



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 017060/2024

DELETE WHICHEVER IS NOT APPLICABLE

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

Date: 11 October 2024 Signature: 

In the matter between:

TEMPELHOF FILLING STATION (PTY) LTD

Trading as Shell Ultra City Musina, Limpopo

Applicant

And

THE CONTROLLER OF PETROLEUM PRODUCTS

First Respondent

SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LTD

Second Respondent

MUSINA LOCAL MUNICIPALITY

Third Respondent

EAGLE CREEK INVESTMENTS 154 (PTY) LTD

Fourth Respondent

MMJ LOUW ACCOUNTING ASSOCIATES 1070 CC

Fifth Respondents

JUDGMENT

NYATHI J

A. INTRODUCTION

- [1] The applicant is before me on the return date of a rule nisi that was granted by Madam Justice Collis J, on 12 March 2024 in the urgent court. The 4th and 5th respondents oppose the confirmation of the order.
- [2] The Rule Nisi is a temporary interdict prohibiting the construction and operation by 4th and 5th Respondents of a petrol station located in the area between Musina and the Zimbabwe border post at Beit Bridge, pending the main application which is for the review and setting aside of petrol station licences granted by the Controller of Petroleum Products (1st Respondent - hereinafter referred to as “the Controller”) to the 5th (in relation to the “Site Licence”) and 6th (in relation to the Retail licence) Respondents.
- [3] The 4th and 5th Respondents raise two points *in limine* against the applicant’s application, namely:

3.1 That the court lacks jurisdiction to adjudicate the matter. And;

3.2 That the applicant does not make out a *prima facie* case for the relief sought.

Lack of jurisdiction:

[4] Jurisdiction has been defined as: *“The power or competence which a particular court has to hear and determine an issue between parties brought before it.”*¹

[5] The 4th and 5th Respondents allege that the applicant’s entire basis for alleging that the Court has jurisdiction, is that the First Respondent’s offices are situated within this Court’s area of jurisdiction.

[6] The First Respondent similarly has offices situated in Polokwane and within the jurisdiction of the Polokwane High Court.

[7] The 4th and 5th Respondents similarly reside, have registered and conduct business in the Musina area of Limpopo Province and conduct no business operations within this Court’s area of jurisdiction.

[8] Mr De Leeuw submitted on behalf of the 4th and 5th Respondents that both the registered and business addresses of the fourth and fifth respondents fall within the sole and exclusive area of jurisdiction of the Polokwane High Court.

¹ *Graaff-Reinert Municipality v Van Ryneveld’s Pass Irrigation Board* 1950 (2) SA 420 (A) at 424.

[9] In *Gcaba v Minister for Safety and Security*² 2010 (1) the Constitutional Court confirmed its earlier decision in *Chirwa v Transnet Ltd*³ and held that: -

*“Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in **Chirwa** and not the substantive merits of the case In the event of the court’s jurisdiction being challenged at the outset (in limine), the applicant’s pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court’s competence. While the pleadings including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish, what the legal basis of the applicant’s claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognisable only in another court.”*

[10] The *dictum* above is instructive in evaluating the essence of the 4th and 5th Respondents complaint pertaining to this Court’s jurisdiction to entertain this matter.

[11] From the annexures AA5 and AA6 which are attached to the Respondents’ answering affidavit, it is evident that these, as well as the permits relevant hereto, were issued out of the Polokwane Office of the First Respondent. It is accordingly

² 2010 (1) SA 238 (CC).

³ 2008 (4) SA 367 (CC).

discernible that the National office of the Department of Mineral Resources and Energy (“the DMRE”) had nothing to do with the issuance of these approvals and licences.

[12] Each High Court has jurisdiction with regard to a specific territory within the Republic of South Africa.⁴

[13] While it is so that the permits and licenses and approvals emanate from the DMRE’s Polokwane office, it is a trite fact that the DMRE’s national office enjoys authority and control over all its regional offices and is responsible for strategic oversight throughout.

[14] I am mindful of the fact that the matter serving before me is an application to confirm or discharge a rule nisi that has been granted by this very Court already. Whether there were objections as to jurisdiction in the urgent court, I am none the wiser. I am also not dealing with the merits of Part B which is a review application.

The principles governing jurisdiction

⁴ Section 6 of the Superior Courts Act 10 of 2013.

[15] It is trite law that a court will have jurisdiction if the defendant (party against whom the proceedings are instituted) either resides or carries on business in the court's area.

[16] Jurisdiction in civil matter either follows the defendant or the action. What this means is that the court with jurisdiction must either be the court in which the cause of action of a matter arose in, or the court which has geographical jurisdiction over the area in which the Defendant of the matter resides or works.

[17] In *Mahosi and Another v Afribiz Invest Collin and Others*,⁵ Molahlehi J (as he then was) followed the Appellate Division and held that the power of the court is *“territorial and does not extend beyond the boundaries of, or over subjects or subject-matter, not associated with, the Court’s ordained territory.”*

[18] Furthermore, section 21(1) of the Superior Courts Act,⁶ provides:

“21(1) A Division has jurisdiction over all persons residing in 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 cognizance ...”

⁵ [2022] ZAGPJHC 1032 at paragraphs [12] – [15] referencing *MacDonald & Co Ltd v M & M Products Co* 1991 (1) SA 252 (A) at 256G.

⁶ *Supra* footnote 4.

[19] *Herbstein and Van Winsen*⁷ in turn opine that:

"Generally speaking, it may be said that in any action relating to a property, the court within whose territorial jurisdiction the property is situated (the forum rei sitae) will have jurisdiction to entertain claims relating to the property."

[20] The learned authors then concluded that:

"The court within whose territorial limits the property is situated will have exclusive jurisdiction in proceedings involving title to immovable property, including those in which is claimed ownership, possession or a declaration that the property is subject to or free from a real right less than ownership, for example a servitude, claimed by another."

[21] Having regard to the discussion so far, it is abundantly clear that the respondents in this matter reside, carry on business and in the case of the corporate entities, have their registered principal places of business in Musina, Limpopo.

[22] The cause of action, namely, the authorization and issuing of the permits at issue occurred in Polokwane, Limpopo. The ultimate result, is that the application ought to have been initiated in the High Court Division of Limpopo which is empowered and authorized to adjudicate the dispute.

⁷ Civil Practice of the High Court of South Africa , Vol 1 Fifth edition page 77.

[23] In the result, the first point in *limine* succeeds, this court cannot consequently confirm the rule nisi.

Order

1. The rule nisi granted by this Court on 12 March 2024 is discharged;
2. The application for an interim interdict in terms of Part A of the Notice of Motion is dismissed;
3. The applicant is ordered to pay the Fourth and Fifth Respondents' costs, including counsel's fees at scale B.



J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 11 September 2024

Date of Judgment: 11 October 2024

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 11 October 2024.