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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: A2023/043983

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 25 February 2025

SIGNATURE:

In the matter between:

**THE LIQUIDATORS (SMALL AND MEDIUM
ENTERPRISES BANK LIMITED) [S.M.E LIMITED
(IN LIQUIDATION)]**

Appellant

and

MET BANK LIMITED (FORMALLY METROPOLITAN

Respondent

BANK OF ZIMBAMBWE)

Summary: Appeal – Randburg Magistrate Court’s judgment setting aside the registration of a foreign obtained judgment from the High Court in Namibia. Registration was made in terms of section 3(1) of the Enforcement of Foreign Civil Judgments Act 32 of 1988 (“Foreign Judgment Act”) on 26 November 2021 by the Clerk of the Court. Subsequent registration was challenged in terms of section 5(1) of the Foreign Judgment Act as a ‘nullity’ for lack of compliance with the requirements of the said Act. The Magistrate read Rule 9(3)(e) of the Magistrate Courts Rules as a cornerstone of the registration in the absence of the application for service notice in the Foreign Judgment Act. This Court found that Rule 9(3)(e) cannot be applied independently of the intersection of section 3(2) and 5(2) of the Foreign Judgment Act. Also, the Clerk of the Court justifiable registered the judgment as evidenced by the stamp and the name of the Clerk of the Court. The issue of the certificate also found no relevance because of the commonality in exchange rates between South Africa and Namibia. This Court, as an Appeal Court with limitations on non-interference with the Court *a quo* judgment, established that the Magistrate committed a misdirection in the interpretation of the law.

JUDGMENT

NTLAMA-MAKHANYA AJ (NOKO J concurring)

Introduction

[1] This application concerns an appeal against the whole judgment and order delivered by Magistrate Booysen of the Randburg Magistrate Court on 7 December 2022 under case number: 28828/2021. The Appellant is the Liquidators (Small and Medium Enterprises Bank Limited) [S.M.E Limited in Liquidation] and the Respondent (Met Bank Limited) is a commercial bank that is operating in Zimbabwe. The

Respondent's Counsel and its Attorneys of Record withdrew from the matter. The Respondent was served with the notice of set down but did not appear hence the appeal proceeded in its absence.

[2] The crux of the appeal is the judgment of the Court *a quo* that set aside the registration of a foreign obtained judgment from the High Court in Namibia which was made an order of court in terms of section 3 of the Enforcement of Foreign Civil Judgments Act 32 of 1988 (Foreign Judgments Act). The said judgment then became an effective South African judgment in terms of section 4 of the Foreign Judgment Act. In this case, the Appellant obtained a judgment in Namibia against the Respondent which was then registered in terms of section 3 of Foreign Judgment Act by the Clerk of Randburg Magistrate Court. The registration of the said judgment was challenged by the Respondent in terms of section 5(1) of the said Act. The Court *a quo* set aside the registration of the judgment after it established that the prescripts of section 3 of the Foreign Judgment Act relating to registration of foreign judgments were not followed.

[3] Pursuant to the setting aside of the registration of the said judgment, the Appellant filed a notice of appeal on 7 December 2022 contending that the Magistrate erred, and the order was not supposed to have been granted. On this basis, it is imperative that I provide a brief background on this matter.

Background

[4] The Appellant, having been granted an order against the Respondent by the High Court in Namibia under case number: HC-MV-COV-MOT-GEN-2019/00105 on 29 October 2020 sought an order to have the judgment registered in South Africa in terms of section 3 of the Foreign Judgment Act. The Namibian judgment ordered the Respondent to, *inter alia*, pay the Appellant an amount of N\$1,028,286,906.13 (One Billion Twenty-Eight Million Two Hundred and Eighty-Six Thousand Nine Hundred and Six Namibian Dollars and Thirteen Cents); together with interest and costs from July 2017. On 26 November 2021, the Appellant successfully registered the Namibian

judgment in the Randburg Magistrates Court, as it is required to do so in terms of section 3 of the Foreign Judgment Act. Having the Namibian judgment so registered, it became an enforceable South African judgment against the Respondent in terms of section 4 of the said Act.

[5] However, as alleged, the Respondent was not aware that the judgment was registered. Allegedly, as soon as the Respondent came to the knowledge of its registration, an application was brought in terms of section 5(1) of the Foreign Judgment Act to have it set aside. The application was heard by Magistrate Booysen (“the Magistrate”) on 7 December 2022. The Magistrate, in an *ex tempore* judgment, rescinded the registration on the basis that the requirements set out in section 3(1) of the Foreign Judgment Act were not complied with. The Appellant argued that the Court *a quo* erred in granting the Respondent’s application on the basis that the registration was *void*.

Before the Court a quo

[6] In the Court *a quo*, without reproducing the Magistrate’s reasoning on the decision made, after an intense analysis of the review of the registration process, the Magistrate established that the registration of the judgment fell ‘foul’ in not following the requirements of section 3(1) of the Foreign Judgment Act as well as Rule 43(B)(2)(b) of the Rules of the Magistrates Courts.

[7] The Magistrate proceeded with the consideration of the merits of the application in this matter and gave reasons to the Respondent’s evidence pertaining to the registration of the foreign judgment. The first point of departure was to read section 5(1) of the Foreign Judgment Act into the context of Rule 43(3)(e) of the Magistrate Courts Rules with reference to the allegations that:

[7.1] First, the service was not affected. The Magistrate considered the Respondent’s contention that the application was defective in that it was brought

outside the stipulated time frames. The Court *a quo* considered the implications of section 5(2) of the Foreign Judgment Act which requires an application to be brought within 21 days after the notice of service. The Magistrate reasoned that the Foreign Judgment Act does not have an inherent process regarding service. As expressed by the Magistrate, this meant that when the application was brought it was dealt with in terms of Rule 9 of the Magistrate Courts Rules which regulate the service process, notices and other documents. According to the Magistrate, since the Respondent is a juristic person, the process of notices is regulated by sub-rule 3(e) wherein the Sheriff's proof of service found application. Further, there was no report of the unwillingness of an employee to accept service with the consequent result of the Sheriff having to proceed and affix the notice to the door on the registered business address or place, principal place of business. The Magistrate found difficulty in the Sheriff's return of service that states 'after a diligent search' whereas the Respondent was no longer at its registered place of business. As a result, with no stipulated process in the Foreign Judgment Act, Rule 9(3)(e) was found to be of application. In essence, drawing from the Magistrate's analysis of section 5(2) of the Foreign Judgment Act, there is no 'legal vacuum' relating to effecting service in the light of the silence of the Foreign Judgment Act as the Rules of the Magistrates Court fill the void.

[7.2] Secondly, another contentious issue about the signing of the judgment by the Clerk of the Court which was not affixed to the notice. The Magistrate was of the view that whether the notice was signed or not was not defective or fatal to the application. The rationale for such finding is because the stamp that was on the registered judgment was reflective of the name of the Clerk of the Court and was therefore sufficient.

[7.3] Thirdly, the final point considered by the Magistrate was the certification of the local currency which is equivalent to that of Namibian currency by a banking

institution in South Africa that was not attached when it was registered.¹ The Respondent averred that they were not served with the certification of the registered judgment in local currency or in effect the service was not effective. The Magistrate, having read Rule 9(3)(e) into the record together with the provisions of Rule 43(2)(b) of the Magistrates Court Rules and section 3(4) of the Foreign Judgment Act, was surprised by the Appellant's contention that there was no need for the certificate. Despite the fierce argument, the Appellant deemed it necessary to file the same later in the name of Geraldine Ramiya, in her capacity as Executive Manager, Corporate and Investment Banking Global Markets of the Standard Bank of South Africa Limited. The Magistrate was of the firm view that the certification that confirms the unchanged or pegged currency exchange rate does not exempt the party registering the foreign judgment from filing a required certificate. It was the Magistrate's reason that a 'foreign obtained judgment that is made out in a foreign currency, should be accompanied by a certificate on registration of the judgment'. Therefore, the Magistrate found that there was no compliance with Rule 43(2)(b) read with section 3(4) of the Foreign Judgment Act.

[8] The Court *a quo* found compelling reasons for the argument made by the Respondent and rejecting that of the Appellant. The Respondent (Met Bank) as a company, was found to have made a proper case for the setting aside of the registration for lack of compliance with the Foreign Judgment Act.

[9] The Appellant was aggrieved by the judgment of the Court *a quo* and applied for leave to appeal which was granted. As a result, this Court is now focusing on the merits of the grounds of appeal relating to the registration of the foreign obtained judgment as submitted by parties.

¹ See Rule 43B(2)(b) of the Magistrate Court Rules which provides that:

A judgment creditor shall, together with the certified copy of a judgment referred to in subrule (1):
if any amount payable under the judgment is expressed in a currency other than the currency of the Republic, file a certificate issued by a banking institution registered in terms of section 4 of the Banks Act, 1965 (Act 23 of 1965), stating the rate of exchange prevailing at the date of the judgment.

Submission by parties

[10] Before this Court, the Appellant contended that the setting aside of the registration of the foreign judgment as a 'nullity' by the Magistrate was misplaced in that.

[10.1] the Respondent's application was defective because it was not brought within the prescribed timelines as envisaged in section 5(2) which mandates the lodging of the application to be brought within 21 days after service of notice referred to in section 3(2) of the Foreign Judgment Act.

[10.2] The Magistrate refused to admit the Appellant's supplementary affidavit that was meant to introduce information which was unavailable at the time of filing the original affidavit. In this regard, the supplementary affidavit detailed the ambit of information relating to the contempt of Respondent regarding the release of funds from the Dollar Account in breach of the South African Court Order and an interdict that was granted in terms of section 8 of the Foreign Judgment Act.

[10.3] The Appellant contends that after the order granted by the Namibian High Court, Liquidators notified ABSA Bank Limited (ABSA) of the South African judgment. ABSA acted on this notification and particularly prohibited payments from the following Met Bank's Dollar account numbers:

- (i) 0[...];
- (ii) 0[...];2;
- (iii) 0[...];3; and
- (iv) 0[...];4.

The prohibition serves as an interdict as envisaged in section 8 of the Foreign Judgment Act wherein a notice issued in terms of section 3(2) 'operates against any judgment debtor on whom the notice was served and against any person who has such knowledge not to remove or dispose of any assets of the judgment debtor if such removal or disposal would prejudice the execution of the judgment'.

As further expressed by the Appellant, following an enquiry into the affairs of the SME Bank on 25 May 2022, a subpoena which was issued by Commissioner, Ms Eunice Baloyi, who attended and on behalf of ABSA, the Respondent's account was reflective of the payments of USD 650 000 on 26 November 2021 and USD 799 703.55 on 15 December 2021. As the Appellant argued, the prohibition could have served as an interdict and have prevented any monies from flowing out of, inter alia, Met Bank's Dollar Account. Considering the interdict, the Liquidators are unaware how Met Bank achieved the payment out of its account. However, the Liquidators are aware that the instruction for the payment of USD 799 703.55 to be effected from the Met Bank Dollar Account was given by Met Bank's employee, Tendai Chaitezvi, on 8 December 2021.

On 30 November 2021, the South African judgment was already served on Met Bank's registered address by the Sheriff and with knowledge and receipt of the said judgement, the Respondent still instructed ABSA in December 2021 to give effect to the USD 799 703.55 transaction. The amount of the USD 650 000, as well as USD 799 703.55 – both of which were paid out of Met Bank's Dollar Account after the interdict was granted – have not been repaid into the Met Bank Dollar Account, or at all. As a result, Met Bank is and remains in contempt of the interdict.

[10.4] The Respondent also failed to justify the prayer for alternative remedy for 'stay in execution' by not demonstrating that there is a pending

appeal against the Namibian Judgment. Secondly, the factual basis to justify the exercise of the discretion in its favour has not been set out.

[11] However, the Respondent opposes the application arguing that:

[11.1] there was neither service nor notification about the registration of the foreign judgment obtained by the Appellant against the Respondent in the High Court of Namibia as required by the Foreign Judgment Act. The Respondent was also not served with the actual purported registration of the said foreign judgment. The first-time the respondent saw the purported registration of the foreign judgment was on the 15th of December 2021 when the same was emailed to it by its attorneys from the appellant's attorneys. This much should be common cause from the correspondence between the appellant and the respondent's attorneys on 14 December 2021 and 15 December 2021.

[11.2] The Appellant, on 29 July 2022 served and filed their supplementary affidavit which was meant to introduce a completely new cause of action that was not covered in the previous hearings of the matter. This was done without the leave of the Court *a quo*, thus prejudicing the Respondent. The filing was dismissed by the Court *a quo* and the matter proceeded with the cause in the main action being granted in favour of the Respondent. The Appellant, thereafter, filed this application with grounds that are less persuasive for this Court arguing that:

[11.2.1] the Appellant seems not to be challenging the ground that the Respondent relied on in their founding papers in the Court *a quo* that the notice of the registration was not served on the respondent and only learned about the purported registration of the judgment from the third party.

[11.2.2] the supplementary affidavits that the Appellants were seeking to slip into the court file without the leave of the court, firstly, introduced a completely new cause of action that was not foreshadowed or covered in any of the previous hearings of this matter and secondly without the leave of Court *a quo* thus prejudicing the Respondent. The Appellants did not make a formal application in terms of Rules 55(1)(a) of the Magistrates Court Rules which states that:

“Every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief”.

[11.2.3] the non-filing of the certificate in terms of Magistrates Court Rule 43B results in registered judgment being a nullity, thus rendering the purported notice *ex-facie* invalid, and this honorable court must not give effect to it. In fact, the Appellant did not ask the court *a quo* to condone the late filing of the certificate.

[11.2.4] the amounts stated in the notice are both in Namibian dollars. However, there is no certificate issued by a bank registered in South Africa stating the rate of exchange prevailing at the date of the judgment. There is also no averment made by Ms Pearson’s on her affidavit when the registration was made to the effect that the certificate is attached as per Rule 43B of the Magistrates Court Rules.

[11.2.5] the Respondents reiterate the fact that they were not served with the actual purported registration of the application by the Appellant in terms of the Foreign Judgment Act and the Rules. The first-time the Respondent saw the purported registration of the

foreign judgment was on the 15th of December 2021 when the same was emailed by the Respondent's attorneys. This much should be a common cause from the correspondence between the Appellant and the Respondent's attorneys on 14 December 2021 and 15 December 2021. Even so, by the admission of the Appellants, the said purported application which was served on or about 15 December 2021 did not comply with the provision of the Act and/or alternatively incomplete as the certificate of the registered Bank of South Africa was only filed with the Court *a quo* on or about 22 December 2021. Therefore, when the Respondents filed their application to set aside the registration of the Foreign Judgment on or about 24 December 2021 with the Court *a quo*, where within the 21 days period that is stated by the Act.

[11.2.6] the Appeal of the Judgment of the High Court of Namibia is pending and is still before the Supreme Court of Appeal. The matter was before the Supreme Court of Appeal on or about 27 March 2023. It is void of the truth that the matter has lapsed. Even though the Act stipulates that the registration remains effective irrespective of whether the appeal is still pending, the Respondent submits that the failure of the court to consider the fact that this matter is before the highest court in the land in Namibia will be very prejudicial to the Respondent.

[11.2.7] there is also no merit on the contempt ground of appeal because of the difficulty to comprehend why the Appellant has not gone after ABSA to recover what it paid itself after advising the Respondent that it cannot transact on the account based on the registration of the foreign judgment. The Respondent is therefore the victim of ABSA's conduct hence it brought the application in

December 2021 because of the bias in giving effect to the judgment.

[12] The centrality of the argument as submitted by both parties was the rationality of the Magistrate's judgment and its order relating to the registration of the foreign obtained judgment which was declared a 'nullity'. Drawing from the afore-grounds of appeal and as presented during oral argument, Counsel for the Appellant narrowed the focus to the:

- (i) registration of the foreign judgment;
- (ii) Service not being effected;
- (iii) Judgment not signed by the Clerk of Court;
- (iv) requirements of and for the issuing of the Certificate by a banking institution when the judgment was registered; and
- (v) rules of exchange rate.

[13] At the risk of repetition, these grounds were a determinant of compliance for registration of the foreign obtained judgment. They also serve as a catalyst against which to determine the rationality of the Magistrate's decision in the setting aside of the registration of the Namibian Judgment. For this Court to ventilate properly the issues raised, it is also essential to set the tone by reviewing the framework in place relating to the registration of foreign judgments and the impact it would have in determining the outcome of this matter.

Legal framework

[14] The gist of this case is laid on the status of the Foreign Judgment Act in regulating the registration of foreign judgments in South Africa. The said registration is preceded by the application of the Foreign Judgment Act itself. This appeal touches on the core content of the application of the Foreign Judgment Act itself as entailed in section 2(1) that deals with the application of the Act which provides that:

- (1) This Act shall apply in respect of judgments given in any country outside the Republic which the Minister has for the purposes of this Act designated by notice in the Gazette.

[15] This is a guide to the registration and enforcement of foreign judgments wherein the first determinant is for the court to establish whether the Foreign Judgment Act is applicable in respect of an application for the registration of judgment that emanates from a particular jurisdiction. The determinant is not taken in a 'vacuum' but considers the broad legal and constitutional framework of the Republic that seek to ensure that South African courts are to guard against compromising the country's laws.

[16] The application of the Foreign Judgment Act sets a pathway for the registration of the foreign judgment and is of direct link to section 3 which provides that:

- (1) Whenever a certified copy of a judgment given against any person by any court in a designated country is lodged with a clerk of the court in the Republic, such clerk of the court shall register such judgment in the prescribed manner in respect of:

- (a) the balance of the amount payable thereunder, including the taxed costs awarded by the court of the designated country;

- (b) the interest, if any, which by the law or by order of the court of the designated country concerned is due on the amount payable thereunder up to the time of such registration;

(c) the reasonable costs of and incidental to such registration, including the costs of obtaining a certified copy of the judgment.

[17] Having complied with the pre-screening process relating to the applicability of the Foreign Judgment Act and the rationality of the registration process, the foreign judgment acquires the status of a South African judgment as provided for in section 4 which reads as follows:

(1) Whenever a judgment has been registered in terms of section 3, such' judgment shall have the same effect as a civil judgment of the court at which the judgment has been registered.

(2) Notwithstanding anything to the contrary in this section contained, a judgment registered in terms of section 3 shall not be executed before the expiration of 21 days after service of the notice referred to in section 3 (2), or until an application in terms of section 5 has been finally disposed of.

The internal limitation relating to the acquired status of waiting for the expiry of the 21 days' notice illustrates the importance of the post-registration screening process of the foreign judgment.

[18] It is my considered view that the foundations of the Foreign Judgment Act in these provisions mean that it is impossible for a foreign judgment to be registered let alone the prospects of enforcement without compliance with the stated requirements. The content of these provisions extend authority to the South African courts on good cause shown and in compliance with the requirements to register and enable the enforcement of a foreign judgment domestically.

[19] In *casu*, the requirements of section 3 of the Foreign Judgment Act are indicative of the merited assurance of the local court in ensuring an intense scrutiny on compliance with the laws that regulate the domestication of foreign judgments. The application for recognition and the consequent result for enforcement of a foreign obtained judgment gives credence to an analysis of the cause of action that has been undertaken by the foreign court. It further entails the domestication of such a judgment through the lens of the basic principles and laws of the Republic.

[20] I am now satisfied that the non-exhaustive legal framework is designed to eliminate any potential of any party avoiding the jurisdiction of the courts particularly in taking responsibility for their conducts that have been intensively analysed by that court of foreign origin. It is this motivation that persuades me to unlock at the subject of the appeal in this matter. In essence, the main issue before the Appeal Court was to determine whether the registered foreign obtained judgment was a 'nullity'?

Discussion

[21] In this matter, it is imperative that this Court moves from a premise of an acknowledgement of guarding against interference with the decision of the Court *a quo* that has been intensely analysed in giving effect to the legal question raised. This entails the limitation of the role of the Appeal Court to be 'slow to interfere' with the judgment of the Court *a quo* unless otherwise is proved. This carries the test endorsed by Jafta J in *Mokate v Vodacom (Pty) Ltd* 2016 (6) BCLR 709 (CC), when the Judge held:

“Ordinarily appeal courts in our law are reluctant to interfere with factual findings made by trial courts, more particularly if the factual findings depended upon the credibility of the witnesses who testified at the trial, [and] the cold record placed before the appeal court does not capture all that occurred at the trial court. The disadvantage is that the appeal court is denied the opportunity of observing witnesses testify and drawing its own inferences from their demeanour and body

language. On the contrary, this is the advantage enjoyed by every trial court”, (paras 37-38).

[22] This is the basis for caution for the Appeal Court to thread carefully and not interfere in a terrain that is within the competence of the Court *a quo*. On the other hand, the Appeal Court may interfere if it ‘emerged from the record that the trial court misdirected itself on the facts or that it came to a wrong conclusion, the appellate court is duty-bound to overrule factual findings of the trial court so as to do justice to the case’, (*Makate, para 40*). I do not intend to go overboard about the limited role of the Appeal Court other than applying the ‘needle-eye’ into the legal dispute of this matter.

[23] In foregrounding the substance of this case, it is limited to the registration only because it is the gist of this application, and all other issues are the consequent results that emanate from it. It is also settled law that the registration of a foreign obtained judgment is limited to the procedural safeguards of the registering country and not the merits of the case that have been adjudicated elsewhere about the dispute between the parties and found to have been beyond reproach.

[24] In this regard, there are various grounds of appeal raised by the Appellant, thus, for purposes of coherence, it is my view that I present the narrowed focal points as argued during oral argument as noted above and not deal with the individual grounds as listed in the notice of appeal.

[25] The grounds of appeal are interdependent, and their core content is on the registration of the foreign obtained judgment itself. This means that the point of departure in this application was the registration process itself in terms of the Foreign Judgment Act and with no other reliance for this process. It is now settled, and I am persuaded by Corbett J in *Jones v Kork* 1995 (1) SA 677 (A) that a foreign judgment and its consideration in South Africa must meet certain requirements that will be the basis for its enforcement and legal standing. In that case, Corbett J stated that a foreign judgment although not directly enforceable it will be enforced by our courts unless:

- (i) that the court which pronounced the judgment had jurisdiction to entertain the case according to the principles recognised by our law with reference to the jurisdiction of foreign courts (sometimes referred to as 'international jurisdiction or competence');
- (ii) that the judgment is final and conclusive in its effect and has not become superannuated.
- (iii) that the recognition and enforcement of the judgment by our Courts would not be contrary to public policy;
- (iv) that the judgment was not obtained by fraudulent means;
- (v) that the judgment does not involve the enforcement of a penal or revenue law of the foreign State; and
- (vi) that enforcement of the judgment is not precluded by the provisions of the Protection of Businesses Act 99 of 1978, as amended....
 Apart from this, our Courts will not go into the merits of the case adjudicated upon by the foreign court and will not attempt to review or set aside its finding of fact or law," (page 10; Olsen J in *Elan Boulevard (Pty) Limited v T Mahomed* Case No: 12451/2014).

[26] Followed by these requirements which entailed the cause of adjudicative action for recognition, Corbett J contextualised the substance of the judgment in that it is characterised by:

- (i) Finality and is not susceptible to alteration by the Court of first instance.

- (ii) Definitive rights of the parties;
- (iii) The effect of disposing at least a substantial portion of the relief claimed, (*page 11* and all footnotes omitted).

[27] For the Appellant, considering these requirements, the Foreign Judgment Act has found application in terms of section 2(1) and the registration as envisaged in section 3(1). In this instance, the registration by the Clerk of the Court after having the copy of the judgment carries the substance of compliance with the Foreign Judgment Act. The Namibian Judgment delivered on 29 October 2020 under case number: HC-MD-CIV-MOTGEN-2019/00105 was registered on 26 November 2021 against the Respondent by the Clerk of the Court. This was indicated in the Court's stamp date and is a clear indication of the signature and certification of the judgment as in compliance with section 3 of the Foreign Judgment Act. This contention is concretised by the substance of Rule43B(1) of the Magistrates Court Rules which provides that '... registrar or clerk of the court shall register that judgment by numbering it with a consecutive number for the year during which it is filed and by noting the particulars in respect of the judgment referred to ...on the case cover'. '

[28] It is my express conviction that the intersection of section 3(1) of the Foreign Judgment Act and Rule43B(1) of the Magistrates Court Rules illustrates the adherence to the regulatory framework on registering a foreign obtained judgment that is not clouded by irregularities. Particularly in this case, the Foreign Judgment Act determines where the registration is to be effected. Herein, it was done at the Randburg Magistrate's Court by the Clerk of the Court on 26 November 2021. The Court's stamp date is without doubt, demonstrates the registration of the judgment.

[29] The registration also prescribes the number of calendar days for the judgment debtor to be served with the notice of registration. In this case, as is required by the Foreign Judgment Act, the 21 calendar days which are counted from the date of the order cannot be discarded in lieu of Rule 9(3)(e) of the Magistrate Court Rules. The

intersection of sections 3(2) and 5(2) of the Foreign Judgment Act was relegated to the sphere of irrelevance as not constituting a framework for 'service notice'. The Magistrate exclusively relied on Rule 9(3)(e) of the Magistrate Courts Rules with the intersection of the Foreign Judgment Act's provisions finding no application because of the misplaced view that the Foreign Judgment Act does not provide for a coherent process of service. It is my view that the Rule 9(3)(e) could not be applied and interpreted independently of the provisions of the Foreign Judgment Act in determining adherence to the quality of the needed notice of service. I further consider that although the date of receipt and lodging of the application is not excessive, the delay could not be detached from the basic principle envisaged in the Foreign Judgment Act. The reliance on the common law principle of 'condonation' which require the 'good cause' to be shown for the delay whilst the application is entirely focused on the content of the registration of the Foreign Judgment Act will render the latter Act not having 'legal clutches' to ensure advancement of its principles. I am not persuaded that the few days are justified in the circumstances because the basis of the application was not purely on registration of the judgment but an indirect avoidance to pay the debt due. It touched on taking accountability for the merited responsibility found by that court of foreign origin.

[30] The fulfilment of the said requirements serves as a means for a just and equitable order in granting the registration of the foreign judgment. The setting aside of the recognition of a foreign judgment entailed a 'sledgehammer approach' and missed an opportunity to interrogate the implications of sections 3(1) and 5(1) of the Foreign Judgment Act in the dispute. These provisions present an opportunity to guard against the avoidance of accountability by the Respondent through the 'technical eye' of registration whilst an independent court of a designated country, found the merits of the claim giving legitimacy to the legal question raised in the dispute. It is not for the Magistrate to adopt 'a good-person approach' in the light of the impact of section 5(1) of the Foreign Judgment Act in the general overhaul of legal regulation in South Africa.

[31] Secondly, the issuing of the certificate was another misplaced quest for the setting aside of the Namibian Judgment. In this instance, Rule 43B(2)(b) of the

Magistrate's Court Rules lays the framework for a proof of exchange rates between countries to be stated as a foundational requirement that would legitimise the registration of the judgment. This also means the proper calculations of the exchange rates to be correctly inscribed in the issued certificate. In this matter, it is evident that the calculated amount to service the debt was not in dispute. Besides, to be further elaborated in the latter ground, there is monetary commonality between the two countries and therefore, the certificate issue finds no relevance. The Respondent adopts a 'delaying tactic' in servicing the debt which undermines the general principles of the interests of justice on the finality and implementation of the registration and enforcement of the judgment. As a critical legal and professional body for the well-being of the adjudicative process, the delaying tactics undermines the merited analysis of the facts of the case in the granting of the order by the foreign court. In the context of the common exchange rates between South Africa and Namibia, the filing of the certificate later by the Appellant does not render the registration a 'nullity'. Therefore, in fact and in law, the certificate has no place in the adjudicative process of this matter.

[32] Thirdly, the argument about the exchange rates between South Africa and Namibia does not have a bearing in this case because of the commonality between the two countries. Section 1 of the Bank of Namibia Act 1 of 2020 defines the area of commonality in this regard as follows:

“common monetary area” means the area in which exchange and monetary arrangements are co-ordinated in accordance with the Multilateral Monetary Agreement concluded on 6 February 1992 between Namibia, the Kingdom of Lesotho, the Republic of South Africa and the Kingdom of Swaziland.

[33] On a plain reading of the provision it entails the shared aims, and the Clerk of the Court was abreast of this requirement and needed not to go any further to enquire about the exchange rates in-between these countries. The commonality is traceable to the Multilateral Monetary Agreement that was entered on 6 February 1992 that pegged the

rate at 1:1. This then meant this Court, as the Counsel for the Appellant argued, is to draw lessons as prescribed by 1(1) and 1(2) of the Law of Evidence Act 45 of 1988 (“the Evidence Act”), and take judicial notice of the Multilateral Monetary Agreement as a reliable source in endorsing that the two countries do not have different pegged exchange rates. I am therefore persuaded by the Appellant’s argument that the quest for a certificate of the exchange rate was disingenuous.

[34] This application gives due regard to the cross-border multi-lateral adjudicative processes wherein the foreign court deals with the merits and substance of the dispute and make an order in that regard. On the other hand, the local court is limited to consider the satisfaction of the requirements for the registration as prescribed in domestic laws, in this instance, the Foreign Judgment Act. Therefore, the cross-border process is an acknowledgment of the scope of functioning of each of the judiciaries.

[35] Therefore, I am satisfied in this case that a reasonable care and diligence was applied by the Clerk of the Court in the registration of the Namibian Judgment. The language of the Foreign Judgment Act as applied in this case is also to be infused in the framework of the Magistrate Courts Rules. The interdependence of the rules governing the regulatory process is designed to serve a common goal in eliminating irregularities in the registration of foreign obtained judgments. It is my view that no prescriptive regulatory framework should take precedence over the other as the Magistrate did in this case by the heavy reliance on the Magistrate Court Rules with Foreign Judgment Act provisions being considered as of no application.

[36] As noted above, it is settled law that the Appeal Court is generally constrained to interfere with the judgments and orders of the Court *a quo*. However, this rule may be relaxed where there is a glaring misdirection when interference by the Appeal Court can be justified. In this case the Magistrate committed a misdirection because of the invalidation of the registration of the judgment due to the exclusive use and consideration of the legal principles that are applicable in resolving the service notice of the dispute. In addition, the Magistrate misapplied the interpretation of the common

exchange laws between South Africa and Namibia. This then rendered the principles of accountability finding no relevance regarding the registration of the Namibian Judgment which is the substance of the dispute between the parties.

[37] It is also of significance that I consider the issue of costs in this application. It is my understanding that, ordinarily, the costs will follow the results which may be determined at the discretion to be exercised by the court. The Respondent having filed records in opposing the application and turned around not to attend court to argue the case, has undermined the due processes of this Court. With the scant resources and the constraints upon which not only this Court functions it is inexcusable that with readiness to proceed the whole process could have collapsed by non-appearance. I am of the view that the Respondent should bear the costs of this application as to be endorsed below.

[38] Accordingly, the following order is made:

[38.1] The appeal is upheld.

[38.2] The order granted by Magistrate Booysen on 7 December 2022 under case number 28828/2021 is set aside and is replaced with an order in the following terms:

“The application is dismissed with costs, such costs to include the costs of two counsel where so employed.”

[38.3] The Respondent is to pay the costs of the appeal, including the costs of two counsel, on scale B of Uniform Rule 67.

N NTLAMA-MAKHANYA

ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

I AGREE

MV NOKO
JUDGE OF HIGH COURT: JOHANNESBURG

Delivery: *This judgment is issued by the Judge whose name appears herein and is submitted electronically to the parties /legal representatives by email. It is also uploaded on CaseLines, and its date of delivery is deemed 25 February 2025.*

Date of Hearing: 28 January 2025

Date Delivered: 25 February 2025

Appearances:

Counsel for Appellant: Adv R Heacote Sc

Instructing Attorneys: Bowman Gilfillan Inc

Respondent: Met Bank Limited