



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Reportable

Case no: 7576/2013

In the matter between:

MOHOMED HASSIM ISMAIL

APPLICANT

And

EDITH NOMAFUSI

RESPONDENT

Coram: JEFFREY AJ

Heard: 25 August 2015

Delivered: 2 September 2015

Summary: Court — High Court — Jurisdiction — KwaZulu-Natal — The KwaZulu-Natal High Court, Pietermaritzburg is the main seat of the KwaZulu-Natal Division and has jurisdiction over the entire province of KwaZulu-Natal — The local seat of the KwaZulu-Natal Division in Durban has concurrent jurisdiction over its limited area within the province of KwaZulu-Natal — Until determined by notice referred to in s 6 (3) (c) of Superior Courts Act 10 of 2013, the limited area of jurisdiction of the local seat remains that set out in Schedule A (as amended) to Supreme Court Act 59 of 1959 — s 50 (1) of Act 10 of 2013

JUDGMENT

Jeffrey AJ

[1] The applicant instituted this application seeking an order evicting the respondent from certain immovable property at which she resides in Kokstad, KwaZulu-Natal.

[2] The town of Kokstad in southern KwaZulu-Natal is situated in the Mount Currie magisterial district.

[3] When this application came before me on the unopposed motion roll I asked Mr *Sitaram* who appeared for the applicant whether this Court had jurisdiction to hear the matter. He submitted that, on a proper interpretation of ss 50 (1) of the Superior Courts Act No. 10 of 2013 (the Act), this Court has concurrent jurisdiction with that of the main seat of the KwaZulu-Natal Division in Pietermaritzburg over the entire province of KwaZulu-Natal and, therefore, this Court does have jurisdiction to hear the matter. This submission cannot be sustained for the following reasons.

[4] Subsection 6 (1) of the Act provides that the High Court of South Africa consists of a several specified Divisions, one of which is the KwaZulu-Natal Division with its main seat in Pietermaritzburg.

[5] The determination of the area of jurisdiction of a Division and the establishment of one or more local seats for a Division in addition to its main seat and the determination of the area or areas of jurisdiction of the local seat or seats as the case may be, is provided for in ss 6 (3) (a) and (c) of the Act as follows:

‘(a) The Minister must, after consultation with the Judicial Service Commission, by notice in the *Gazette*, determine the area under the jurisdiction of a Division, and may in the same manner amend or withdraw such a notice ...

(c) The Minister may, after consultation with the Judicial Service Commission, by notice in the *Gazette* establish one or more local seats for a Division, in addition to the main seats referred to in subsection (1), and determine the area under the jurisdiction of such a local seat, and may in the same manner amend or withdraw such a notice.’

[6] Subsection 50 (1) sets out the following transitional provisions in respect of the High Courts that existed at the date of commencement of the Act namely 23 August 2013:

‘(1) On the date of the commencement of this Act, but subject to the issuing of any notice referred to in section 6 (3) (a) or (c), the-

(a) Eastern Cape High Court, Bhisho, becomes a local seat of the Eastern Cape Division;

(b) Eastern Cape High Court, Grahamstown, becomes the main seat of the Eastern Cape Division;

(c) Eastern Cape High Court, Mthatha, becomes a local seat of the Eastern Cape Division;

(d) Eastern Cape High Court, Port Elizabeth, becomes a local seat of the Eastern Cape Division;

(e) Free State High Court, Bloemfontein, becomes the main seat of the Free State Division;

(f) KwaZulu-Natal High Court, Durban, becomes a local seat of the KwaZulu-Natal Division;

(g) KwaZulu-Natal High Court, Pietermaritzburg, becomes the main seat of the KwaZulu-Natal Division;

(h) Limpopo High Court, Thohoyandou, subject to subsection (2), becomes a local seat of the Limpopo Division;

(i) Northern Cape High Court, Kimberley, becomes the main seat of the Northern Cape Division;

(j) North Gauteng High Court, Pretoria, becomes the main seat of the Gauteng Division;

(k) North West High Court, Mahikeng, becomes the main seat of the North West Division;

(l) South Gauteng High Court, Johannesburg, becomes a local seat of the Gauteng Division; and

(m) Western Cape High Court, Cape Town, becomes the main seat of the Western Cape Division,

of the High Court of South Africa, and the area of jurisdiction of each of those courts becomes the area of jurisdiction or part of the area of jurisdiction, as the case may be, of the Division in question.’

[7] On a proper interpretation, the words ‘the area of jurisdiction of each of those courts’ on the date of commencement of the Act as contemplated in s 50 (1), means the area of jurisdiction of those courts that was set out in First Schedule (as amended) to the Supreme Court Act No. 59 of 1959 (the Supreme Court Act).

[8] The reason for this is that First Schedule remained extant by virtue of s 4 of the Interim Rationalisation of Jurisdiction of High Courts Act No. 41 of 2001 (the Interim Rationalisation Act). Despite the repealing of the First Schedule along with subsections 6 (1) and (4) of the Supreme Court Act, the Interim Rationalisation Act specifically provided that the

seats and the areas of jurisdiction of the High Courts referred to in the First Schedule would, subject to any alteration by notice contemplated under s 2, remain as they were immediately before the commencement of the Interim Rationalisation Act. Notices were subsequently issued under s 2. For instance, the district of Matatiele (Maluti) became a cross-jurisdictional enclave by virtue of such a notice that amended the First Schedule and specially endowed both this Court and the KwaZulu-Natal High Court, Pietermaritzburg, with concurrent jurisdiction over that magisterial area that fell into the Eastern Cape Province. This was held to be the position in the as yet unreported decision of *Minister of the National Department of Rural Development & Land Reform v Tsuputse and Others* (4127/2015) [2015] ZAKZDHC 35 (28 April 2015) at paras [7] to [10]. But this notice certainly did not confer concurrent jurisdiction on this Court with the Natal Provincial Division (as it then was) over the entire province of KwaZulu-Natal.

[9] I respectfully agree with the view expressed in *Thembanani Wholesalers (Pty) Ltd v September and Another* 2014 (5) SA 51 (ECG) 54D-G at para [10], that the express wording of the transitional provisions of ss 50 (1) are grammatically clear and unambiguous and that the words that ‘... the area of jurisdiction of each of those courts becomes the area of jurisdiction or part of the area of jurisdiction, as the case may be, of the Division in question’ mean that the local seats of the Divisions are endowed with concurrent jurisdiction over their limited areas with the main seats of the Divisions in question. But I would go further and add that the words ‘...the area of jurisdiction of each of those courts...’ are equally clear and unambiguous in their context and mean, as a transitional measure, that the areas of jurisdiction of each of those courts immediately prior to the commencement of the Act are those set out in the First

Schedule (as amended) and became the areas of jurisdiction or part of the area of jurisdiction, as the case may be, of the Divisions in question upon the commencement of the Act and will remain as such until such time as the areas of jurisdiction may be determined by a notice referred to in section 6 (3) (a) or (c) of the Act.

[10] I am accordingly unpersuaded that the construction sought to be placed on the meaning of ss 50 (1) by Mr *Sitaram* is correct.

[11] The Mount Currie magisterial district does not fall within the area of jurisdiction of this Court that was contemplated in the First Schedule (as amended) immediately before the commencement of the Act. This Court's area of jurisdiction has not yet been determined by a notice under ss 6 (3) (c) of the Act and consequently the transitional provisions of ss 50 (1) are still applicable.

[12] I accordingly find that this Court does not have jurisdiction in this matter. I make the following order:

The application is dismissed.

A G JEFFREY
ACTING JUDGE

Appearances

For applicant: Mr V R Sitaram
Instructed by:
Junaid Khamissa Attorneys
Ref. JYK/129
Tel. 039 6825592
e-mail: junaid@sai.co.za

For respondent: No appearance