the promulgation of the 2008 Companies Act.¹⁰ On the one hand, some judgments held that the 2008 Act abolished the dual jurisdiction principle and held that only the court where the registered office of the company is situated retained jurisdiction. Other judgments retained the dual jurisdiction principle.

[52] In my view the question of jurisdiction over close corporations is entirely unaffected by the debate regarding the effect of the 2008 Companies Act on the jurisdiction over companies. In *Cooper NO and others v Market Fisheries (Oudtshoorn) CC*¹¹ the provisions of the 2008 Companies Act were peripherally mentioned in connection with the dual jurisdiction principle in an application for the liquidation of a close corporation.¹² It is important to note that this case did not involve the dual jurisdiction issue, as both the registered address and the principal place of business were situated within the court's jurisdiction. The issue that was argued was whether the statutory demand provided for in section 69 of the CCA could only have been delivered to the close corporation's registered office, or also had to be delivered to the principal place of business. The learned judge succinctly and, with respect, correctly rejected the argument that the

¹⁰ See *Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf Country Estate (Pty) Ltd (Nedbank Ltd Intervening)* 2013 (1) SA 191 (WCC), *Burmeister and Another v Spitskop Village Properties and Others* [2015] ZAGPPHC 1094 (21/09/2015), *Lonsdale Commercial Corporation v Kimberley West Diamond Mining Corporation* [2013] ZANCHC 11 (17/5/2013), *Wild & Marr (Pty) Ltd v Intratek Properties (Pty) Ltd* 2019 (5) SA 310 (GJ).

¹¹ *Cooper NO and others v Market Fisheries (Oudtshoorn) CC* 2023 JDR 0790 (WCC)

¹² See par 20.

demand of necessity also had to be delivered to the principal place of business, relying on section 69 and relevant authority. *Cadit quaestio*. However, it seems that the respondent unjustifiably drew the court into a dual jurisdiction inquiry, to which the court responded by way of an additional opinion, which was clearly *obiter*. The court ultimately found that the dual jurisdiction principle applied to applications for the liquidation of close corporations, due to the fact that applications for liquidation of close corporations are still regulated by the relevant liquidation provisions of the 1973 Companies Act.¹³ Whilst I am of the view that the *obiter* finding that dual jurisdiction is applicable to close corporations in liquidation proceedings was correct, I am not convinced that that dual jurisdiction is derived from the applicability of the liquidation provisions in the 1973 Companies Act to close corporations. Liquidation matters are simply regulated by section 7 of the CCA which expressly provides for dual jurisdiction. This section was not referred to by the learned judge, perhaps because the matter did not involve the issue of dual jurisdiction as such, but rather the validity of the demand preceding the liquidation application. Importantly, the question whether dual jurisdiction applies to close corporations due to the application of the 1973 Companies Act does not assist in resolving the issue in this matter, which is not a liquidation application.

[53] The learned judge then made the following remark:¹⁴

“It is also my respectful view, that sight should not be lost on the objectives of the New 2008 Act with reference to the registered office of a company and

¹³ See par 19. The reasoning being that dual jurisdiction applied to companies under the 1973 Companies Act.

¹⁴ Par 20.

more specifically to pre-existing companies that have previously conveniently chosen their registered address as that of their auditors for example, and which is not the same address as that of the administrative office of the company. In my view, it is desirable that where such addresses are different, that companies change their registered address in terms of section 23(3) of the 2008 Companies Act so that this would give certainty to transacting third parties of the company.”

[54] In the context of the real issue at hand, it would appear to me that this remark was a side-remark which was unconnected with both the *ratio decidendi* and the *obiter dictum* of the matter. The court merely implored companies to ensure that they complied with section 23(3) of the 2008 Companies Act. The remark does not seem to be relevant to close corporations.

[55] I am of the view that the provisions of the 2008 Companies Act relating to the registered office of a company¹⁵ (which are clearly inconsistent with the provisions of the CCA¹⁶) are not relevant to the present enquiry.

[56] In the premises I agree with the authors of *Erasmus* that the dual jurisdiction principle that applied to companies prior of the 2008 Companies Act also apply to close corporations. Additionally, I find that the legal position regarding close corporations is unaffected by the promulgation of the 2008 Companies Act.

¹⁵ Section 23(3).

¹⁶ Section 25.

[57] In any event, in the present matter the dual jurisdiction debate does not avail the applicant, as on both interpretations of the effect of the 2008 Companies Act, the location of the registered office confers jurisdiction on the relevant court.

CONSTITUTIONAL CONSIDERATIONS

[58] I am of the view that there is also a constitutional consideration relevant to this issue. As this was not raised or argued before me, I shall deal with this aspect briefly.

[59] In terms of section 34 of the Constitution¹⁷ litigants are guaranteed access to the courts in the resolution of disputes. The question of the court's jurisdiction and the process initiating the *lis* (including the manner of service of process) are fundamental to a litigant's access to the courts. The facts of the present matter illustrate that if the respondent had to exclusively rely on the location of the applicant-close corporation's principal place of business to determine which court has jurisdiction, it may well have been denied access to the courts entirely. As indicated above, the applicant was dysfunctional and may well not have had a place of business at the time legal action commenced herein.

[60] It would be a startling consequence if a plaintiff or applicant would effectively be non-suited because it is unable, through no fault on its part, to discern the principal place of business of a defendant or respondent. The situation can be troublesome where a corporation has more than one place of business, and the

¹⁷ The Constitution of the Republic of South Africa, 1996

plaintiff or applicant must divine which of these places is the “principal place of business” of the corporation.

[61] As indicated above, each member of a close corporation in principle has the entitlement to take part in the management of the corporation, has equal rights regarding the management of the corporation and has equal rights to represent the corporation in the carrying on of the business. This eroded the notion of central control in the case of a close corporation, making it even more difficult to determine the location of the corporation’s principal place of business.

[62] In my view, to guarantee the access to court a litigant is entitled to by virtue of section 34 of the Constitution, it is imperative that a plaintiff or applicant should be able to rely on the dual jurisdiction principle in all matters involving close corporations.

CONCLUSION ON THE ISSUE OF JURISDICTION

[63] Consequently, I find that this court had jurisdiction to grant the order in the present matter.

COSTS

[64] The applicant has agreed to pay costs on the attorney and client scale.

[65] The applicant clearly has no defence to the respondent’s claim for delivery of the motor vehicle. Upon learning of the granting of the order for delivery in this

matter, the applicant failed to deliver the vehicle to the respondent as he was contractually obliged to do. Instead, the applicant brought the present application for rescission of the order.

[66] This application is clearly a reprehensible delaying tactic, justifying a special costs order.

ORDER

[67] In the premises I make the following order:

“The application is dismissed with costs on the attorney and client scale.”



**DAWID MARAIS
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG
23 MAY 2023**

This judgment was handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date of this judgment is deemed to be 23 May 2023.

Appearances:

Appearance for Applicants:

ADV T M P POOE

Instructed by:

K KGOPE ATTORNEYS

Appearance for Respondent:

ADV C DENISHAUD

Instructed by:

JAY MOTHIBI INCORPORATED

Date of hearing:

9 May 2023

Date of Judgment:

23 May 2023