



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: 14851/2024

In the matter between:

**FIRST NATIONAL BANK, A DIVISION OF
FIRSTSTRAND BANK LIMITED**

Plaintiff

and

GAIL ROUX

Defendant

JUDGMENT DELIVERED ON 19 MAY 2025

VAN ZYL AJ:

Introduction

1. On 2 July 2024 the plaintiff instituted an action against the defendant for the repayment of various sums lent and advanced to the defendant pursuant to the conclusion of three credit agreement over the period 2014 to 2021. The amounts claimed fall within the jurisdiction of the magistrates' court.
2. The defendant is a lay litigant who refers to herself as "*i-Am : Gail : a politically*

status corrected living soul, Suv'eran, beneficiary who is existing on land and soil of the unincorporated de jure South Africa and therefore not in your [this Court's] jurisdiction". She has conducted the litigation in a colourful manner.

3. The defendant has not pleaded to the action (she assured me that she has no intention of pleading since she is not an animal), but has brought an application for the transfer of the action from this Court to the Wellington Magistrates' Court. Since the launch of that interlocutory application, she has sought further relief, namely that the action be set aside on the basis (amongst others) that this Court has no jurisdiction over her, and that the action is based on a fraud.

The application to transfer the action proceedings

4. The defendant's grounds for seeking the transfer of the action are that she is a pensioner, "existing" nearer to the Wellington Magistrates' Court than to this Court. A transfer of the matter to Wellington will thus save time and costs, especially as the quantum of the plaintiff's claim falls within the jurisdiction of the magistrates' court.
5. There is merit in these submissions, but the transfer of the action is not solely up to this Court. Rule 39(22) of the Uniform Rules of Court, which regulates the transfer of matters from superior courts to the magistrates' court, requires consent by, and agreement between the parties to have the matter so transferred. It provides as follows:

"By consent the parties to a trial shall be entitled, at any time, before trial, on written application to a judge through the registrar, to have the cause transferred to the magistrate's court: Provided that the matter is one within the jurisdiction of the latter court whether by way of consent or otherwise."

6. This Court may not transfer the proceedings in the absence of agreement to that effect. It is obliged to determine matters that fall within its jurisdiction, and it has no inherent power to exercise a discretion to decline to hear such a matter on the ground that another court (for example, a magistrate's court) has concurrent

jurisdiction.¹ In *PT v LT and another*² this Court held as follows:

“ ... I am unaware of the existence of an inherent jurisdiction in the High Courts to transfer proceedings competently instituted before them to other jurisdictions The magistrates' courts are creatures of statute, and proceedings in those courts fall to be instituted and prosecuted in accordance with the relevant statutory provisions. The same considerations apply to proceedings in the maintenance courts. A High Court has no jurisdiction, outside the applicable statutory frameworks, in proceedings instituted before it to cause those proceedings to continue in another court. Subject to the applicable statutory provisions, it is for a claimant to determine in which court of competent jurisdiction to institute and prosecute proceedings.”

7. The plaintiff is *dominus litis* in the action and, as such, may elect in which court to institute proceedings, provided that such court has the necessary jurisdiction to hear the matter. In the present case, the credit agreements in question entitle the plaintiff to choose whether to proceed in the High Court or the magistrates' court. The plaintiff does not consent to the transfer of the action. The action is properly before this Court, which enjoys concurrent jurisdiction with the Wellington Magistrates' Court. The plaintiff has not abused the process of this Court, and seeks costs only on the magistrates' courts' scale.
8. The application to transfer the action must therefore be refused.

The application to set aside the action proceedings

9. The defendant indicates that she has realized that the action – and, it seems, virtually all aspects of her life – has its origins in a fraud. The exact nature of the defendant's argument is oblique. One of the elements of the alleged fraud is that she does not recognize her surname, it having been foisted upon her at birth by

¹ See the discussion in *Standard Bank of South Africa Ltd and others v Mpongo and others* 2021 (6) SA 403 (SCA) paras 15-62. An application for leave to appeal against the SCA's decision was dismissed by the Constitutional Court in *South African Human Rights Commission v Standard Bank of South Africa Ltd and others* 2023 (3) SA 36 (CC).

² 2012 (2) SA 623 (WCC) at 630 fn. 13.

her parents and the government in big brother fashion. There are other aspects to the fraud, set out in detail in various affirmations (she does not do affidavits), and supported by a variety of case law and extracts from miscellaneous items of legislation (in particular from the United States) seemingly sourced from the internet. I could go down the well but it is not necessary to do so.

10. The defendant was adamant that she does not recognize the jurisdiction of this Court (which, according to her, is an administrative tribunal, it not having served a judicial function since 1789) because she did not sign a contract with the Court. The Court, moreover, has no jurisdiction over living persons, but only over corporations. This is based on the defendant's interpretation of the definition of "person" in the Interpretation Act 33 of 1957:

"person" includes-

- (a) any divisional council, municipal council, village management board, or like authority;*
- (b) any company incorporated or registered as such under any law;*
- (c) any body of persons corporate or unincorporate..."*

11. This definition does not refer to natural persons – so the argument goes. The defendant is therefore in fact not before the Court. Nevertheless, she submitted that this Court could set aside the action because she has paid the money now claimed by the plaintiff, and does not owe it anything.
12. It seems to me that this is a matter that should properly be dealt with by the defendant in a plea to the action. The action itself is not before me for determination, and the defence raised – that the amount claimed has already been repaid – is a matter for the trial court. There is, out of all of the information placed before me and the wide-ranging submissions made by the defendant, no proper basis for the setting aside of the action.

Costs

13. The defendant argues that the plaintiff should bear the costs of these

proceedings because, on her argument, the action should never have been instituted. The plaintiff's view is that costs should be costs in the cause.

14. I am inclined to follow the plaintiff's suggestion. I am not determining the action. What served before me were two narrow issues, namely whether the action proceedings should be transferred to another court and, on the further relief sought by the defendant, whether the action should be set aside for the reasons given by the defendant. I have found against the defendant on both scores, but her circumstances are unique. The action will continue, and the trial court will be best placed to determine the question of costs overall.³

Order

In the circumstances, I grant the following orders:

15. The defendant's application for the setting aside of the action under case number 14851/2024 is refused.
16. The defendant's application for the transfer of the action proceedings under case number 14851/2024 from this Court to the Wellington Magistrates' Court is refused.
17. The costs of these proceedings will be costs in the cause.

P. S. VAN ZYL

Acting judge of the High Court

Appearances:

³ See *Levin v Corrigan* [2020] ZAGPJHC 68 (16 April 2020) paras 26-27.

The defendant in person

For the plaintiff:

Mr P. S. Smit, instructed by Ismail and
Dahya Attorneys