

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

Case Number: 2020- 37457

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

23 May 2025

In the matter between:

MAFUBE LOCAL MUNICIPALITY

Applicant

And

SOUTH AFRICAN LOCAL AUTHORITIES PENSION FUND First Respondent

ABSA BANK Second Respondent

FIRST NATIONAL BANK Third Respondent

STANDARD BANK OF SOUTH AFRICA Fourth Respondent

THE SHERIFF HEILBRON Fifth Respondent

JUDGMENT

NOKO J

Introduction

[1] The applicant launched an application to set aside of a warrant of execution issued by the Registrar in this Division. Further, that the goods attached in terms of the said warrant of execution be released from the attachment. All other parties except the first respondent are not participating in this *lis* and as such reference to the respondent would mean the first respondent.

Parties

[2] The applicant is **MAFUBE LOCAL MUNICIPALITY**, a municipality as contemplated in section 2 of the Local Government: Municipal Systems Act¹ with its principal place of business situated at 6[...] J[...] H[...] Street, F[...], Free State Province.

[3] The first respondent is **SOUTH AFRICA LOCAL AUTHORITIES PENSION FUND**, a fund duly registered in terms of the Pension Funds Act² with its *domicilium* address at c/o Motlatsi Seleke Attorneys, 1st Floor, 6[...] C[...] Street, Sandton, Johannesburg.

[4] The second respondent is **ABSA BANK LTD**, a bank registered in terms of the Banks Act³ (Banks Act) and also a public company duly incorporated in accordance with the Company laws of the Republic of South Africa carrying its business at J[...] H[...] Street, F[...], Free State Province.

¹ Act 32 of 2000.

² Act 24 of 1956.

³ Act 94 of 1990.

[5] The third respondent is **FIRST NATIONAL BANK**, a bank registered in terms of the Banks Act and also a public company duly incorporated in accordance with the Company laws of the Republic of South Africa with its business address at 5[...] J[...] H[...] Street, F[...], Free State Province.

[6] The fourth respondent is **STANDARD BANK OF SOUTH AFRICA**, a bank registered in terms of the Banks Act and also a public company duly incorporated in accordance with the Company laws of the Republic of South Africa with its registered address at B[...] street, F[...].

[7] The fifth respondent is **THE SHERIFF FOR THE DISTRICT OF HEILBRON**, cited in his official capacity appointed in terms of the Sheriffs Act.⁴

Background

[8] The background of the dispute between the parties is not contentious. The applicant deducts pension fund contributions from its employees on monthly basis and undertakes to pay same to the first respondent. The applicant failed to forward the deductions to the first respondent over a period of time. The failure of the applicant to pay the contributions was referred to the Pension Fund Adjudicator on 4 August 2020 by the first respondent in terms of the Pension Funds Act. The pension fund administrator duly adjudicated over the referral and made a determination against the applicant on 4 August 2020 for contravening section 13A⁵ of the Pension Fund Act and was ordered to pay the amount of 98 million rands.

⁴ Act 90 of 1986.

⁵ Section 13A mandates that employers must deposit contributions to pension funds by the seventh day of the month following the month for which the contributions are due.

[9] The determination by the adjudicator is of the same status with an order of the high court in terms of section 30(O)(1).⁶ The said determination was forwarded to this Division and was made an order of court. The first respondent ultimately caused a writ of execution to be issued on the basis of the determination by the adjudicator. The fifth respondent was instructed to proceed with the attachment and accordingly attached the applicant's bank accounts held with the second, third and fourth respondents. The applicant was aggrieved by the attachment and instituted the proceedings to challenge it.

[10] The application was launched in two parts. Part A was for an interim order to stay the warrant of execution pending the adjudication of Part B being for the setting aside of the writ of execution. Relief sought in Part A was granted on 15 May 2023.

Parties submissions

Application for the condonation of the late filing of heads of Argument.

[11] In support of the application for the condonation of the late filing of the heads of arguments, the attorney, acting on behalf of the applicant, stated that he joined the current applicant's attorneys of record during late 2024 and did not have sufficient time to get up to speed with the details and nature of the matter. He initially thought that the matter was set down to be heard on 28 of April 2025 but noted that it would be a holiday and subsequently was informed that the matter was reallocated to 29 April 2025. He noted later that the heads of argument which were filed related to Part A of the application, whereas, this matter was enrolled in respect of Part B of the application. He immediately made efforts to engage with his opponents and made a commitment, hoping that his counsel would be available to settle the heads of argument but unfortunately the counsel was not available. The parties subsequently managed to have a joint minute signed and filed with the court.

⁶ Section 30(O)(1) provides that: "Any determination of the Adjudicator shall be deemed to be a civil judgment of any court of law had the matter in question been heard by such court, and shall be so noted by the clerk or the registrar of the court, as the case may be." Emphasis added.

[12] The respondent whilst not opposing the application for condonation demonstrated that the applicant's nonchalant attention and lackadaisical stance should be frowned upon and the costs order be granted at a punitive scale.

[13] The submissions put forward by the applicant do not give credence to the contention that the applicant has been keen to seeing to the finalisation of the matter. The order regarding the stay of the warrant was made a while ago and it took few years for the matter to be prosecuted without coherent explanation from the applicant. In the circumstances, I find the conduct of the applicant amounting to unreasonable delay and the applicant should be mulcted with costs at a punitive scale.

Merits

[14] The applicant referred to section 30M of the Pension Funds Act, in terms of which the adjudicator is entitled to refer his findings together with the reasons to the clerk or the registrar of the court which has jurisdiction over the matter. In this instance, the registrar of this Court does not have jurisdiction as the applicant is a resident within the area of jurisdiction of Free State High Court and not within the jurisdiction of the Gauteng High Court. To this end, counsel argued, the warrant of the execution issued at this Court should be set aside and be declared *pro non scripto*.

[15] The first respondent contends that the determinations of the Pension Fund Adjudicator, in terms of the Pension Fund Act accorded the determinations by the adjudicator the status of civil judgments and enforceable through the court processes. Pursuant to the reluctance of the applicant to effect payment in accordance with the determination by the Adjudicator, the first applicant approached the registrar of the above court in terms of section 30(O)(2) of the Pension Funds Act on 29 July 2022 to issue of a writ. The said warrant was accordingly issued on 7 February 2023 and the bank accounts of the applicant were then attached.

[16] The first respondent contends further that the application for rescission brought by the applicant is ill advised especially because rescission rules relates to rescissions of judgement or orders of court and not warrant of execution. In any event, the applicant fails to satisfy the requirement as set out in Rule 42(1)(a) of the Uniform Rules of Court and /or the common law.

[17] Secondly, counsel argued, section 30M envisages that the adjudicator would, after making a determination, also make a decision as to which High Court has jurisdiction to execute the determination that has been made. The decision by the adjudicator to decide which court would have jurisdiction remains extant until set aside by the court having jurisdiction. It follows, counsel continued, that the applicant would ordinarily have a recourse, in terms of section 30P of the Pension Funds Act, to proceed with a judicial review. If a party disregard the decision made by the adjudicator, his or her conduct would amount to self-help a conduct proscribed by the courts as illustrated in *EFF and Others v The Speaker of the National Assembly and Another*.⁷

[18] The applicant in retort contends that section 30O of the Pension Funds Act provide that once an adjudicator has made a determination, that determination shall have the effect of civil judgement of any court of law. Further, unlike the provisions of section 30M and section 30O, does not make any reference to jurisdiction. As a result, "... the words any court should be interpreted to include the court which has jurisdiction over the course of the matter by which of the determination being made within its geographical jurisdiction".

Issues

[19] Issues for the determination is to establish if the applicant made out a case for the relief sought and whether the defences raised by the respondent are valid.

⁷ [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC).

Legal principles

[20] Ordinarily, a warrant of execution can be set aside on the basis, firstly, that the writ does not conform with the judgment which its issue, secondly, the judgment is not definite and lastly that the causa for the judgment has fallen away.⁸

[21] It was also stated in *FirstRand Bank Limited v Baadjies*⁹ that:

“In approaching the question of jurisdiction in the context of the present case, the starting point must be found in the provisions of s19 (1) (a) of the Superior Court Act,¹⁰ which confers jurisdiction, *inter alia*, ‘... over all persons residing or being in and in relation to *all causes arising* ... within its area of jurisdiction and all other matters of which it may according to law take cognizance...’ It is trite that a cause based on contract ‘arises’ where (a) the contract was entered into; or (b) the contract is or was to be performed, wholly or in part; or (c) the particular breach of contract upon which the plaintiff relies, was committed. The plaintiff has a choice of instituting action in any of these places.”¹¹

[22] The Supreme Court of Appeal held in *Makhanya*¹² that:

“... the term ‘jurisdiction’, as it has been used in this case, and in the related cases that I have mentioned, describes the power of the court to consider and to either uphold or dismiss a claim. And I have also pointed out that it is sometimes overlooked that to dismiss a claim (other than for lack of

⁸ See *Strydom NO v Kruger and Another* [2022] ZANCHC 3 at [8].

⁹ [2013] ZAWCHC 116 at para 6.

¹⁰ Act 10 of 2013.

¹¹ See also section 21(1) of the Superior Court Act 10 of 2013 states that: “a division has jurisdiction over all persons residing 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 cognisance.

¹² *Makhanya v University of Zululand* [2009] ZASCA 69; 2010 (1) SA 62 (SCA).

jurisdiction) call for the exercise of judicial power as much as it does to uphold the claim.”¹³

Analysis

[23] Section 30M (1) is very specific that the determination should be referred to the clerk or registrar of the court which has jurisdiction over the *lis*. The relevant portion of the section is that “... any court of law had the matter in question been heard by such court.”¹⁴ Though not in clearest terms with perfect interpretation the section means the court which would have been seized with the matter had it not been referred to the Pension Fund Adjudicator.

[24] It is trite that the Court has jurisdiction over the defendant who ordinarily resides or carries business within its area of jurisdiction alternatively if the cause of action arose within its area of jurisdiction. In *casu*, the cause of action arose in the Free State Province and the applicant carries its business in the said province. It follows that the court which has jurisdiction is the Free State High Court and not this Division.

[25] Other arguments raised by the first respondent do not address the essence of the application serving before me and need not detain me further.

Conclusion

[26] In the premises the ineluctable conclusion is that the registrar has no jurisdiction and therefore the warrant issued is susceptible to be set aside.

Costs

¹³ *Id* at para 52.

¹⁴ See also ‘*The LAWSA*’, second ed, 2010, vol 20 at p276.

[27] It is settled in our jurisprudence that the issue of costs resorts within the discretion of the court and normally the costs should follow the results. I have already relayed my displeasure at the way through which the applicant dealt with the matter and believe that though the applicant is successful the principle that the costs should follow the costs would be departed from in this *lis*. The applicant had an opportunity to challenge the adjudicator's determination had there being any qualms about its essence otherwise the applicant should have complied therewith without being compelled to comply therewith. No plausible explanation has been advanced.

Order

[28] I therefore make the following order.

1. The warrant of execution issued by the Registrar of the above Honourable Court under case number 37457/2020 is set aside.
2. No order as to costs.

M V NOKO

Judge of the High Court
Gauteng Division, Johannesburg.

DISCLAIMER: This judgment was prepared and authored by Judge Noko and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 23 May 2025 at 14:00.

Dates:

Hearing: 29 April 2025.

Judgment: 23 May 2025

Appearance:

For the Appellant : ` LA Roux
Instructed by Peyper Attorneys.

For the Respondent : K Nkabinde
Instructed by Motlatsi Seleke Attorneys.