



Reportable:	Yes/No
Circulate to Judges:	Yes/No
Circulate to Magistrates:	Yes/No

***IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)***

Appeal Case No: CA & R 40/2023

In the matter between:

CONSTABLE MANGATE

1st Appellant

MINISTER OF POLICE

2nd Appellant

and

THEBE VINCENT MOTLOGELWA

Respondent

In re:

THEBE VINCENT MOTLOGELWA

Plaintiff

and

CONSTABLE MANGATE

1st Defendant

MINISTER OF POLICE

2nd Defendant

Coram: Williams J et Lever J

JUDGMENT

Lever J:

1. This appeal arises out of the dismissal of a special plea by the Regional Magistrate in the Regional Court of the Northern Cape, held at Kimberley. The special plea taken was that the said Regional Magistrates Court did not have jurisdiction to entertain the relevant claim.
2. The claim concerned an unlawful arrest, alleged unlawful detention, a claim for damages to a vehicle taken into custody by the police at the behest of the first appellant, and a claim for legal costs incurred in respondent defending himself and securing the release of the said vehicle.
3. The plaintiff in his Particulars of Claim pleaded that he was arrested in Taung on the 22 January 2018. This was admitted by both defendants/appellants in

their plea-over. This also forms the basis of the special plea in question. This special plea is founded on the admitted contention that the said arrest took place in Taung, which is part of the North-West Province and does not fall within the territorial jurisdiction of the Regional Court. In fact, respondent pleaded in paragraph 3 of his Particulars of Claim that: “The above Honourable Court has jurisdiction over this matter in that the cause of action arose within its area of jurisdiction.”

4. The appellants filed two special pleas to the respondent’s Particulars of Claim. However, it is only the second special plea that is relevant to the present appeal. This second special plea reads:

“The Defendants plead that this Honourable Court does not have jurisdiction to adjudicate this matter as the cause of action arose in Taung, a town outside the jurisdiction of this court. Wherefore the Defendants plead that the matter be dismissed with costs.”

5. The special plea was argued in the Regional Magistrates Court for the Regional Division of the Northern Cape, held at Kimberley on the 22 June 2023. The Magistrate reserved judgment and gave an order on the 28 July 2023 dismissing the said special plea. The appellants requested reasons for the said order. Such reasons were provided by the relevant Magistrate on the 17 August 2023.

6. The reasons provided by the learned Regional Magistrate are short and succinct enough to quote verbatim. In these circumstances, it is safer to simply quote the said reasons rather than attempt to paraphrase or summarise them.

The said reasons read as follows:

- “1. This court on the 28 July 2023 ruled on a special plea raised by the Defendants. On the same day the Defendants filed a notice for written reasons for the ruling in terms of Rule 51(1).
2. The approach by the Defendants that this court lacks jurisdiction on the basis that the whole cause of action did not arise in the jurisdiction of this court in my view, with respect is technical in nature and not the purpose of the jurisdictional boundaries.
3. According to the Particulars of Claim, the Plaintiff was arrested in Taung in the North West Province for a crime which emanates from the jurisdiction of this court. The Plaintiff was detained in Jan Kempdorp which falls within the jurisdiction of this court.
4. I am therefore of the view that this court is not precluded from adjudicating the matter. The Defendants will also not suffer any prejudice if the matter is adjudicated within the jurisdiction of this court.”

7. The appellants filed a Notice of Appeal containing six grounds of appeal. The grounds of appeal read as follows:

- “1. The learned Magistrate erred in dismissing the special plea with costs.
2. The learned Magistrate erred in finding that the court is not precluded from adjudicating the matter as the crime emanates from the jurisdiction of the court.
3. The learned Magistrate erred in finding that because the Plaintiff was detained in Jan Kempdorp that the court is vested with jurisdiction to adjudicate the matter.
4. The learned Magistrate erred in finding that Defendants would not suffer any prejudice if the matter were adjudicated within the

jurisdiction of the court, as prejudice is not a ground to found jurisdiction.

5. The learned Magistrate erred in not considering the relevant authority that the entire cause of action must have arose (sic) within the jurisdiction of the Regional Court for such a court (sic) to have jurisdiction to adjudicate on the matter.
6. The learned Magistrate erred in not considering section 28(1)(d) of the Magistrates Court Act, 32 of 1944, that the whole cause of action did not arise within the jurisdiction of the court and the court is thereby precluded from adjudicating the matter.”

8. Mr Davis who appeared for the appellants in this matter, argued that a dismissal of a Special Plea relating to jurisdiction is an order that has final effect and is therefore appealable. In making this submission Mr Davis relied *inter alia* on the authorities of: MAIZE BOARD v TIGER OATS AND OTHERS¹; NDLOVU v SANTAM LTD²; and MINISTER OF POLICE v THE REGIONAL CIVIL MAGISTRATE OUDTSHOORN³.

9. Undoubtedly, the dismissal of a Special Plea relating to jurisdiction is a final judgment which may be appealed as contemplated in section 83(b) of the Magistrates Court Act⁴.

10. Mr Davis then goes on to quote section 28(1)(d) of the Magistrates Court Act⁵.

On the strength of that sub-section Mr Davis submits that the entire cause of

¹ 2002 (5) SA 365 (SCA) at para [9].

² 2006 (2) SA 239 (SCA) at para [10].

³ Unreported WCC case number 15587/2013 dated 6 November 2014.

⁴ Act 32 of 1944.

⁵ Above.

action must arise within the area of that court's jurisdiction for such court to be vested with the jurisdiction to adjudicate that matter.

11. In making the submission that the entire cause of action must arise within the area of jurisdiction of the court for such court to be vested with jurisdiction under section 28(1)(d) of the Magistrates Court Act⁶ to adjudicate such matter, Mr Davis referred the court to the following authorities: BLUE CHIP 2 (PTY) LTD t/a BLUE CHIP 49 v RYNEVELDT AND OTHERS (NATIONAL CREDIT REGULATOR AS AMICUS CURIAE)⁷; and MINISTER OF LAW AND ORDER v THUSI⁸.

12. Mr Davis then asserted that the arrest of the plaintiff is a different cause of action that does not emanate from the court's area of jurisdiction.

13. Insofar as section 28(1)(d) of the Magistrates Court Act⁹ goes this is correct.

14. Mr Ndwanya who appeared for the respondent raised a number of issues, but the argument that needs more careful attention appears from paragraph 35 of the Heads of Argument which he filed on behalf of the respondent. The said paragraph reads as follows:

⁶ Above.

⁷ 2016 (6) SA 102 (SCA) at para [21].

⁸ 1994 (2) SA 224 (N).

⁹ Above.

“35. In this instance, the first Appellant is employed within the court *a quo* (sic) area of jurisdiction, the Second Appellant carries on business within the court's jurisdiction and there is no statutory provision precluding the court *a quo* from pronouncing upon this matter.”

15. Mr Davis, for the appellants had no answer to this argument.

16. Turning to the pleadings filed in the court *a quo* these contentions or facts to support such contentions are pleaded by the respondent. Paragraph 2 of the relevant Particulars of Claim read:

“2.1 The first Defendant is CONSTABLE MANGATE, an adult male police officer in the employ of the South African Police Service, stationed at KIMBERLEY, NORTHERN CAPE.

2.2 The Third Defendant is the MINISTER OF POLICE, cited in his capacity as the executive head of the SOUTH AFRICAN POLICE SERVICE responsible for implementing the constitutional obligation contained in section 206(1) of the Constitution of the Republic of South Africa, Act 106 of 1996. ...”

17. The appellants have admitted these contentions in their plea-over. The question raised is twofold: Firstly, do the contentions as pleaded and admitted in the plea-over clothe the court *a quo* with jurisdiction to adjudicate the matter under the provisions of section 28(1) of the Magistrates Court Act¹⁰; and Secondly, could the court *a quo*, based on the admitted contentions set out above, be clothed with such jurisdiction despite what is pleaded in paragraph 3 of the Particulars of Claim, which is quoted above.

¹⁰ Above.

18.Paragraph 2.1 of the Particulars of Claim shows that the first defendant/first appellant is employed by the South African Police Service and is stationed at Kimberley. Therefore, it follows that the first appellant is employed within the area of jurisdiction of the court *a quo*.

19.Paragraph 2.2 there is an obvious typographical mistake with the reference to the ‘Third Defendant’. It is clear that it is the second defendant being referred to in this paragraph. The second defendant/second appellant is the political head of the South African Police Service. The South African Police Service employs the first appellant/first defendant and has stationed him in Kimberley. The phrase ‘carries on business’ is not defined in the Magistrates Court Act¹¹, nor is it defined in section 28 of the said act, and it is also not defined in the Magistrates Court Rules. The said phrase therefore bears its ordinary meaning, which is wide enough to encompass employing people and stationing them in a particular place as well as fulfilling the Constitutional mandate as pleaded, being to establish a policing policy for all of the provinces with the Republic of South Africa. In ordinary use, the said phrase is not confined to commercial activity. In these circumstances, it can safely be concluded that the second defendant carries on business within the area of jurisdiction of the court *a quo*.

20.Section 28(1) of the Magistrates Court Act provides:

¹¹ Above.

- “28(1) Saving any other jurisdiction assigned to a court by this Act or by any other law, the persons in respect of whom the court shall, subject to subsection (1A), have jurisdiction shall be the following and no other:
- (a) Any persons who resides, carries on business or is employed within the district or regional division;
 - (b)...
 - (c)...
 - (d) any person, whether or not he or she resides, carries on business or is employed within the district or regional division, if the cause of action arose wholly within the district or regional division;
 - (e)...
 - (f) Any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court;
 - (g)...”

21. What is clear from the structure and wording of section 28(1) of the Magistrates Court Act are alternate grounds each of which individually could found jurisdiction for the court concerned. If any one of these are established the said court will have jurisdiction to adjudicate the matter.

22. It is true that the respondent/plaintiff pleaded the ground set out in section 28(1)(d) as the ground upon which he claimed the court *a quo* had jurisdiction.

23. However, the respondent/plaintiff also pleaded facts that would establish jurisdiction to adjudicate the matter under the provisions of section 28(1)(a).

What's more, both appellants have admitted these facts.

24. The function of our courts is to determine the real issues between the parties.

The function of pleadings has been set out by Innes CJ in the case of ROBINSON v RANDFONTEIN ESTATES G.M. CO. LTD¹², where it is stated that:

“The object of pleading is to define the issues; and parties will be kept strictly to their pleas where any departure would cause prejudice or prevent a full enquiry. But within those limits the court has a wide discretion. For pleadings are made for the Court, and not the Court for the pleadings.”

25. Although the *dicta* quoted above in the ROBINSON v RANDFONTEIN case was made in different circumstances, I believe it is still applicable to the present appeal. Here the plaintiff/respondent has pleaded facts which would clothe the court *a quo* with jurisdiction to adjudicate the matter under the provisions of section 28(1)(a) of the Magistrates Court Act. Both appellants have admitted these facts. In these circumstances, the grounds that clothe the court *a quo* with the necessary jurisdiction have been established.

26. The grounds pleaded in paragraph 3 of the Particulars of Claim are obviously wrong. They can and have been denied in the plea-over. Having admitted the grounds that establishes the jurisdiction of the court *a quo*, there can be no question of either appellant suffering any prejudice in holding that the court *a quo* has jurisdiction to adjudicate the matter. To decide otherwise in the

¹² 1925 AD 173 at 198.

circumstances would be overly formalistic in approach and would severely prejudice the respondent/plaintiff.

27. Accordingly, the court *a quo* was correct to dismiss the Special Plea, albeit on other grounds. In these circumstances the appeal stands to be dismissed.

28. On the question of costs, there is no reason why costs should not follow the result. The appellants should be jointly and severally liable for such costs. Having regard to the issues canvassed I think it appropriate for costs to be awarded on scale "B".

In the circumstances, the following order is made:

1. The appeal is dismissed.
2. The appellants are jointly and severally liable for the costs of the appeal, the one paying the other to be absolved.
3. Such costs are awarded on scale B.



L. G. Lever

Judge

Northern Cape Division,

Kimberley

I agree,


C. Williams

Judge

Northern Cape Division,
Kimberley

Date of Hearing: 20 May 2024

Date of Judgment: 27 July 2025

Appearances:

Appellants: Mr C Davis – Office of the State Attorney

Respondent: MrNdwanya – Attorney for Respondent