

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case No: 2023/013876

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

DATE: 18 JULY 2024

SIGNATURE

In the matter between:

JACOB CHARLES MNISI

First Applicant

(ID NO.: 6[...])

MENZI JOHN NYAMBI

Second Applicant

(ID NO.: 6[...])

MAHLEKISANE MOSA CHRIWA

Third Applicant

(ID NO.: 6[...])

FANYANA ENOCH BHEMBE

Fourth Applicant

(ID NO.: 5[...])

and

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

First Respondent

SMILE ZANDILE NKOSI N.O.

(ID NO.: 6[...])

Second Respondent

HLUPHEKA SALMINAH MOHALE N.O.

(ID NO.: 5[...])

Third Respondent

RODAH LINDIWE MGWEBYA N.O.

(ID NO.: 6[...])

Fourth Respondent

JOSIAH NDABAMBI MOKOENA N.O.

(ID NO.: 7[...])

Fifth Respondent

BONGANE KENNETH SHAKOANE N.O.

(ID NO.: 6[...])

Sixth Respondent

MAQUANDASHI ELIAS MATHABA N.O.

(ID NO.: 6[...])

Seventh Respondent

ISAAC SITHOLE N.O.

(ID NO.: 7[...])

Eighth Respondent

HENDRY SIPHO LAMOLA N.O.

(ID NO.: 6[...])

Nineth Respondent

MOKWAZI THEMBEKA MDZINGASE NKAMBULE N.O.

(ID NO.: 8[...])

Tenth Respondent

MAGOLIDI JIM MANDLAZI N.O.

(ID NO.: 5[...])

Eleventh Respondent

ZULU SAMUEL CHIRWA N.O.

Twelfth Respondent

(ID NO.: 6[...])

HENDRY NTININI MZIMBA N.O.

Thirteenth Respondent

(ID NO.: 6[...])

AGNES NTOMBIKAYISE MAVUSO N.O.

Fourteenth Respondent

(ID NO.: 6[...])

Delivered. This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand down is deemed to be 14h00 on 17 July 2024.

JUDGMENT

DM LEATHERN, AJ:

[1] The present application commenced as an urgent application divided into a "PART A" dealing on an urgent basis with an interdict restraining the second to fourteenth respondents from carrying on any business of the Lebuyile Community Trust ("the trust") pending the determination of PART B. Part B sought a declaratory order that the second to fourteenth respondents were not duly elected as trustees of the trust at a properly constituted annual general meeting, that such general meeting was not duly constituted in terms of the trust deed and that the second to fourteenth respondents were not in terms of the trust deed eligible to be elected as trustees as they did not reside on the property concerned.

[2] In addition, an order was sought against the first respondent, the Master of the High Court of South Africa, Gauteng Division, Pretoria ("the Master") that the Master withdraw the letter of authority issued in respect of the

trust, that the Master be ordered to appoint the applicants as trustees together with an independent trustee to be nominated by the Master to act in such capacity pending the election of trustees for the trust at a duly constituted annual general meeting to be held within thirty days from date of the order.

[3] As usual, also the question of costs is relevant.

[4] The matter came before this Court when I as an Acting Judge had been appointed for one day, and a number of opposed applications had been allocated to me. At the hearing of the matter it was made clear that the entire matter could not be heard on that day and pointed out that the courts frowned upon only certain aspects being heard and matters decided on a piecemeal basis as such could give rise to the matter being referred back to the Court *a quo* after an appeal had been heard. Nevertheless, the Court was requested and convinced to determine a single point *in limine*, that being whether this Court has jurisdiction to hear PART B.

[5] The question of jurisdiction had been raised in respect of the relief sought in Part A and Khumalo J held that this Court did not have jurisdiction to hear the relief sought in Part A. A similar point is now taken in regard to Part B.

[6] The respondents point out that:-

[6.1] it has already been found by this Court that all the applicants, the trust and the trustees are located within the territorial jurisdiction of the High Court, Mpumalanga;

[6.2] the decision complained of, the subject matter and the cause of action including the effect of the decision would all be restricted to the territorial are of jurisdiction of the Mpumalanga High Court;

[6.3] only two allegations are made to vest jurisdiction in this Court, those being that the trust was registered with the Master of the High Court, Pretoria and the trustees have been appointed by the Master of the High Court, Pretoria.

[7] It is not disputed that the authorities make it plain that onus of establishing that the division of the High Court concerned has jurisdiction ordinarily rests upon the applicant who, as in this case, is *dominus litis*.

[8] The respondents further argue that on a proper interpretation of Sections 6 and 7 of the Trust Property Control Act, the Master of the High Court did not appoint the trustees but that trustees are in fact appointed in terms of the trust deed or under Section 7 when the office of a trustee cannot be filled or becomes vacant when the Master can in the absence of any provision in the trust instrument and after consultation appoint any person as trustee or when he considers it desirable he may, notwithstanding the provisions of the trust instrument, appoint as co-trustee of any serving trustee any person who he deems fit. The respondents submit further that in terms of the Trust Property Control Act the Master may not refuse authorisation of a duly appointed trustee except in cases where he cannot furnish security when required to do so.

[9] Bringing this argument to its conclusion, it was submitted that trustees were appointed in terms of the trust deed and only authorised by the Master, that the Master made no decision that can be challenged but merely authorised appointments duly made by the trust where there was compliance with the provisions of Section 6.

[10] The respondents then take the matter further by alleging that on the merits the relief claimed by the applicants in relation to the withdrawal of the letter of authority is not competent as the Master did not appoint but merely authorised the appointment in terms of the trust deed. It is argued that the relief

claimed is therefore not against the Master situated in Pretoria at all, but rather against the trust or in relation to the appointment and election process which all fall outside the jurisdiction of this Court.

[11] Relying on the decision in *Estate Agents Board v Lek*¹ the submission is made that convenience and common sense as well as effectiveness remain valid considerations when considering the issue of jurisdiction and building on this, the facts mentioned lead ineluctably to the conclusion that it is convenient for the matter to be heard in the Mpumalanga Division of the High Court.

[12] The submission is then made on the basis of these arguments, that this Court does not have the necessary jurisdiction to adjudicate upon the relief as sought.

[13] On a proper reading of *Estate Agents Board v Lek*, it is however apparent that the Court there did not determine that only the Cape Provincial Division had jurisdiction and that only the then Transvaal Provincial Division or the Witwatersrand Local Division would have had jurisdiction to determine the appeal. To the contrary it found that the Court *a quo* was “an appropriate Court” (my underling).

[14] The applicants point out that the trust was registered in the office of the Master of the High Court, Pretoria when the Master of the High Court Mpumalanga did not even exist, the trust has factually been administered by the Master and that Section 3 of the Trust Property Control Act provides *inter alia* in Section 3(1)(a) that

¹ 1979 (3) SA 1048 (A).

“a Master who has exercised jurisdiction shall continue to have jurisdiction notwithstanding any change in the situation of the great or greater portion of the trust property”.

[15] It seriously cannot be disputed that the trust was administered in terms of the Act by the Master, Pretoria.

[16] The applicant referred to the matter of *JP van Schalkwyk Attorneys v Botha N.O. & another*² a judgment by Davis J who, after setting out with reference to Section 3(1)(a) of the Trust Property Control Act that a trust was administered by the Master in Pretoria, had never been transferred to a different Master, found that “the supervision over the administration of a trust, which includes the supervision over the sequestration of that trust is a sufficient *ratio jurisdictiones* for jurisdiction to exist”.

[17] The facts in the *van Schalkwyk* matter do not divert sufficiently from those in the present matter to distinguish the decision of Davis J. I am also not convinced that he is incorrect in the finding and am accordingly bound to follow that decision.

[18] I would in any event have come to the same decision on the basis that specific relief is sought against the Master including that in prayer 3 under Part B where an order directing the Master to appoint the applicants as trustees of the trust together with an independent trustee to be nominated by the Master is sought. The seeking of such an order against the Master would certainly vest jurisdiction in this Court and where Section 21(2) of the Superior Courts Act 10 of 2013 provides that a Division also has jurisdiction over any person residing in or being outside its area of jurisdiction who is joined as a party to any causes in relation to which such Court has jurisdiction if the said person resides or is within

² 2021 JOL 50129 (GP).

the area of jurisdiction of another division is applicable *in casu*. This Court has jurisdiction over the Master, Pretoria, and accordingly over the other parties joined in such cause. No relief was sought against the Master in PART A.

[19] This may be an appropriate matter in which to apply in terms of Section 27 of the Superior Courts Act 10 of 2023 for the removal of the proceedings from this Division to the Mpumalanga Division, particularly where the challenge is on the basis of convenience. Even if it were to be found that this Court does not have jurisdiction for any reason, it is empowered by that Section to transfer the matter to the Mpumalanga Division. However, Section 27 requires that an application be launched by a party and that all parties be heard in regard to the proposed transfer. That did not happen in the present instance. There is however nothing to prevent such an application being launched.

[20] Under the circumstances I find that this Court has jurisdiction to determine Part B of the notice of motion and the point *in limine* must fail.

[21] I accordingly order:

1. The point *in limine* as to the jurisdiction of this Court in respect of Part B raised by the second to fourteenth respondents is dismissed.
2. The second to fourteenth respondents are ordered to pay the costs of the applicants, such costs to be determined on scale C.

DM LEATHERN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA