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

CASE NO:17025/2014

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES:NO

REVISED:YES

28 February 2023

In the matter between:

V [....]:H [....]

APPLICANT

And

V [....]: C [....]

FIRST RESPONDENT

JUDGMENT

ALLY AJ

[1] This is an application for the payment of an amount of R885 000-00 alleged to be owed in terms of a settlement agreement in a divorce action granted by this Court.

[2] The application is opposed by the Respondent.

[3] The parties were represented by Adv. Harms for the Applicant and Adv. J.C. Klopper for the Respondent.

[4] The Applicant contends that the abovementioned amount, which forms part of a settlement agreement, is an amount which the Respondent is obliged to pay in terms of the agreement.

[5] The Respondent raises various defences, the first of which is the jurisdiction of this Court to hear this application.

[6] As I understand this submission, since 25 January 2016, this Court does not have jurisdiction to hear this matter because the Respondent does not reside within the jurisdiction of the Court but resides within another Province. On this ground alone, the Respondent submits that the application be dismissed with costs.

[7] Secondly, the Respondent submits that the settlement agreement was compromised by a final agreement round about 16 October 2015 and the obligation was finally set-off in totality against the loss suffered by the Respondent.

[8] Thirdly, the Respondent submits that this case is a clear case wherein disputes of fact exist and cannot be decided on the papers before the Court.

[9] The first issue that needs adjudication is whether the Respondent is correct regarding the first issue of jurisdiction, namely, that this Court does not have jurisdiction to hear the matter.

[10] Section 21 of the Superior Courts Act¹, hereinafter referred to as 'the Act', provides as follows:

*“(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. . .
 . . . [my emphasis]*

¹ Act 10 of 2013

(2) A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as 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.
. . . .”

[11] Section 50 (2) of ‘the Act’ provides:

“Notwithstanding section 6(1), the Gauteng Division shall also function as the Limpopo and Mpumalanga Divisions, respectively, until a notice published in terms of section 6(3) in respect of those Divisions comes into operation.”

[12] It is apposite at this point to also quote the following regarding the Court’s inherent jurisdiction:

“... apart from powers specifically conferred by statutory enactments and subject to any deprivations of power by the same source, a Supreme Court can entertain a claim or give any order which, at common law, it would be entitled to entertain or give. It is to that reservoir of power that reference is made where in various judgments Courts have spoken of the inherent power of the Supreme Court... The inherent power is not merely one derived from the need to make the court’s order effective, and to control its own procedure, but to hold the scales of justice where no specific law provides directly for a given situation” Ex Parte Millsite Investments Co (Pty) Ltd. 1965(2) SA 582(T) at 585 G-H

[13] The Applicant submits that the Respondent has misunderstood the law relating to jurisdiction and specifically submit that the obligation arising from the settlement agreement founds the jurisdiction of this Court in respect of this case.

[14] It must be stated that this must be correct, namely, that a Court is vested with jurisdiction in respect of causes of action arising within its jurisdiction. I agree with Counsel for the Applicant that the cause of action arising in this application founds

the jurisdiction of this Court. The settlement agreement was made an order of Court on 9 May 2014² and this Court is entitled to hear any action or application arising from such Order of Court.

[15] In respect of the second issue raised by the Respondent regarding set-off and compromise as a defence, this issue, in my view cannot be decided on the papers. The Applicant has not requested that this matter be referred for oral evidence, however, a Court may *mero motu* decide to refer a particular matter for oral evidence³.

[16] Counsel for the Respondent submitted that the Applicant was made aware of the factual disputes in this matter and nevertheless continued with this application. In circumstances such as this, Counsel for the Respondent submitted that the Applicant's application should be dismissed especially because she did not request a referral for oral evidence.

[17] Whilst that is true, I am of the view that this matter demands further ventilation and that it is in the interest of justice that the matter be referred to oral evidence.

[18] In respect of costs, I am of the view that the costs should be reserved for adjudication by the Court hearing oral evidence and deciding on the matter.

[19] Accordingly, the following Order shall issue;

- a). this matter is referred to oral evidence for the determination of whether the Respondent is obligated to pay the amount claimed in terms of the settlement agreement made an order of court on 9 May 2014;
- b). that the founding affidavit read with the replying affidavit serve as a combined summons and the answering affidavit serve as a plea;

² Caselines: 01-8

³ Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) @ 1165

Oertel NO v Pieterse & Others 1954 (3) SA 364 (O) @ 368

c). the costs of this application are reserved for determination by the Court hearing oral evidence.

G.ALLY
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG
Electronically submitted therefore unsigned

Date of virtual hearing: 25 October 2022

Date of judgment: 28 February 2023

Appearances:

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