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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, THOHOYANDOU**

CASE NO. 555/2014

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 15.01.2026

SIGNATURE:

In the matter between:

**THE BOARD OF TRUSTEES OF GOVERNMENT
EMPLOYEE PENSION FUND**

FIRST EXCIPIENT

**THE HEAD OF GOVERNMENT EMPLOYEES
PENSION FUND**

SECOND EXCIPIENT

**THE CHIEF DIRECTOR, PENSION
ADMINISTRATION**

THIRD EXCIPIENT

And

TSHIANEO CYNTHIA NDOU

RESPONDENT

In Re:

TSHIANEO CYNTHIA NDOU

PLAINTIFF

and

**THE BOARD OF TRUSTEES OF
GOVERNMENT EMPLOYEES PENSION FUND**

FIRST DEFENDANT

**THE HEAD OF GOVERNMENT EMPLOYEES
PENSION FUND**

SECOND DEFENDANT

THE CHIEF DIRECTOR, PENSION ADMINISTRATION

THIRD DEFENDANT

JUDGMENT

SEMENYA DJP.

[1] The plaintiff instituted action against the defendants for payment of specific sum of money. The claim arising out of an alleged misrepresentation made to her by the third defendant or by any official of the Government Employees Pension Fund (GEPF), acting on the third defendant's instruction. The defendants raised rule 23 exception against the plaintiffs' particulars of claim on the basis that, firstly, they do not disclose the cause of action and, secondly, that this Court lacks the necessary jurisdiction to adjudicate on the matter. The parties in this judgment, on the exception raised by the defendants, shall be referred to as in. the main action.

[2] The background facts that led to the institution of action proceedings against the defendants are that the plaintiff was employed by the Department of Education, Gauteng Province as Head of Department at Ebony Park Primary School until 2011. During the period of her employment with the Department, she became a member of the GEPF to which she made monthly financial contributions to her pension.

[3] The plaintiff avers that during March 2011, she requested information from GEPF concerning the value of her pension benefits as she was planning to leave the Department. In response to her enquiry, she received a document on which the value of the pension benefits was said to be Four Million Thirty Two Thousand One

Hundred and Twelve Rands and Eight Cents (R4 032 112 08). The plaintiff took the document to SANLAM with a proposal for investment in the amount stated in the document. Satisfied with the advice she received from SANLAM, she decided to resign from her employment with effect from 1 August 2011.

[4] On the 30 August 2011, SANLAM informed the plaintiff that GEPF has transferred an amount of One Million One Hundred and Eighty Two Thousand Eight Hundred and Eleven Rand and Seventy One Cents (R1 182 811. 71) into its account and not the initial amount of R4 032 112.08. The amount claimed in this action is for the recovery of the difference between the two amounts, being Two Million Eight Hundred and Forty Nine Thousand Three Hundred Rand and Thirty Seven Cents (R2 849 300.37) together with interest on that amount.

[5] The objection to this Court's jurisdiction to hear the matter is mainly based on the addresses of the defendants as stated in the particulars of claim. The address of the first defendant is stated as Block A T[...] Floor R[...] Office Park, 4[...] M[...] Road, Ashlea Gardens Pretoria, Gauteng Province. The second and third defendants' address is 3[...] H[...] Street, Arcadia, Pretoria, Gauteng Province.

[6] Counsel for the plaintiff contend that it is trite that an exception will only be upheld if the pleading is such that, by any stretch of imagination, the other party will be able to plead. He submits that the defendants in this case will be able to plead by raising a special plea of lack of jurisdiction. In short, counsel for the plaintiff argues that an objection to the Court's jurisdiction can only be raised in a special plea and not as an exception.

[7] The plaintiff's contention has been decided upon as follows in **Makhanya v University of Zululand**¹ (Makhanya).

"[29] Jurisdictional challenges will be raised either by an exception or by a special plea, depending on the grounds upon which the challenge arises. There will be some cases in which the jurisdiction of a court is dependent

¹ 2010 (1) SA 62 (SCA)

upon the existence of a particular fact (often called a 'jurisdictional fact'). Where the existence of that fact is challenged it will usually be in plea, and the matter will proceed to a factual enquiry confined to that issue. In other cases the existence or otherwise of jurisdiction to consider the case will appear from the particulars of claim and in those cases the challenge will be raised by an exception. In such cases a court that considers the challenge might not even be aware of whether or not the plaintiff intends raising any defence at all to the claim. But in both cases the issue must necessarily be disposed of first, because upon it depends the power of the court to make any further orders."

[8] Jurisdiction means the power vested in a Court to adjudicate upon, determine and dispose of the matter². The plaintiff dealt with the issue of jurisdiction in Paragraph 5 of the particulars of claim by stating that this Court derives jurisdiction from the fact that she resides within its area of jurisdiction. In terms of section 21 of the Superior Courts Act 10 of 2013 (the Act), 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. Counsel for the plaintiff contended that the plaintiff falls under the category of persons who reside within the area of this Court's jurisdiction and that, on this basis, this Court has the power to adjudicate on the issues raised in this case.

[9] Counsel for the defendants contends that the general rule regarding territorial jurisdiction is that it is determined by the place of residence of the defendants. In **Gallo Africa Ltd and Others v Sting Music Pty Ltd and Others**³ the Court held that the domicile of the plaintiff never determines jurisdiction. Further that in terms of the common law principle of effectiveness, the defendant must be or reside within the area of jurisdiction of the Court. The plaintiff's reliance on her place of residence being in the area of this Court's jurisdiction, therefore, has no merit.

[10] Counsel for the plaintiff contends that GEPF has offices within the area of jurisdiction of this Court. He contends, based on this fact, that this Court has jurisdiction to hear the matter. Counsel for the defendants contended that GEPF is a

² Ewing McDonald & Co Ltd v M&M Products Co 1991 (1) SA 252 (SCA) 256G-H

³ 2010 (6) SA 329 SCA at par 8-10

juristic person with the capacity to sue and to be sued. This fact is supported by Regulation 2 of the Rules of the Government Employees Pension Fund. Counsel for the defendants argues that the plaintiff cannot rely on the fact that GEPF has offices within this Court's area in that GEPF is not a party to the proceedings. On this point, counsel for the plaintiff contends that GEPF acts through its Board of Trustees and that the Board of Trustees is a party to the proceedings. This argument too is without merit. In the **Chairman of the Board of SANLAM Pensioenfonds (Kantoorpersoneel) v Registrar of Pension Funds**⁴, the court held that the board of.) pension fund is not a juristic person. It cannot sue or be sued. In any event, the existence of GEPF offices within the area of this court's jurisdiction is not a factor the plaintiff relied on to establish jurisdiction in her particulars of claim.

[11] In *Makhanya* the court held that the issue of jurisdiction must be disposed first because it determines the power of the court to make any further orders. According to the particulars of claim, the addresses of the defendant are in Gauteng Province. Therefore, it is the Gauteng Division of the High Court that has jurisdiction to adjudicate on the issues raised in this case.

[12] I am aware that territorial jurisdiction or the defendant's place of residence, is not the only factor that determines jurisdiction. In terms of section 21 of the Act, the place where the cause of action arose can be relied upon to establish jurisdiction. The Supreme Court of Appeal held in **Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd**⁵ that causes arising, within the meaning of section 2 of the Act, do not refer to causes of action but to all factors giving rise to jurisdiction under common law. The Court further held that a court will have jurisdiction if the facts establish a sufficient connection to the court's area of jurisdiction. Counsel for the defendants argues that the plaintiff failed to allege the place where the cause of action arose in her particulars of claim. It is indeed so that the plaintiff did not state the place where the alleged misrepresentation was made. If I have to stretch my imagination, as contended by counsel for the plaintiff, I will say the cause of action arose in Gauteng on the basis that the plaintiff enquired about the value of her pension interest at the time she was still employed in that Province.

⁴ 2007(3) SA 41 (T) at 45I-46A

⁵ 2005 (6) SA 205 (SCA) at par 11

[13] The ground of exception that this court has no jurisdiction to hear the matter stands to be upheld. On this basis of Makhanya, this court has no power to make further orders. I do not agree with counsel for the defendants that the plaintiff's action should be dismissed. In terms of section 34 of the Constitution of the Republic of South Africa, 1996, the plaintiff should be given an opportunity to have her dispute resolved in the appropriate Court. This Court has no constitutional right.

[14] On the issue of costs, the defendants are the successful parties on the exception. This court has no reason to deviate from the general rule that costs should follow the result. The defendants are entitled to costs. They should be granted costs.

[15] In the result the following order is made:

- i. The exception of lack of jurisdiction is upheld; and
- ii. The plaintiff's case is struck off the roll with costs on party and party. scale B.

MV SEMENYA
DEPUTY JUDGE PRESIDENT, LIMPOPO DIVISION.

APPEARANCES:

For the plaintiff: ADV S Sikhwari SC

Instructed by: MK Mulaudzi Attorneys

For the defendants: M P Fourie

Instructed by: MACROBERT INCORPORATED

Date heard: 23 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. Date and time of delivery is deemed to be the 15 January 2026.