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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 2512/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED: YES

DATE 31/01/2025

SIGNATURE

In the matter between:

CEBISILE R MAMBWE

FIRST APPLICANT

ASTON MAMBWE

SECOND APPLICANT

and

ADDITIONAL MAGISTRATE, V.K MTHSWENI N.O.

FIRST RESPONDENT

SUMMER BREEZE HOME OWNERS ASSOCIATION

SECOND RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 31 January 2025 at 10:00.

JUDGMENT

Mangena AJ

[1] Mr and Mrs Mambwe are the applicants in these proceedings. They seek an order to review and set aside the decisions of the Magistrate's court for the district of Mbombela held in the sub district of White River under case number 37/2019. The basis for the review is that the Magistrates' Court did not have the jurisdiction to hear the matter because the amount claimed by the plaintiff exceeded the monetary limit determined by the Minister. At the time the plaintiff (who is the second respondent) instituted the proceedings against the applicants, the monetary limit in the Magistrate's court was R200 000.00 and the summons reflected an amount of R216 669.90.

[2] The facts giving rise to the claim can be summarised as follows. The applicants bought an immovable property in a gated village and assumed contractual liability to contribute towards levies charged by Summer Breeze Homeowners Association (Summer Breeze). When they defaulted on their obligations, Summer Breeze instituted legal proceedings against them claiming for the payment of R216 669.90 together with the interest and the costs.

[3] The applicants entered an appearance to defend without the assistance of an attorney and later appointed one. In the intervening period, Summer Breeze had served and filed a notice of bar. The appointed attorney for the applicants placed himself on record, served and filed a plea without uplifting the bar.

[4] Summer Breeze applied for a default judgement as they were in law entitled to, and the Magistrate granted it on 20 May 2019. All attempts made to rescind it yielded no fruits and the property upon which the levies were being charged was declared specially executable on 09 April 2024.

[5] Unrelenting, the applicants set their eyes on the High Court for their salvation and relied on the provisions of section 22 of the Superior Courts Act 10 of 2013 as their

access point. The section deals mainly with the grounds upon which the proceedings of the Magistrates' Court may be reviewed and one such ground is absence of jurisdiction on the part of the court.

[6] When the matter was called for hearing, counsel for Summer Breeze argued that the application has become moot because the subject property has been sold, and the funds are held in trust by the transferring attorneys. He did not provide the details of sale nor did he alert his opponent that he will be advancing this argument. I was nonetheless not persuaded that the matter has become moot as it was not explained to me how the sale took place when there is a court order issued specifically to interdict the sale of the property and suspend the operation of the warrant of execution pending review.

[7] No one has the authority to defy the court order even if one disagrees with it. Therefore, anything done contrary to what the court has ordered is a nullity and cannot be clothed with validity under the guise of mootness. The provisions of section 165(5) of the Constitution are instructive, stating that: "[a]n order or decision issued by a court binds all persons to whom and organs of state to which it applies". This is foundational to the rule of law which is a key principle of our Constitution. The Constitutional Court expressed it better when it said, "the duty to obey court orders is the stanchion around which a state founded on the supremacy of the Constitution and the rule of law is built".¹ For this reason, I decline counsel's invitation to declare the application moot.

[8] What remains now is whether the Magistrates' Court had jurisdiction to entertain Summer Breeze's claim of R216 669.90 instituted against the applicants. If it did, this will be the end of the matter. If it didn't, then the applicants are entitled to the relief they seek.

¹ *Department of Transport and Others v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) para 183.

[9] Mr Sithebe, counsel for the applicants, contends that the Magistrates' Court did not have jurisdiction when regard is had to the provisions of section 29(1)(g) of the Magistrate Courts Act 32 of 1944 (as amended) which reads as follows:

“(1) Subject to the provisions of this Act and the National Credit Act, 2005 (Act No. 34 of 2005), a court in respect of causes of action, shall have jurisdiction in –

...

(g) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*.”

[10] The Supreme Court of Appeal gave an illuminating guidance on the application of section 29(1)(g) of the Magistrate's court in the matter of *Vorster v Clothing City (Pty) Ltd*,² when it said:

“[11] Section 29(1)(g) operates to set the jurisdictional limit of the value of the subject matter in dispute. The starting point is the pleadings – jurisdiction is always determined with reference to the pleadings. The test is the amount claimed. ... in order to determine whether the claim or the matter in dispute fell within the jurisdiction of the Magistrate's court (in terms of the relevant proclamation), the court has to simply look at the prayer. If the prayer was for an amount under the prescribed amount, then it fell within the jurisdiction of the Magistrate's court. Therefore the sole test is the amount claimed.”

[11] Relying on the SCA judgment, Mr Sithebe submitted that the prayer in the respondents' particulars of claim is for judgement against the applicants jointly and severally for payment of a sum of money in the amount of R216 669.90, including interests and costs of suits. The amount claimed is in excess of the monetary limit determined by the minister which was R200 000.00 at the time the summons was issued. On the authority of the *Vorster* judgement, the Magistrates' Court did not have

² *Vorster v Clothing City (Pty) Ltd* [2024] ZASCA 53 para11.

jurisdiction and the proceedings as well as all decisions taken by the magistrate under case number 37/2019 should be reviewed and set aside.

[12] Mr Van Heerden, counsel for Summer Breeze, adopted a two-pronged approach to the matter. He argued that the applicants followed the wrong procedure in their quest to challenge the decision of the Magistrates' Court. He submitted that the correct procedure available to a party aggrieved with a decision of the Magistrates' Court is appeal, more especially because what led to them approaching the High Court was the magistrate's decision to refuse the rescission of judgement application.

[13] Mr Van Heerden's argument is appealing on first blush but does not bear scrutiny when the papers are analysed in their entirety. As I understand the applicant's case, they have moved beyond the rescission application and the focus of their attack is the entirety of the proceedings. They are challenging the authority of the Magistrates' Court to entertain the matter.

[14] By raising an argument on the absence of jurisdiction as their ground of review they are saying the magistrate did not have the power to even grant the default judgment. They are on solid grounds and have the backing of the supreme court of appeal in *Gallo Africa Ltd and others v Sting Music (Pty) Ltd and others*,³ where it was held that jurisdiction means the power vested in a court to adjudicate upon, determine and dispose of the matter. Absent this power, the orders made by the magistrate are a nullity though binding and enforceable until duly set aside by a competent court. I therefore find it difficult to agree with Mr Van Heerden that the procedure adopted by the applicants is wrong. Section 22 of the Superior Courts Act is intended to give an effective remedy to those aggrieved by the irregularities in the proceedings of the lower court. There is accordingly no merit in the argument that the applicants have adopted a wrong procedure.

³ *Gallo Africa Ltd and others v Sting Music (Pty) Ltd and others* 2010 (6) SA 329 (SCA) para 6.

[15] The last string in Mr Van Heerden's bow is section 43 of the Magistrates' Court Act. He urged me to look at the particulars of claim intently and will find that there are different causes of action under one claim, being for levies charged for the property and penalties for failing to comply with house rules.

[16] Section 43(1) of the Magistrates' Courts Act provides as follows:

"If two or more claims, each based upon a different cause of action, are combined in one summons, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action."

[17] To succeed on this defence, Summer Breeze needs to prove three things, namely, (a) two or more claims, (b) different causes of action, and (c) combination in one summons.

[18] Reading the particulars of claim issued against the applicants and applying all the principles applicable to interpretation of documents, it is clear to me that Summer Breeze's claim is based on only one cause of action, namely breach of contract arising out of the applicant's membership of the Homeowners Association. This is so because paragraphs 5 to 8 of the particulars of claim read as follows:

"5.1 The Defendants are the registered co-owners of the immovable property situated at stand 5[...] S[...] B[...] estate, White River, 1240.

5.2 The Defendants became members of the plaintiff upon registration of the property into its name

5.3 By virtue of their membership, the Defendants agreed to be contractually bound by the Articles of Association and Home Association Rules of the plaintiff.

6. ...

7. The Defendants are liable for monthly levies, penalties and interest on outstanding levies in respect of their property payable to the plaintiff on the first day of every month.

8. The Defendants breached their duties and obligations as members of the plaintiff in that they failed to timeously pay monthly levies and failed to pay penalties levied by the plaintiff.”

[19] From the above, it admits of no doubt that the plaintiff instituted one claim for breach of contract which is its cause of action and the total amount claimed exceeded the monetary limit as determined by the Minister. To argue that unpaid levies and penalties for compliance with the rules constitute two separate causes of action is to strain the definition of cause of action as understood in law. The claim for levies and penalties for non-compliance with house rules are different heads of damages under one cause of action which is breach of contract. The reliance on section of 43 is misplaced.

Costs

[20] The rule on costs is that a successful party is entitled to costs. The applicants raised their defence on lack of jurisdiction for the first time when they instituted the review proceedings in the High Court. Had they done so earlier, this matter would not have reached the High Court. It is their fault or that of their previous attorneys that this matter had to come to this court. For this reason, I do not think they should be awarded costs.

[21] Consequently, the following order is made:

1. The decisions and findings including the court order of 09 April 2024 and the subsequent warrant of execution issued on 10 April 2024 made by the Magistrates' Court for the district of Mbombela held in the sub district of White River under case number 37/2019 are reviewed and set aside.
2. Each party shall pay its own costs.

M I MANGENA
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances:

Counsel for the Appellant: Adv Sithebe
Instructed by: Lukhele Z Attorneys

Counsel for the 2nd Respondent: Adv K van Heerden
Instructed by: Walters & Stander Attorneys - Mbombela