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

Case No.: **2025-058782**

In the matter between:

GENFIN (PTY) LTD	Applicant
and	
ZULU LOUNGE SA (PTY) LTD	First Respondent
SHUMAIZ HASHIM ACHARATH PARAKKAT MAHAL	Second Respondent

Coram: Montzinger AJ

Heard: 18 March 2026

Delivered: 25 March 2026

Summary: Application for monetary judgment on motion – Second respondent disputes this court's jurisdiction – applicant an incola but second respondent a *perigrinus* of the court – principles of jurisdiction restated – liability in terms of guarantee – no merit in disputing the court's jurisdiction or the liability of second respondent – Monetary judgment granted.

ORDER

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1. The second respondent is ordered to pay the applicant the sum of R1,424,419.95 (One million four hundred and twenty-four thousand four hundred and nineteen rand and ninety-five cents) plus interest on the aforementioned amount at the rate of 5% per month from 25 March 2026 to date of payment.

2. The second respondent is ordered to pay the costs of this application on the scale as between attorney and client.

JUDGMENT

Montzinger AJ

Introduction

[1] This is an opposed application in which the applicant, Genfin (Pty) Ltd seeks an order for the payment of the sum of R1,424,419.95, together with interest and costs, against the second respondent, Mr Shumaiz Hashim Acharath Parakkat Mahal. The claim is based upon a loan agreement concluded between the applicant and the first respondent as well as a written guarantee and surety agreement concluded between the applicant and the second respondent.

[2] The loan agreement was concluded on 8 December 2023, at Stanger (now KwaDukuza), KwaZulu-Natal. It was signed on behalf of the applicant in Pretoria, Gauteng, and on behalf of the first respondent by the second respondent at KwaDukuza.

[3] In terms of the loan agreement the applicant lent and advanced the sum of R2,000,000.00 to the first respondent. On the same date, the applicant and the second respondent entered into an ancillary written guarantee and suretyship agreement in terms of which the second respondent bound himself as both guarantor and surety in respect of the first respondent's obligations under the loan agreement.

[4] The applicant duly performed its obligations in terms of the loan agreement. Initially the loan bore interest at the rate of 10 percent, capitalised at inception, with monthly interest thereafter accruing at 2.5 percent. Repayment was to be made in 22 monthly instalments of R152,630.45, commencing on 2 April 2024 and ending on 31 January 2026.

[5] The first respondent initially complied with the repayment terms and made nine successful instalment payments of R152,630.45 during the period April 2024 to January 2025. Two attempted payments, on 2 January 2025 and 3 March 2025, were returned. The first respondent thus made total net repayments of R1,373,674.05, but ceased making payments from February 2025 onwards and has been in default since that date. The first respondent was provisionally liquidated during June 2025 and is not participating in these proceedings.

[6] The second respondent opposes the application on two grounds and those are the only issues that require determination. The first is whether this Court has jurisdiction to entertain the application since the second respondent is a *peregrinus* of this Court's area of jurisdiction. The second issue, which only arises if jurisdiction is established, is whether the document upon which the applicant relies for the second respondent's liability constitutes a guarantee to create an independent principal obligation apart from the surety provisions of the same document.

[7] I deal first with the jurisdiction issue and thereafter I will consider whether the applicant is entitled to judgment having regard to the defence raised.

Contextualising the Jurisdiction Issue

[8] The second respondent is a local *peregrinus* of this Court. He resides in Ballito, KwaZulu-Natal. He has never resided, been domiciled, or carried on business in the Western Cape. As foreshadowed, the loan agreement was concluded at KwaDukuza and Pretoria.

[9] The applicant advances at least two grounds for this court's jurisdiction. First, the applicant relies on its own status as an *incola* of this court read with clause 18.2 of the loan agreement or clause 14.2 of the surety and guarantee agreement. The aforementioned clauses provide that the parties submit to the non-exclusive jurisdiction of the Western Cape Division of the High Court. The second leg of the applicant's basis for this court's jurisdiction is that the contractual cause of action against the second respondent partially arose within this court's jurisdiction as both the partial performance and breach of the loan agreement occurred within this Court's jurisdictional area.

[10] On the papers, the second respondent asserted that a consent to jurisdiction is insufficient in the absence of a connecting factor in that Court's area of jurisdiction. Reliance is placed on *Fick*[1], *Cordiant Trading*[2], and *Gallo Africa*[3] to submit that there is no connecting factor between the dispute before the court and the Western

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[1] *Natalse Landboukoöperasie Bpk v Fick* 1982 (4) SA 287 (N)
[2] *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6) SA 205 (SCA)
[3] *Gallo Africa Ltd v Sting Music (Pty) Ltd* 2010 (6) SA 329 (SCA)

Cape as the loan was advanced and the agreements concluded in KwaZulu-Natal and Gauteng, the money was disbursed at KwaDukuza, Kwazulu-Natal and the second respondent also resides in KwaZulu-Natal. The second respondent also disputes that the cause of action arose within the jurisdictional area of this court.

The Legal Framework for the Court's Jurisdiction

[11] The statutory point of departure is section 21(1) of the Superior Courts Act 10 of 2013. That section provides that:

> *"A Division of the High Court 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] The section uses deliberately broad language. As has been observed by the court in *Veneta*[4] the legislature intended to interfere as little as possible with the common law grounds for jurisdiction. Recourse must therefore be had to common law principles to determine whether a court is competent to adjudicate a particular matter[5].

[13] Therefore, having regard to section 21(1) of the Super Courts Act it means that a Division of the High Court has jurisdiction: (i) over all persons residing or being in its area of jurisdiction; (ii) in relation to all causes arising within its area of

[4] *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd (in liq)* 1987 (4) SA 883 (A) at 886
[5] Although *Veneta* was decided during 1987 when section 19(1) of 1959 Supreme Court Act closely resembles the wording of the current section 21(1) of the Superior Courts Act, 10 of 2013.

jurisdiction; (iii) in relation to all other matters of which it according to law may take cognisance. There are also various common law grounds like *domicile*, contract, delict, cause of action, cohesion of causes and location of property.

[14] The basic common law principle in respect of money claims (whether from contract, delict or otherwise) is that the plaintiff must sue in the court of the defendant: *actor sequitur forum rei*. However, there are exceptions. The exception relevant to this matter is the situation where the plaintiff is an *incola* of the court where proceedings are instituted and the defendant is a local *peregrinus*[6] of that court, but jurisdiction is established on any of the other common law *ratio jurisdictionis*.

[15] Some of the recognised grounds of jurisdiction, or *ratio jurisdictionis*, include: (a) that the cause of action arose within the court's area of jurisdiction; (b) that the defendant has consented or submitted to the court's jurisdiction; and (c) in the case of a foreign *peregrinus*, that property has been attached to found or confirm jurisdiction.

[16] In this matter the applicant relies firstly on the authorities of *Hay*[7]; *Tsung*[8]; and *Travelex*[9] for the proposition that where the plaintiff is an *incola* of the court, the submission to jurisdiction by a local *peregrinus* defendant is of itself sufficient to found the court's jurisdiction. This ground is relied on as an independent basis for jurisdiction.

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[6] meaning domiciled or resident in the Republic but outside the court's area of jurisdiction

[7] *Hay Management Consultants (Pty) Ltd v P3 Management Consultants (Pty) Ltd* [2005] 3 All SA 119 (SCA)

[8] *Tsung v Industrial Development Corporation of SA Ltd* 2006 (4) SA 177 (SCA)

[9] *Travelex Limited v Maloney* 2016 JDR 1776 (SCA)

[17] In addition to the independent basis for jurisdiction, the applicant is also relying on the exception to the *actor sequitur forum* principle by alleging that the cause of action arose within the jurisdiction of this division. To establish this ground as a basis for jurisdiction and since the applicant's cause of action is based on contract, the applicant must establish where: (i) the contract was entered into; (ii) the contract is or was to be performed, wholly or in part; or (iii) the particular breach of contract upon which the applicant relies, was committed[10].

[18] Suffice to say that my understanding of the authorities is not that the judgments of *Hay*[11]; *Tsung*[12]; and *Travelex Limited* created a new independent ground for a court's jurisdiction. In my view it actually fits perfectly into the established common law approach to jurisdiction that has been developed by our courts. The judgment of *Tsung* in fact explains it as follows[13]:

> *'… In one instance, effectiveness is non-existent, and that is in the case of submission to jurisdiction (also referred to as prorogation). The reason is this: If a peregrine defendant has submitted - whether unilaterally or by agreement - to the jurisdiction of the court of the incola, an attachment or arrest to found or confirm jurisdiction is not only unnecessary, it is not permitted. (Consent on its own cannot confer jurisdiction unless the plaintiff is an incola.)*

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[10] *Roberts Construction Co Ltd v Willcox Bros (Pty) Ltd* 1962 (4) SA 326 (A) at 331H-332A.
[11] *Hay Management Consultants (Pty) Ltd v P3 Management Consultants (Pty) Ltd* [2005] 3 All SA 119 (SCA)
[12] *Tsung v Industrial Development Corporation of SA Ltd* 2006 (4) SA 177 (SCA)
[13] para 25

[19] The court in *Tsung* goes further[14] to explain that: *"In the case of a peregrinus defendant, what is additionally required, with either attachment to found jurisdiction or a submission to jurisdiction, is '…the link between the cause and the court, a link that is established when the plaintiff is an incola'.*

[20] What the *Hay, Tsung* and *Tralex* judgments say is that in the situation where a local *perigrinus* defendant has submitted to the court's jurisdiction, a link between the *'cause'* and the court must be establish. That can be established if the plaintiff is an *incola* of the court. However, it requires the 'cause' also to arise in the court's area of jurisdiction. *Cordiant* gives some context to what 'cause' may mean by suggesting that: *"… 'causes arising' does not refer to causes of action but to all factors giving rise to jurisdiction under the common law. Of course, such factors do not exclude a cause of action."*

[21] Furthermore, in *Gallo*[15] the Supreme Court of Appeal makes it clear that: *"…the domicile of the plaintiff never determines jurisdiction"*. This means the fact that a plaintiff is an *incola* can never establish jurisdiction on its own and as the cause for the court's jurisdiction.

[22] On the argument as presented on behalf of the applicant, by Mr O'Connor, it means that in the situation where the plaintiff is an *incola* and where jurisdiction of the court was consented to, the court will as a matter of course have jurisdiction. That cannot be correct. If I accept the proposition on behalf of the applicant it means there is in fact no *ratio jurisdictionis* present, which is essential to establish jurisdiction.

[14] para 25
[15] para 8

[23] This means instead of considering the basis for the applicant's jurisdiction as two separate and distinct grounds I will consider them rather as one ground.

Evaluation of the jurisdiction issue

[24] There is no dispute that the second respondent is a local *peregrinus*. As pointed out earlier, he is *domiciled* and resident in Ballito, KwaZulu-Natal, within the Republic of South Africa, but outside this Court's area of jurisdiction. There is also no dispute that the applicant is an *incola* of the court. However, as I have concluded that alone is not enough to establish jurisdiction. The question is therefore what constitutes a sufficient *ratio jurisdictionis* to provide this division with jurisdiction to determine the dispute before it.

[25] This is where the independent nature of the guarantee document is relevant. Mr Holland, on behalf of the second respondent, at the hearing placed reliance on the judgment of Van Zyl AJ in *Business Fuel*[16] in which the judge held at paragraph 47 that the primary distinction between a contract of suretyship and a guarantee is that a guarantee, in the strict sense, creates a solidary, independent, and principal liability which exists independently of any underlying obligation by the principal debtor to the creditor. Relying on that conclusion, Mr Holland submits that, since the applicant is seeking judgment against the second respondent under the guarantee, which is a principal and independent obligation, jurisdiction must be established with reference to the guarantee agreement alone, and not by reference to the loan agreement.

[16] *Business Fuel (Pty) Ltd v Alberts and Another* (Case No 12531/2023, Western Cape Division)

[26] Mr Holland further argues that the guarantee agreement does not itself contain provisions specifying where payment is to be made or where performance is to occur. The loan agreement's requirement that payment be made into the Cape Town bank account, so the argument goes, is irrelevant to the guarantee because the guarantee creates an obligation independent of the loan agreement. Therefore, if the court agrees with this argument, the applicant has failed to establish that the cause of action under the guarantee arose within this Court's jurisdiction.

[27] There are some difficulties with this argument. Firstly, the guarantee agreement implicitly and expressly incorporates the terms of the loan agreement. Clause 3.1.1 of the guarantee agreement, which requires the guarantor *"to punctually pay any and all amounts which may be payable to the Lender from time to time ... by the Borrower"* and *"to punctually perform any and all obligations which may be owing from time to time by the Borrower in terms of or as a result of the Loan Agreement/s."* Since the loan agreement requires payment to be made in Cape Town, the guarantor's obligation to pay those very amounts must also be performed in Cape Town. Furthermore, the applicant's RMB bank account, to which repayment instalments were to be directed, is maintained at a branch in Cape Town.

[28] Mr Holland's argument, while creative, conflates the independence of the guarantee obligation with the terms that define the content of that obligation. It is correct, as Van Zyl AJ held, that a guarantee in the strict sense creates a principal and independent obligation, one that is not accessory to the principal debt in the manner of a suretyship. But it does not follow that the guarantee exists in a vacuum, entirely detached from the underlying loan agreement to which it relates. While the obligation under the loan agreement remains for the principal debtor the guarantor

is liable in his own right, without the creditor being required first to pursue the principal debtor. But the place of performance is determined by what the guarantee requires the guarantor to do, and what it requires him to do is pay the amounts due under the loan agreement at the place stipulated in the loan agreement.

[29] It is clear to me that since the cause of action is based on contract and this is a monetary claim that the cause of action partially arisen within this court's jurisdiction, as both the partial performance of and the breach of the agreement occurred within the Court's jurisdictional area.

[30] I am therefore satisfied that the jurisdiction of this court has been established on the basis of the cause of action having arose within the court's jurisdiction, coupled with the fact that the applicant is an *incola* of the court and the second respondent submitted in writing to this court's jurisdiction.

The liability of the second respondent

[31] The agreement on which the applicant relies for the second respondent's liability is a single document titled "Guarantee and Surety Agreement." The second respondent bound himself as both guarantor and surety in favour of the applicant in respect of the first respondent's obligations under the loan agreement. It is not in dispute that the surety component of the "Guarantee and Surety Agreement" did not comply with the Electronic Communications and Transactions Act 25 of 2002. Section 6 of the General Law Amendment Act 50 of 1956.

[32] The applicant's case, however, against the second respondent does not rely on the suretyship. It contends that the Guarantee and Surety Agreement contains two

distinct obligations: (a) a guarantee obligation, by which the second respondent assumed a principal, independent obligation to pay the applicant; and (b) a suretyship obligation, by which the second respondent bound himself as surety and co-principal debtor for the debts of the first respondent. It is the applicant's case that the guarantee component is an independent obligation and survives the invalidity of the suretyship, and is therefore enforceable.

[33] At the hearing of the matter Mr Holland, sensibly, accepted that there are authorities[17] that have made a definitive pronouncement on the very defence raised by the second respondent in this matter. In fact, in this court in the judgments of *Business Fuel*[18] and *Du Toit*[19] the same defences were considered and an analysis in respect of the same documents that serve before me was done. Those judgments involve the same applicant, albeit in the *Business Fuel* matter under a different name. The court in both judgments found that the guarantee component of the document is still enforceable notwithstanding that the surety component is invalid for non-compliance with the relevant statutes. Unless, I can find that both those judgments were wrong I am bound by them.

[34] I am therefore satisfied that the guarantee provisions of the agreement create a valid, independent, and principal obligation binding the second respondent to the applicant. The guarantee is enforceable and it follows, since no other defence is raised, the applicant is entitled to judgment.

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[17] *Standard Bank of South Africa Ltd v Wardkiss Property Holdings (Pty) Ltd* (9324/22) [2023] ZAKZPHC 153 (19 December 2023) and those cited in fn 12 and 13. See also: *Malesela Taihan Electric Cable (Pty) Ltd v Fidelity Security Services (Pty) Ltd* [2017] ZAGPJHC 341
[18] *Business Fuel (Pty) Ltd v Wiets L Alberts & 1 other* (12531/2023) ZAWCHC (20 March 2024)
[19] *Genfin (Pty) Ltd v Johan Pieter Du Toit* (18584/2023

The judgment amount

[35] The applicant asks for judgment in the amount of R1,424,419.95 plus interest accrued at the rate of 2.5% per month, calculated on a daily basis and capitalised monthly until 31 January 2026 and thereafter at a rate of 5% per month on the utilised balance from 1 February 2026 to date of payment in full. As Mr O'Connor pointed out the judgment amount in the notice of motion includes one month's arrear interest.

[36] I therefore grant judgment in the amount as prayed for on the basis that interest runs on, and is limited to an amount equal to, the whole of the judgment debt, including the portion which consists of previously accrued interest and that the post-judgment interest runs at the rate agreed upon contractually[20].

Conclusion and order

[37] In the result, in the following order is made:

1. The second respondent is ordered to pay the applicant the sum of R1,424,419.95 (One million four hundred and twenty-four thousand four hundred and nineteen rand and ninety-five cents) plus interest on the aforementioned amount at the rate of 5% per month from 25 March 2026 to date of payment.

[20] *Paulsen and Another v Slip Knot Investments 777 (Pty) Limited* 2015 (3) SA 479 (CC); 2015 (5) BCLR 509 (CC) (24 March 2015) para 100

2. The second respondent is ordered to pay the costs of this application on the scale as between attorney and client.

[redacted]

A MONTZINGER

Acting Judge of the High Court

Appearances:

Attorneys for applicant:	Van der Meer and Partners Inc.
	Mr SF Van Zyl
Counsel for applicant:	Mr O' Connor
Attorneys for second respondent:	ER Browne and Sons
	Per: Andrew Golschmidt
Counsel for second respondent:	Mr. Holland