IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION (MAIN SEAT)

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

09 April 2025
DATE

[redacted]
SIGNATURE

CASE NUMBER 51/2023

NPE CONSTRUCTION (PTY) LTD	**FIRST APPELLANT**
TRENCON CONSTRUCTION (PTY) LTD	**SECOND APPELLANT**

and

KENNETH MMANGALELWA MKHONTO	**FIRST RESPONDENT**
CHARLES PAUL MAZIBUKO	**SECOND RESPONDENT**
THABISO EVANCE MAHLALELA	**THIRD RESPONDENT**
ROWAN TORR	**FOURTH RESPONDENT**
BHEKIFA WELCOME MKHATSWA	**FIFTH RESPONDENT**
WISEMAN SHIYA	**SIXTH RESPONDENT**

MANDLA SIBOZA	**SEVENTH RESPONDENT**
ERICK FIELDIN MASUKU	**EIGHTH RESPONDENT**
SHADRACK MAGAGULA	**NINTH RESPONDENT**
SUZETTE C MOUTON	**TENTH RESPONDENT**
VARIUOS UNKNOWN PERSONS	**ELEVENTH RESPONDENT**
THE STATION COMMANDER	**TWELFTH RESPONDENT**
NELSPRUIT POLICE STATION	
THE PROVINCIAL COMMISIONER OF	**THIRTEENTH RESPONDENT**
POLICE-MPUMALANGA	
UNIVERSITY OF MPUMALANGA	**FOURTEENTH RESPONDENT**

This judgment will be handed down by email to the parties and by publication on SAFLII. The judgment will be deemed to have been delivered at 11:00 on 09 April 2025

JUDGMENT

SHAI AJ

Introduction

[1] This is an appeal against the whole of the judgment and order of Magistrate D van Rooyen, of the Mpumalanga Regional Division, Mbombela (court *a quo*), handed down on 14 June 2023.

[2] The appeal is opposed by the respondents.

Brief litigation history

[3] The appellants are contractors conducting development works at the Mpumalanga University ("construction site").

[4] An urgent application was brought by the appellants in the court *a quo* to interdict the respondents (1st to 11th) from entering the construction site for unlawful purposes and making threats of violence against the appellants' employees. It was alleged that the respondents had acted on some of the threats made in that they, *inter alia*, attacked appellants' attorney and damaged the vehicle he was in. The appellants, therefore sought an order prohibiting the respondents from repeating the alleged unlawful activities.

[5] It was alleged that their actions included malicious damage to property, trespassing, threats of assault and intimidation and murder.

[6] The respondents did not respond in detail to the allegations averred to by the appellants but, instead, raised *points in limine* which included, but not limited to, non-joinder of the Mbombela Local Municipality, questioning the form and manner of service, and lack of urgency. All of these points were considered and dismissed by the court *a quo*. The matter was then postponed for arguments on merits. The court *a quo*'s findings on the points *in limine* are not the subject matter of this appeal.

[7] When the matter was supposed to be heard on merits, the court *a quo mero motu* raised a jurisdictional issue. It held that it had no jurisdiction to entertain the matter as the contract value of the construction project which the appellants are conducting on the site where the transgressions were alleged to have been committed by the respondents, exceeded its jurisdictional limit of R400 000. The value was said to be R500 million.

[8] The appellants now appeal against this finding.

Issue

[9] The issues for determination herein are:

9.1 Whether a presiding officer could, in light of the fact that jurisdiction was at no stage disputed by the respondents, raise the issue of jurisdiction *mero motu*;

9.2 Whether the court *a quo* was correct in finding that it lacked jurisdiction by virtue of the operation of the provisions of Section 29 of the Magistrate's Court Act.

[10] For the appeal to succeed, the question in 9.2 should be answered negatively.

The law

[11] This Court may interfere with a decision by the court *a quo* only if the court *a quo* misdirected itself on the question of law involved.

Section 30(1)

[12] Section 30(1) of the Magistrates' Court Act, no. 32 of 1944 (the Act), provides:

> "(1) *Subject to the limits of jurisdiction prescribed by this Act, the [Magistrates'] court may grant against persons and things orders for attachments, interdicts and mandamenten van spolie*."

[13] The phrase "subject to the limits of jurisdiction prescribed by this Act" calls into action the provisions of section 29 of the Act. Section 29(1)(g) provides:

> *"(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.*"

[14] Section 30 is the section empowering the Magistrate's Court to deal with interdicts. It is trite that interdicts generally take one of the following two forms:

14.1 Those that are brought to stop or prevent a person from acting or taking action. These are referred to as prohibitory interdicts; and

14.2 Those that are brought to compel or force a person to act or take action in a certain way, and are referred to as mandatory interdicts.[1]

[15] A Magistrate's Court can adjudicate in all these interdicts save a mandatory interdict which amounts to an order for specific performance. It is accepted that, generally an interdict can be brought by way of an application but can also be brought by way of an action procedure, especially where a dispute of fact arises.

[16] It was held by the SCA in *Botha v Andrade*[2] that in dealing with the provisions of section 30, the court should not lose sight of the jurisdictional limits in section 29, more particularly section 29(1)(g). The court had the following to state at paragraph 15:

> *" It follows that s 29(1)(g) is applicable to interdicts granted by the magistrate under s 30, and the section operates to set the jurisdictional limit of the value of the subject matter in dispute and other specific matters referred to in s 29."*

[17] Section 30 should therefore be read with section 29. The court proceeded to state at paragraph 16:

> *"The central question this case raises, however, is how to determine 'the value of the matter in dispute'. The issue in dispute between the parties is the alleged nuisance emanating from the respondents' unlawful activities. The*

[1] See *CIVIL PROCEDURE – A PRACTICAL GUIDE* by S Pete *et al*, Third Ed (2016), at p. 483 and *Airoad Express (Pty) Ltd v Chairman, Local Road Transportation Board, Durban and Others* 1986 (2) SA 663 (A) at 675–676.
[2] (578/2007) [2008] ZASCA 120 (26 September 2008); 2009 (1) SA 259 (SCA).

abatement of the nuisance is capable of quantification and so the jurisdictional limits of the magistrates' court can be determined without difficulty. Although the court below correctly identified the issue as being the 'alleged nuisance', it attached value to the businesses rather than the subject matter in dispute, which was the abatement of the unlawful activities. In this regard the court erred. It is that conduct or the cost of the abatement of the unlawful activities to which value had to be attached and not the businesses per se. If the cost of abating the nuisance was in excess of R100 000 the magistrate would clearly have had no jurisdiction in the matter. The respondents simply provided evidence of the yearly profit and monthly turnover of their businesses, which the high court accepted as conclusive in relation to the jurisdictional limits. That was in my view wrong. The question was not, what was the turnover and profit of the businesses creating the offending nuisance? It was, what would be the cost to the respondents of complying with the conditions attached to the provisional municipal permission, so as to abate the nuisance? On this they led no evidence at all."

[18] The court then held, at paragraph 18, that the respondents bore the onus of proving what the value of the abatement is:

"The onus was on the respondents to prove that the matter fell beyond the jurisdiction of the magistrates' court."

[19] From the aforesaid it is evident that where the issue of lack of jurisdiction is raised by the respondent, it is the respondent that bears the onus of proving what the value of the abatement is.

Lack of jurisdiction

[20] I now turn to look at whether a court can raise the issue of lack of jurisdiction *mero motu*.

[21] It was held in *Cusa v Tao Ying Metal Industries and Others*[3] that:

"Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, mero motu, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality….". The court in *Booi v Amathole District Municipality*[4] *held that:*

"It is trite that courts are bound by the issues that the litigating parties raise. However, a court can raise an issue mero motu where (i) raising it is necessary to dispose of the matter, and (ii) it is in the interests of justice to do so, which depends on the circumstances at hand."

[22] It is apparent from these cases that courts, including magistrates' courts, have the power to raise issues of jurisdiction on their own initiative, even if the parties have not raised them. If a court determines that it lacks jurisdiction, it necessarily follows that it must decline to hear the case, regardless of whether the plea of lack of jurisdiction was raised by the opposing party or not.

Evaluation

[23] It is trite that a court can raise lack of jurisdiction *mero motu*. This can be raised at any time of the proceedings, including on appeal. In principle, there is no procedural

[3] 2009(1) BCLR 1 CC; 2009(1) SA 204 CC, at paragraph 6

[4] 2022 (3 BCLR 265 (cc) at para 35.

handicap that prevents the court from raising jurisdiction *mero motu*. However, in this case, the circumstances and the facts did not warrant such step by the court *a quo*.

[24] This is because the court *a quo* was mistaken on a point of law, and so are the respondents in their submissions, as to what the issue was that related to the limit set in section 29(1)(g). The court *a quo* reasoned that the limit was determined by the value of the business generated on the premises. To that extent, the court *a quo* erred.

[25] This reasoning, that the court should consider the value of the business generated on the premises, was rejected by the SCA in *Botha v Andrade.* The court therein held that it was the costs abatement of the unlawful activities that should be considered.

[26] The court *a quo* found that "*the basis for this concern was that it appeared to me that the magnitude of the construction work is such that its value exceeds the monetary limit of the court, which is currently R400 000*"[5]. This was a misdirection.

[27] The issues raised by the respondents on non-disclosure of material facts relate to the fact that the value of the project was not disclosed by the appellant in its founding affidavit.

[28] In light of what has been said above, such disclosure was not relevant or material to the determination of the issue by the court and I am not going to labour this issue any further.

Conclusion

[29] Although this Court, on the facts before it, is in as good a position as the court *a quo* to make an order that should have been made by that court, the matter is partly heard by the court *a quo* and certain findings were made by it on other points *in limine*.

[5] Bundle 2, page 355, paragraph 8 of the judgment

It would, therefore, be prudent and appropriate to remit the matter back to the court *a quo* for reconsideration.

[30] Consequently, the following order is proposed:

1. The appeal is upheld;
2. The matter is remitted back to the court *a quo* to be finalised by the same Magistrate.
3. The first to eleventh respondents are ordered, jointly and severally liable, the one paying the other to be absolved, to pay the costs of this appeal on a party and party scale B.

SHAI AJ

I agree and it is so ordered.

RATSHIBVUMO DJP

DATE OF HEARING: : 18 OCTOBER 2024

DATE OF JUDGMENT : 09 APRIL 2025

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be **11h00** on **09 APRIL 2025.**

THE NAMES, TELEPHONE NUMBERS AND EMAIL ADDRESSES OF THE LEGAL REPRESENTATIVES OF THE PARTIES

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