

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 047351/20

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

22.06.23

In the matter between:

KGOMOTSO KUMBE

Applicant

and

RUSTENBURG MUNICIPAL COUNCIL

1st Respondent

RUSTENBURG LOCAL MUNICIPALITY

2nd Respondent

KOKETSO MOGOMOTSI N.O (*Council Speaker*)

3rd Respondent

FRANS MABOKELA N.O(*Municipal Manager*)

4th Respondent

SHEILA MABALE-HUMA N.O (*Executive Mayor*)

5th Respondent

RUSTENBURG WATER SERVICES TRUST

6th Respondent

MOKOKA EDWIN YOU N.O (*Trustee*)

7th Respondent

ESMARI SCHEEPERS N.O (*Trustee*)

8th Respondent

BRIAN KAGISO LEBETHE N.O (*Trustee*)

9th Respondent

MARKS KABELO RAPOO N.O (<i>Trustee</i>)	10th Respondent
PRISCILLAR NGOKWANA MAYEZA N.O (<i>Trustee</i>)	11th Respondent
THE MASTER OF THE HIGH COURT	12th Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL	13th Respondent

JUDGMENT

MOGALE, AJ

INTRODUCTION

1. The applicant approaches this court for an order reviewing and setting aside the decision of the Rustenburg Municipal Council (the 1st respondent) for not appointing him as trustee of the Rustenburg Water Services Trust (the 6th respondent). The applicant further seeks relief that the appointment of the appointed persons be reviewed and set aside, as well as all that such trustees did after they were appointed in September 2022.

POINT IN LIMINE

2. The respondents opposing this application have raised a point in limine that this court lacks jurisdiction to determine the review application.
3. Relying on the provisions of section 21 of the Superior Court Act 10 of 2013, they contended that the majority of the respondents, except the twelfth respondent, operate their businesses within the boundaries of the North West Province. The applicant also pleaded that he is employed as Acting Chief

Financial Officer in the JB Marks Local Municipality in Potchefstroom, North West Province.

4. The respondents, therefore, argued that these proceedings should have been brought before the North West Division of High Court, Mahikeng, which has jurisdiction over the matter.
5. In reply to the point in limine raised, the applicant argued that the respondents had raised the same issue in the urgent application instituted before this court. However, the matter was struck off from the roll for lack of urgency. Therefore, this point in law raised is just an abuse of the court processes, so argued the applicant. The applicant further maintains that this court has exclusive jurisdiction to adjudicate these proceedings.

MERITS

6. The 1st to the 5th respondents' argued that the applicant could not rely on the basis that the issue of jurisdiction was raised in the urgent application, in that the urgent court satisfied itself only with issues pertaining to Rule 6.
7. The 1st respondent decided not to appoint the applicant. Therefore, the court that has jurisdiction to review the decision taken by the 1st respondent is the North-West High Court. The applicant could also not rely on the fact that jurisdiction is vested in these courts in terms of PAJA, the North-West High Court is the court with jurisdiction to adjudicate the matter. The respondents also argued that except for the 12th respondent, all the respondents, including the applicant, reside in the North West Province.
8. It was emphasized that the 12th respondent never appointed the Trustees but only authorized the appointment made by the 1st respondent. In that regard, it

was submitted that the 1st respondent was the one who excluded the applicant from the appointment.

9. The appointments of Trustees were conducted in Rustenburg. The 6th, 8th-11th respondents also maintained that this Court does not have jurisdiction to adjudicate this matter. The applicant is not satisfied with the decisions taken by the 1st respondent and seeks to review the proceedings; North-West High Court has jurisdiction to hear the matter. The applicant should have followed the 1st respondent's area of jurisdiction, which is the North-West High Court, so that any order made by that court be carried out within the scope of that court's jurisdiction but has failed to do so.
10. The respondents argued that none of the Trustees resided or worked within this court's jurisdiction, nor did they choose a *domicilium citandi* within this Court's jurisdiction. Regarding the Trust Deed, the Trust records are kept in Pretoria, and the Trust Deed was partially signed in the geographical area of this court. The 6th respondent abandoned his previous address many years ago, [...] , Meyerspark, Pretoria, 0184. Therefore, the respondents submitted that the applicant cannot argue that the Trust is still within the jurisdiction of this Court.
11. The applicant disputes the averments made by the respondents about the role of the 12th respondent in appointing the Trustees. It was argued that the 1st respondent recommended the Trustees to be appointed. Then the 12th respondent had to approve and set the Trustees in Pretoria, Gauteng, in the geographical jurisdiction of this court. That process occurred in Rustenburg, North-West, Jurisdiction of Mahikeng High Court.

THE LAW

12. The provisions of section 21 of the Superior Court Act 10 of 2013 read as follows:

"(1) A division has Jurisdiction over all persons residing or being in and about all causes arising and of all offenses triable within its area of Jurisdiction and all other matters of which it may, according to the law, take cognizance and has power,

- a. To hear and determine appeals from all the Magistrates' courts within its area of jurisdiction.*
- b. To review the proceedings of all such courts;*
- c. In its discretion, and at the instance of any interested person, to enquire into and determine any existence, future, or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination*

(2) A Division also has jurisdiction over any person residing or being outside an area of jurisdiction who is joined as a party to any cause about which such court has jurisdiction or who, in terms of a third party notice, becomes a party to such a cause, if said person resides or is within the area of jurisdiction of any other Division.'

13. In *Snyders v De Jager* (2015) ZASCA 137; 2016 (5) SA 218 (SCA) para 8, the court held as follows:

'First, this court does not have original jurisdiction. Its jurisdiction is determined by the Constitution and by the statute. Its inherent power to protect and regulate its process does not extend to the assumption of jurisdiction not conferred upon it by statute.'

14. It is trite that an in-limine hearing must occur before the merits of the central issue in dispute can be heard. This hearing addresses any queries or technical legal points the parties raise before getting into the facts.

15. The provisions of section 46 of the Magistrate Court Act, 32 of 1944 provide that the court shall have jurisdiction to determine any action or proceedings otherwise beyond the jurisdiction if the parties consent in writing to it: Provided that no other court than a court having jurisdiction under section 28 shall, except where such consent is explicitly given concerning particular proceedings already instituted or about to be instituted in such court, have jurisdiction in any such matter. This approach does not apply to these proceedings.

EVALUATION

16. In determining the issue of jurisdiction, this court has to consider whether the Trust (6th respondent) and the Master of the High Court (the 12th respondent) are within this Court's jurisdiction. It is common cause that there is no Rule that the majority of the respondents determine jurisdiction.

17. In determining the role of the 12th respondent about the decisions taken by the 1st respondent, Annexure MM4, which is an Agenda of Special Council held on 01 September 2022, the following was recommended:

(1). That Council recommend four Trustees to the Master of the High Court,

(2). Upon authorization by the Master, a report must be served before the Council to condone the same.

18. I find that the issue of roles was clearly explained by the 1st-5th respondents in their supplementary heads of arguments, wherein it was stated as follows:

*'it is of utmost importance to appreciate that the first respondent can **merely** make a recommendation to the Master regarding the appointment of Trustees. The*

appointment is made by the Master of the High Court, which had been joined to these proceedings as the 12th respondent.' (Emphasis added).

19. The 1st - 5th respondents' answering affidavit, AD Paragraph 11.2 states the following:

'Even worse, the Master appointed the 7th -11th respondents as far back as 19 September 2022, as evident from Annexure FTM6'.

20. Based on these concessions by the 1st - 5th respondents, I find that the Master is situated in Pretoria. He approves the recommendations made by the 1st respondent and further appoints the Trustees (7th -11th respondents).

21. The 6th, 8th -11th respondents, council Advocate Stone, referred this court to the **Text Book Trust Law in South Africa by D Geach et al.**, where it was dealt with the appointment of the trustees and the right to a court review of an appointment in terms of section 23. I find that the pages referred to do not deal with the issues raised in limine.

22. The 6th respondent, in their pleadings and Rule 6(11) application, indicated that the applicants are aware of the Trust address, [...], Meyerspark, Pretoria. Still, the application was not served at this address. The applicant argued that the Trust is held within the geographical area of this court jurisdiction.

23. The 6th respondent should have filed the addendum disclosing their new domicillium citandi. The office of the Mayor (the 5th Respondent) accepted the services on behalf of the Trust at this address, [...], Rustenburg, North-West Province. In Court, the 6th respondent submitted that the Trust domicillium

citandi is[...], Rustenburg, North-West, and the trust records are in terms of the Trust Deed kept in, and the Trust Deed was partially signed in the geographical area of this court. I find that the new Trust address was not pleaded by the respondents in their papers.

CONCLUSION

24. Section 21(2) of the Superior Court Act also provides that a Division also has jurisdiction over any person residing or being outside an area of jurisdiction who is joined as a 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.

25. In light of the above, it is my finding that the Master of the High Court is in Pretoria, and the Trust address is also in Pretoria. Pretoria High Court has jurisdiction over the 1st respondent who is residing outside the area of its Jurisdiction as it was joined when the Master of the High Court Pretoria was given the powers to appoint based on the decision taken by the 1st respondent in a different jurisdiction and the Trust is in Pretoria. As a result, this Court has jurisdiction to adjudicate decisions taken by the 1st respondent in another jurisdiction, North-West Province.

26. The point in limine raised is dismissed, and the parties must approach the office of the DJP of this Division for allocation.

ORDER

27. As a result, an order is made in the following terms:

a. The point in limine is dismissed with costs.

K MOGALE,
ACTING JUDGE OF THE GAUTENG
DIVISION OF HIGH COURT,
PRETORIA.

Date of hearing : 08 MAY 2023

Date of judgment: 22 MAY 2023

Appearances

For the Applicant : Advocate Muza

Instructed by : Mabapa Attorneys Inc

For 1st – 5th Respondents : Advocate Mthombeni

Instructed by : Setshedi, Makgale & Matlapeng Inc

For 6th, 8th-11th Respondents : Advocate Stone

Instructed by : Len Dekker Attorneys