

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, MTHATHA
CASE NO 45/2012**

In the matter between:

NKOSINATHI REGINALD MAQUBA **PLAINTIFF**

And

MINISTER OF POLICE **DEFENDANT**

JUDGEMENT

MGXAJI AJ

[1] This matter comes before the court for adjudication only of the special plea filed on behalf of the defendant to the plaintiff's particulars of claim. The plaintiff instituted by way of summons issued on the 12 January 2012 these proceedings foreshadowing his claim therein as follows:

“

3.

On or about July 2009 plaintiff's salary was stopped or terminated at the instance of the defendant or his department and was re-instated on the 12th August 2010. The defendant was not in receipt of his salary for a period of thirteen (13) months. The plaintiff was receiving his salary through his bank account opened at Butterworth.

4.

At the time the plaintiff's salary was stopped or terminated, the plaintiff was having a salary notch of R238 872.00 with a gross salary of R20406.00 and net salary of R13505.47.

5.

On 12th August 2010 and upon re-instatement of plaintiff's salary, the defendant or his department effected a back pay in the gross salary of R94021.76 and a net salary of R64314.22 and such payment was effected in the plaintiff's bank account opened in Butterworth.

6.

The plaintiff was short paid by the defendant or his department in the gross salary an amount of R171256.24 and in the net salary of R111256.89. The defendant is therefore liable in the aforesaid amounts.

7.

The administrative action of the defendant or his department and its consequences are experienced and having effect at Butterworth where the plaintiff is staying. This honourable court has jurisdiction to entertain this matter.”

[3] The defendant filed its amended special plea dated 22nd day September 2015 as follows:

“

1.

SPECIAL PLEA

1.1 The defendant pleads that this Honourable court lacks jurisdiction on the ground that the plaintiff is in the employ of the South African Police Services (“the services”)

stationed at Zwelitsha and at the time of institution of these proceedings he was stationed at Zwelitsha, which is under the jurisdiction of the Bisho High Court, the Bisho High Court has jurisdiction to entertain the above matter;

- 1.2 The alleged termination and/or discontinuing of plaintiff's salary took place in Zwelitsha where he is stationed; "the plaintiff did not reside in, and was not, in the area of jurisdiction of this court within the meaning of section 19(1) of the Supreme Court Act, 1959".*
- 1.3 Wherefore the defendant prays for dismissal of plaintiff's claim with costs."*

[4] The only question to be determined relates to the defendant's contention that the plaintiff at the date of the alleged withholding of his salary was stationed in Zwelitsha. Mr Singqumba, on behalf of the defendant, argued that it is not where the plaintiff resided that should be the determining factor in this matter but where the defendant was stationed and the court within whose area of jurisdiction he was so stationed at the time that must be considered.

[4] Mr Zono appearing on behalf of the plaintiff argued that the plaintiff receives his salary payment through his bank account held in Butterworth and even at the time of the breach of his right he had been paid his salary through the same branch. The nature of the relief and where the breach occurred vests this court with territorial jurisdiction over this matter, so submitted Mr Zono.

[5] The matter was argued on the basis of the pleadings filed with both Mr Zono and Mr Singqumba agreeing on the employment contractual basis of the parties' relationship and the fact of the plaintiff's salary termination or withholding by the defendant's personnel. From the pleadings the plaintiff's salary which had been withheld or terminated was subsequently paid but underpaid. It is this underpayment that gave rise to these proceedings against the defendant.

[6] The defendant in these proceedings is the Minister of the Police and therefore a Minister of the State as defined in Section 1 of Act 20 of 1957 which

provides: “Any claim against the State which would, if that claim had arisen against a person, be the ground of an action in any competent court, shall be cognisable by such court, whether the claim arises out of any contract lawfully entered into on behalf of the State or out of any wrong committed by any servant of the State acting in his capacity and within the scope of his authority as such servant”.

[7] In **RAMPHELE V MINISTER OF POLICE**¹ it was held to be the position that the essence of what the above quoted section² means and conveys as its correct interpretation is that “any competent court” means any court competent as to the subject matter the intention recognised being the substitution of the State for the resident subject thereby eliminating ‘residence’ in so far as the State is concerned as an element of jurisdiction.

[8] From the foregoing it is remarkable that if the breach in the case of a contract as in this matter before me or a delictual wrong took place within the area of the jurisdiction of any Division of the High Court such Division would have jurisdiction against the State.

[9] It follows that a Court can only be said to have jurisdiction in a matter if such Court has the power not only of taking cognisance of the suit but also of giving effect to its judgement. This in my view is the alternative apt expression of the definitive criteria for determining jurisdiction in terms of Section 21(1) of the Superior Courts Act 10 of 2013 as being dependent on the nature of the proceedings and the nature of the relief sought. In some cases jurisdiction would depend on both aspects as could be gleaned from the pleadings in those proceedings.

¹ 1979 (4) SA 902

² Section 1 of Act 20 of 1957

[10] According to **ERASMUS SUPERIOR COURT PRACTICE**³, the term jurisdiction in Section 21 (1) of the Superior Courts Act 10 of 2013 as used therein means *‘the power vested in a Division of the High Court to hear, adjudicate upon, determine and dispose of the disputes between parties in a matter brought before it.’* In this matter indisputable the plaintiff receives his salary through his bank account in Butterworth and any breach by the defendant which gave rise to these proceedings was realisable and it prejudicially affected him in Butterworth being where his right to receive his salary vests.

[11] Contrary to the submissions by Mr Singqumba during the hearing of this matter that only the High Court, Bisho has jurisdiction over this matter because the plaintiff was stationed in Zwelitsha, King Williams Town, it seems to me the pertinent issue is whether this court has the power to give an effective judgement as an integral aspect of the *rationes jurisdictionis* for this Division of the High Court against the defendant as the State which committed the contractual breach of terminating or withholding or underpaying the plaintiff’s salary as the subject matter of these proceedings. It is noteworthy that the defendant paid the plaintiff but less than what the plaintiff alleges was due to him.

[12] In view of the contractual nature of the issue on which these proceedings by the plaintiff are based and the relief the plaintiff seeks of having declared unlawful the defendant’s underpayment of his salary for the period during which his salary had been withheld by the defendant, and an order directing the payment of such salary shortage, this court, in my view, has jurisdiction on both grounds. See: **ZOKUFA V COMPUSCAN**⁴ where it was held *“Generally, a breach of a right occurs at the place where the right vests. The act of setting the breach in motion may occur somewhere else, but the breach usually takes place*

³ ERASMUS SUPERIOR COURT PRACTICE volume 1, 3rd edition,

⁴ 2011 (1) SA 272 at 280 paragraph 44

where the rights vests". This legal position finds application on the facts before me.

[13] It seems in this matter the principle of effectiveness remains cardinal and decisive in the sense that not only this Court has the power to grant the order declaring unlawful the withholding of the plaintiff's salary and directing also that the underpayment that subsequently resulted when the withheld salary was paid be settled, this Court can as well ensure an effective enforcement within its area of jurisdiction for such payment of the shortage by which the plaintiff was underpaid by the defendant. See: **ESTATE AGENTS BOARD v LEK**⁵.

[14] Needless to mention that section 19(1) of the Supreme Court Act 59 of 1959 was still applicable when the ESTATE AGENTS BOARD case was decided until its repeal by the Superior Courts Act 10 of 2013. Section 21 of the Superior Courts Act 10 of 2013 remains the same as the provisions of Section 19 of the repealed Act 59 of 1959 and the applicable legal considerations on jurisdiction from the case law are thus far still undeveloped or unchanged.

[15] It is remarkable that in this matter one is dealing with the State as the defendant unlike in the case of Zokufa quoted above as well as the Estate Agents Board case both in which the issue of the applicant being or not an incola of the Division of the Court though of the republic of South Africa or the respondent being or not a peregrinus became central in the Court's considerations of the issue of jurisdiction in those matters. As indicated above Section 1 of the State Liability Act 20 of 1957 eliminated residence as an element of jurisdiction and the effect thereof is that the State has since been substituted for the resident subject in legal proceedings. See: **HAKO v MINISTER OF SAFETY AND SECURITY AND ANOTHER**⁶.

⁵ 1979 (3) SA 1048 at 1063F-H

⁶ 1996 (2) SA 891 at 895E

[16] Accordingly the breach by the defendant having been committed where the plaintiff's right to his salary was denied in Butterworth and also being where the prejudicial act of denying his salary adversely affected him, in my view the jurisdictional connecting factors exist for this court to adjudicate this matter.

[17] From the pleadings and during the hearing of this matter there has not been any counter argument that the withheld salary, subsequently settled though less than what was due, was paid anywhere else other than in Butterworth where the plaintiff contends the right to it vests and the breach of such right by the defendant has occurred.

[18] On these reasons I am fortified in my view that this Court has jurisdiction given the subject matter of these proceedings as also the nature of the relief and its effectiveness with the defendant being the State.

[19] I therefore make the following order:

1. That the Defendant's Special Plea is dismissed.
2. The Defendant is ordered to pay costs relating to the determination of the Special Plea.

By Court

MGXAJI AJ

ACTING JUDGE OF THE HIGH COURT

MTHATHA

DATE HEARD:

22 JUNE 2016

JUDGMENT DELIVERED:

23 AUGUST 2016

FOR THE PLAINTIFF:

MR ZONO

PLAINTIFF'S ATTORNEYS:

A. S. ZONO & ASSCOIATES

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FOR THE DEFENDANT:

MR SINGQUMBA

DEFENDANT'S ATTORNEYS:

STATE ATTORNEY

REF: 29/12A6 (MR BEMBE)

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