

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

Case Number: 4433/2024 &
Case Number: 4435/2024

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
17 February 2026 [REDACTED]	
DATE	SIGNATURE

In the matter between:

Case Number: 4433/2024

FIRSTRAND BANK LIMITED

Applicant

and

CEDAR FALLS PROPERTIES 143 (PTY) LTD
Registration number 2017/362742/07

Respondent

AND

In the matter between:

Case Number: 4435/2024

FIRSTRAND BANK LIMITED

Applicant

and

MATUMAINI FARMING (PTY) LTD

First Respondent

MOOSA DANIEL NTIMBA

Second Respondent

Before the Honourable Mayet AJ:

Heard: 7 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down of the judgment is deemed to be 10h00 on 17 February 2026.

Order:

[1] The Respondents objection *in limine* to the jurisdiction of this Court is dismissed.

[2] It is declared that the High Court of South Africa, Mpumalanga Division, Mbombela, has jurisdiction to hear the applications (Case number: 4435/2024 and Case number: 4433/2024).

[3] The Respondents to pay the costs on a party and party taxed on Scale B.

JUDGMENT

[1] The jurisdiction of this Court is challenged. The issue arises from two related applications instituted by the Applicant under a suite of credit agreements. The Respondents contend that, by reason of a jurisdiction clause, this Court lacks competence to entertain the proceedings.

Background Facts

[2] The facts are recorded to the extent necessary to describe the jurisdictional setting in which the dispute arises.

[3] Matumaini Farming (Pty) Ltd ("Matumaini") operates a broiler poultry business, raising day-old chicks within its broiler facilities and supplying mature chickens to the fresh meat market. These agricultural activities are carried out on land situated within the Mpumalanga province, owned by Cedar Falls Properties 143 (Pty) Ltd ("Cedar Falls").

[4] Mr Moosa Daniel Ntimba ("Mr Ntimba") is the sole director of both Matumaini and Cedar Falls.

[5] The Applicant, a commercial bank and Matumaini, represented by Mr Ntimba concluded a written Loan Agreement and an overdraft Facilities Agreement.

[6] As security for the loan and overdraft, Mr Ntimba executed an unlimited suretyship in his personal capacity, and bound himself jointly and severally

as surety and co-principal debtor for all sums of money that Matumaini may owe to the Applicant.

[7] As further security, Cedar Falls, represented by Mr Ntimba, bound itself jointly and severally as surety and co-principal debtor, for limited debts that Matumaini may owe to the Applicant.

[8] In September 2024, the Applicant instituted two applications in this Court under Case number 4435/2025 and Case number 4433/2025:

[1] Case number: 4435/2024: monetary claim for outstanding arrears arising from an alleged breach of the Loan Agreement and overdraft Facility Agreement in the amounts of R15 554 062.16 and R759 481.07 against:

- i. The First Respondent, Matumaini as primary debtor; and
- ii. The Second Respondent, Mr Ntimba, as surety for the obligations of Matumaini.

[2] Case number: 4433/2024: winding up application for Cedar Falls, based on non-compliance with statutory notice in terms of sections 344 and 345 of the Companies Act, 2008, having failed to make payment on its suretyship for the obligations of Matumaini.

[9] The Respondents opposed both applications and raised various points *in limine* one of which is this jurisdictional challenge.

Jurisdictional Challenge

[10] At the commencement of the hearing, the parties agreed that the jurisdictional challenge should be determined at the outset.

[11] In *Louis Pasteur Holdings (Pty) Ltd v Absa Bank Ltd*¹ the Supreme Court of Appeal observed that, while Rule 33(4) does not apply to applications, a court may nevertheless deal with separate issues in motion proceedings:

*“The provision does not apply to applications, but a court may deal with separate issues in applications in limine and in its inherent power apply a similar procedure to them.”*²

[12] Having considered the nature of the jurisdictional challenge, the interests of the parties and the ends of justice are better served by resolving the jurisdictional challenge.³ This Court is satisfied that the question of jurisdiction is discreet and can be conveniently adjudicated prior to the main applications.

Issue for determination

[13] The dispute concerns the proper construction of Clause 15.2 in the Loan Agreement; in particular whether Clause 15.2 confines proceedings to the High Court Gauteng Local Division, Johannesburg.

¹ *Louis Pasteur Holdings (Pty) Ltd v Absa Bank Ltd* 2019 (3) SA 97 (SCA)

² *Louis Pasteur Holdings (Pty) Ltd v Absa Bank Ltd* 2019 (3) SA 97 (SCA) referred to Harms, Civil procedure in the Superior Courts Part B High Court at B33.9,

³ *African Bank Ltd v Covmark Marketing CC; African Bank Ltd v Soodhoo and others* 2008 (6) SA 46 (D) at 51B-D Rule 6(5)(d)(iii) provides a respondent in application proceedings with the means of raising a point of law.

THE PARTIES' SUBMISSIONS

The Respondents case

[14] The Respondents rely on Clause 15.2 in the Loan Agreement which reads:

“15. GOVERNING LAW AND JURISDICTION

15.1 *The terms of this Agreement shall be governed by and interpreted in accordance with the laws of South Africa.*

15.2 *Each of the Parties to this Agreement irrevocably agrees that the High Court of South Africa, Gauteng Local Division, Johannesburg shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes which may arise out of or in connection with the agreements and for such purposes, irrevocably submits to the non-exclusive jurisdiction of such court.”*

[15] The Respondents submit that Clause 15.2 constitutes a clear and binding contractual provision, mutually agreed upon by both parties and which forms a material part of the Loan Agreement. The parties intended that disputes arising from the Loan Agreement were to be litigated in the Gauteng Local Division, Johannesburg.

[16] The Respondents refer to the factual matrix in support of this contention. Despite proximity, the Applicant's Mbombela branch played no role and all negotiations and meetings with the Applicant occurred in Johannesburg,

and the Loan and Facility Agreements were concluded within the jurisdiction of the Gauteng Local Division.

[17] The Respondents argue that, having contractually submitted to the jurisdiction of the Gauteng Local Division, the parties are bound by that election. The Court was referred to *Minister of Justice v Breytenbach* 1942 AD 175 and *Wellworth Bazaars Ltd v Chandler's Ltd and another* 1947 (2) SA 37 (A) for the submission that every word in Clause 15.2 must have meaning and this Court should be slow to conclude that words are tautologous or superfluous. It is worthwhile to note that the latter two judgments concern the interpretation of legislation.

[18] Reliance was also placed on *Arafdien v Soeker* 1982 (2) SA 570 (C), together with authorities concerning contractual interpretation, including *Coopers & Lybrand v Bryant* 1995 (3) SA 761 (A), for the proposition that contractual language must be given its ordinary meaning and that effect should be given to every word used by the parties.

[19] Reference was made to *First National Bank v Clear Creek Trading 21 (Pty) Ltd and another* 2014 (1) SA 23 (GNP) for the proposition that in the event that the written agreement did not correctly reflect the agreement or intention of the parties, then the proper course would have been to seek rectification.

[20] The Respondents further contend that the Applicant is not entitled to unilaterally disregard the jurisdictional agreement and proceed in a forum other than the one expressly provided for in the Loan Agreement per *Villa Crop Protection v Bayer Intellectual Property* 2024 (1) SA 331 (CC).

[21] On this basis, the Respondents submit that the applications should be dismissed with costs, due to the blatant disregard for the agreed jurisdictional prerequisites in Clause 15.2 and the unnecessary litigation costs incurred.

The Applicant's case

[22] The Applicant is of the view that Clause 15.2 specifically provides for "*non-exclusive*" jurisdiction of the High Court, Gauteng Local Division, Johannesburg.

[23] The Applicant pointed out that *ex facie*:

[1] Matumaini's registered address and chosen *domicilium citandi et executandi* address is within the jurisdiction of this Court.

[2] Mr Ntimba's chosen *domicilium citandi et executandi* address is within the jurisdiction of this Court.

[3] Cedar Falls registered address is within the jurisdiction of this Court.

[4] The cause of action (the alleged default payment) arose within the jurisdiction of this Court.

[24] The Applicant refers to the contractual matrix in support, in particular clause 16 of the overdraft Facility Agreement, which provides that the Applicant may institute proceedings in the High Court of South Africa:

"Jurisdiction: The Bank may take any proceedings against the Obligers relating to this facility in the High Court of South Africa to which the client submits."

[25] In addition, the Applicant highlighted that the Deed of Surety signed by Mr Ntimba in his personal capacity as well as the Cedar Falls Deed of Surety does not contain a similar clause regarding jurisdiction of the High Court, Gauteng Local Division, Johannesburg. Both Deed of Surety provide:

“Jurisdiction - I/We hereby consent and submit to the jurisdiction of the Magistrates' Court having jurisdiction in respect of all proceedings connected with this suretyship, even if the amount claimed or the value of the matter in dispute exceeds the Magistrates' Court's jurisdiction; but FRB shall not be obliged to take steps against me/us in the Magistrates' Court. FRB may, however take steps against me/us in connection with this suretyship in the appropriate division/s of the High Court of South Africa and I/we hereby consent and submit to the jurisdiction of that Court and I/we agree that any costs awarded against me/us on the High Court scale.”

[26] The Applicant placed reliance on *Foize Africa (Pty) Ltd v Foize Beheer*⁴ *Fleet Africa (Pty) Ltd v Polokwane Local Municipality*⁵ and *Saboath General Traders (Pty) Ltd t/a Sausage Saloon and Another v Mthatha Mall (Pty)*⁶ regarding the enforceability of jurisdiction clauses.

[27] The Applicant maintained that the Respondents' registered address, principal place of business, chosen *domicilium* as well farming operations are within Mpumalanga and this Court has jurisdiction.

Evaluation

[28] The interpretation of clause 15.2 falls to be undertaken in accordance with the approach articulated in *Natal Joint Municipal Pension Fund v Endumeni Municipality*.⁷ The language used, read in context and having regard to purpose and commercial sense, must be given its ordinary grammatical

⁴ *Foize Africa v Foize Beheer* (752/2011) [2012] ZASCA 123 (20 September 2012)

⁵ *Fleet Africa (Pty) Ltd v Polokwane Local Municipality* [2023] JOL 61642 (SCA) at para

⁶ *Saboath General Traders (Pty) Ltd t/a Sausage Saloon and Another v Mthatha Mall (Pty) Ltd* [2023] ZACC 43

⁷ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18

meaning unless this leads to insensible or unbusinesslike results. Clause 15.2 must be interpreted so that every word is given operative effect rather than rendered redundant.⁸

[29] Clause 15.2 records that the parties irrevocably agree that the High Court of South Africa, Gauteng Local Division, Johannesburg “*shall have jurisdiction*” and submit to the non-exclusive jurisdiction of that court. The deliberate qualification “*non-exclusive*” must therefore carry independent meaning.

[30] The ordinary grammatical meaning of “*non-exclusive*” is unambiguous: Properly construed, it constitutes an advance consent to the jurisdiction of the of the the Gauteng Local Division, Johannesburg, with the consequence that no party may object to proceedings instituted there but simultaneously preserves the possibility that other competent courts may also entertain proceedings.

[31] Two features of Clause 15.2 are immediately apparent. First, it affirmatively confers jurisdiction on the Gauteng Local Division, Johannesburg. Second, the conferral is expressly described as *non-exclusive*.

[32] Clause 15.2 does not say that the Gauteng Local Division, Johannesburg is the *only* court that would have jurisdiction in matters arising out of the Loan Agreement.

[33] Clause 15.2 operates as an irrevocable consent to the jurisdiction of the Gauteng Local Division, Johannesburg, but being expressly *non-exclusive*,

⁸ Coopers & Lybrand v Bryant 1995 (3) SA 761 (A) at 767E–F.

it does not exclude or limit the jurisdiction of another competent division of the High Court.

[34] A non-exclusive jurisdiction clause enlarges jurisdiction by consent; it does not restrict concurrent jurisdiction.⁹ In *Foize Africa v Foize Beheer*¹⁰ the Supreme Court of Appeal held that parties to a contract cannot exclude the jurisdiction of a court by their own agreement. The Supreme Court of Appeal cautioned against conflating contractual arrangements with jurisdictional competence, emphasising that jurisdiction must be determined as a matter of law.¹¹

[35] The wording of clause 15.2 thus has two discrete legal consequences:

[1] First, it constitutes an irrevocable advance submission to the jurisdiction of the Gauteng Local Division. If proceedings are instituted there, no party may object to that court's jurisdiction. A party that institutes proceedings in the Gauteng Local Division, Johannesburg may not be met with a jurisdictional objection on the basis that the court is improper; and

[2] Second, because it is expressly non-exclusive, it preserves concurrent jurisdiction in any other division of the High Court that is competent in terms of section 21 of the Superior Courts Act 10 of 2013. It does not preclude proceedings in another division provided that statutory connecting factors are present and established.

⁹ *Foize Africa v Foize Beheer* (752/2011) [2012] ZASCA 123 (20 September 2012)

¹⁰ *Foize Africa v Foize Beheer* (752/2011) [2012] ZASCA 123 (20 September 2012)

¹¹ *Foize Africa v Foize Beheer* (752/2011) [2012] ZASCA 123 (20 September 2012) at para 21

- [36] Commercially, a non-exclusive jurisdiction clause serves a practical function: it ensures certainty that proceedings may validly be brought in the nominated court while preserving flexibility where jurisdiction is connected to another forum.¹²
- [37] To construe a non-exclusive jurisdiction clause as excluding the jurisdiction of another competent court would require this Court to ignore the ordinary grammatical meaning of the words used, contrary to settled principles of interpretation.¹³
- [38] In *Fleet Africa (Pty) Ltd v Polokwane Local Municipality*¹⁴ the Supreme Court of Appeal held that a non-exclusive jurisdiction clause does not exclude the jurisdiction of other competent courts. The court stated that such clauses merely designate a specific court as the appropriate forum, and the principle of *pacta sunt servanda* cannot override the inherent jurisdiction of a competent court altogether.
- [39] Similarly, in *Saboath General Traders (Pty) Ltd t/a Sausage Saloon and Another v Mthatha Mall (Pty) Ltd*,¹⁵ the Constitutional Court held that a clause conferring jurisdiction on a specified court does not, by reason of consent alone, oust the jurisdiction of another court competent under statute; instead such a clause means that if proceedings are instituted in

¹² *Foize Africa (Pty) Ltd v Foize Beheer BV* 2013 (3) SA 91 (SCA) para 21

¹³ *Coopers & Lybrand v Bryant* 1995 (3) SA 761 (A) at 767E–F

¹⁴ *Fleet Africa (Pty) Ltd v Polokwane Local Municipality* [2023] JOL 61642 (SCA) at para

¹⁵ *Saboath General Traders (Pty) Ltd t/a Sausage Saloon and Another v Mthatha Mall (Pty) Ltd* [2023] ZACC 43.

the nominated court, no jurisdictional objection may be taken, but concurrent jurisdiction remains possible where legally established.¹⁶

[40] To interpret Clause 15.2 as an absolute injunction that proceedings may only be instituted in the Gauteng Local Division, Johannesburg would contradict both its express wording and settled authority, and would impermissibly convert a non-exclusive jurisdiction clause into an exclusive one by judicial fiat.

[41] Even though this court has interpreted Clause 15.2 to provide concurrent jurisdiction,¹⁷ if the statutory requirements are not satisfied, then this Court will not have jurisdiction.¹⁸ This follows from *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd*¹⁹, where the court held that jurisdiction depends on objective connecting factors recognised in law, and the existence of jurisdiction elsewhere does not extinguish jurisdiction where the statutory requirements are otherwise met.²⁰

Application to the facts

[42] Jurisdiction is conferred as a matter of law. Section 21(1) of the Superior Courts Act 10 of 2013 provides that:

¹⁶ *Saboath General Traders (Pty) Ltd t/a Sausage Saloon and Another v Mthatha Mall (Pty) Ltd* [2023] ZACC 43 at para 66

¹⁷ *Fleet Africa (Pty) Limited v Polokwane Local Municipality* (720/2022) [2023] ZASCA 142 (30 October 2023)

¹⁸ *Foize Africa v Foize Beheer* (752/2011) [2012] ZASCA 123 (20 September 2012) at para 21

¹⁹ *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd* 1987 (4) SA 883 (A)

²⁰ *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd* 1987 (4) SA 883 (A) at 893E–H

"...division has jurisdiction over all persons residing or being in and in relation to all causes arising and of all offences triable within its area of jurisdiction..."

[43] In *South African Human Rights Commission v Standard Bank of South Africa Ltd*,²¹ the Constitutional Court held that a court is bound to entertain proceedings that fall within its jurisdiction.²²

[44] Clause 15.2 cannot defeat statutory jurisdiction where the connecting factors are present. To this end, Kotzé J rationale in *Brooks v Maquassi Halls Ltd*²³ is apposite:

"According to our common law and practice under it, the Court will exercise juris-diction upon any one of the following grounds, viz: (1) Ratione domicilii; (2) ratione rei sitae; (3) ratione contractus; that is, where the contract has either been entered into or has to be executed within the jurisdiction. This is a correct statement of the law as summarised by Burge

²¹ *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others* [2022] ZACC 43 applied the dictum in *Goldberg v Goldberg* 1938 WLD 83, where Schreiner J stated: "[o]n principle it seems to me that in general a Court is bound to entertain proceedings that fall within its jurisdiction....But apart from such cases and apart from the exercise of the Court's inherent jurisdiction to refuse to entertain proceedings which amount to an abuse of its process.... I think that there is no power to refuse to hear a matter which is within the Court's jurisdiction. The discretion which the Court has in regard to costs provides a powerful deterrent against the bringing of proceedings in the Supreme Court which might more conveniently have been brought in the Magistrate's Court."

²² Applying the dictum in *Goldberg v Goldberg* 1938 WLD 83, where Schreiner J stated: "[o]n principle it seems to me that in general a Court is bound to entertain proceedings that fall within its jurisdiction....But apart from such cases and apart from the exercise of the Court's inherent jurisdiction to refuse to entertain proceedings which amount to an abuse of its process.... I think that there is no power to refuse to hear a matter which is within the Court's jurisdiction. The discretion which the Court has in regard to costs provides a powerful deterrent against the bringing of proceedings in the Supreme Court which might more conveniently have been brought in the Magistrate's Court."

²³ *Brooks v Maquassi Halls Ltd* 1914 CPD 371 at 376 - 377

in his Commentaries, vol 3, chap 24, and has generally been adopted by our courts."²⁴

[45] The Respondents are resident, domiciled, and carry on business within the area of jurisdiction of this Court and there is a real and substantial connection to this Division. It has repeatedly been stressed by the authorities and in decisions of the courts, that effectiveness is the basis of jurisdiction.²⁵

[46] Accordingly, this Court is satisfied that the Applicant has established the jurisdictional connecting factors required for this Court, sitting in Mbombela, to have jurisdiction to hear the applications.

[47] Consequently, I make the following order:

ORDER

[1] The Respondents objection *in limine* to the jurisdiction of this Court is dismissed.

[2] It is declared that the High Court of South Africa, Mpumalanga Division, Mbombela, has jurisdiction to hear the applications (Case number: 4435/2024 and Case number: 4433/2024).

[3] The Respondents to pay the costs on a party and party taxed on Scale B.

²⁴ Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd. (262/86) [1987] ZASCA 87; [1987] 2 All SA 447 (A) (17 September 1987) at para 25

²⁵ Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakeries (Pty) Ltd 1969(2) SA 295 (A) 305C - 310t Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd. (262/86) [1987] ZASCA 87; [1987] 2 All SA 447 (A) (17 September 1987) at para 15-16

[REDACTED]

N MAYET
ACTING JUDGE OF THE HIGH COURT

Appearances:	
For the Applicant:	ADV WP STEYN
Instructed by: THETHE SWART INC 3 Sandstone Avenue Zwartkop Extension 8 Centurion Mbombela Tel: 0861 298 007 Email: stephan@tvss.co.za Ref: Mr Swart/msr/FNB1/0057 C/O COMBRINK GREYLING ATTORNEYS 11 Murray street Mbombela Tel: 031 752 6995 Email: mirandi@cgattorneys.co.za Ref: the11/0010/MB	
For the Respondent:	ADV WIJNBEEK
Instructed by: ADENDORFF THERON ATTORNEYS Beacon Corner, 2 nd Floor 2 Rothery street Cnr Van Niekerk Street Mbombela Tel: 013 752 3902 Email: jacques@adendorffs.co.za ; REF: J THERON/D00073	