



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

**Not reportable
Case no:740/22**

In the matter between:

AMMAN HAMISSIE

PLAINTIFF

And

THE MINISTER OF POLICE

FIRST DEFENDANT

**THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

SECOND DEFENDANT

Coram: Wessels AJ

Judgment reserved: 26 February 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to

SAFLII. The date and time for the handing down of the judgment are deemed to be 16h00 on 14 April 2026.

Summary: Jurisdiction – Territorial jurisdiction – Mero motu – Court may raise issue of its own jurisdiction even where not pleaded – Superior Courts Act 10 of 2013.

Jurisdiction – Consent – Consent to jurisdiction cannot cure absence of traditional grounds of jurisdiction where court has no authority over subject matter – *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd* 1987 (4) SA 883 (A) applied.

Arrest and detention – Separate causes of action – Arrest a single, completed act – Detention a continuous wrong – *Ngcobo v Minister of Police* 1978 (4) SA 930 (D) followed.

Jurisdiction – Causa continentia – Doctrine permitting court with jurisdiction over part of indivisible cause to assume jurisdiction over whole – *Roberts Construction Co Ltd v Willcox Bros (Pty) Ltd* 1962 (4) SA 326 (A) considered – Doctrine not applicable where claims are factually rather than legally indivisible – Separate docket numbers in different provinces indicating legal separation of claims

JUDGMENT

Wessels AJ

Introduction

[1] This matter was enrolled for trial before me on 16 September 2025. Prior to the commencement of the trial proceedings, this Court raised, *mero motu*, the question of whether this Court, the North West Division of the High Court, has the requisite territorial jurisdiction to adjudicate the plaintiff's claim for wrongful arrest and the initial period of detention that occurred in Gauteng. The issue was not raised by the Defendants in their pleadings.

[2] It should be noted that the parties were directed to file written submissions on the jurisdictional point and that, following the hearing, the matter was stood down for the filing of heads of argument. While the plaintiff's heads of argument were evidently filed with the Office of the Registrar on the due date, they were not brought to the attention of this Court at that time. The delay in finalising this matter was resolved only when my secretary contacted the plaintiff's attorneys directly to obtain the documents. Upon the heads of argument being furnished to my secretary on 26 February 2026, judgment was reserved and I engaged with the evaluation of the submissions and the writing of this judgment.

The factual matrix as disclosed in the pleadings

[3] The plaintiff instituted an action against the first defendant, the Minister of Police, and the second defendant, the National Director of Public Prosecutions, claiming damages for wrongful arrest, wrongful detention, and malicious prosecution.

[4] The factual matrix set out in the plaintiff's Particulars of Claim is common cause. For the jurisdictional enquiry, the following facts are material: On or about 7 November 2020, members of the South African Police Service ("SAPS") from the Brackendowns Police Station attended to the plaintiff's

place of employment, Nyasa Logistics, situated at [...] R[...] Road, Alberton, Gauteng. Upon the plaintiff's arrival, he was arrested and charged with possession of a hijacked truck, possession of suspected stolen property, and cultivation of dagga. A case docket was opened under Brackendowns CAS No: 52/11/2020. The plaintiff was detained overnight at the Brackendowns Police Station in Gauteng Province on 7 to 8 November 2020. On 8 November 2020, members of the Klerksdorp SAPS collected the plaintiff from Brackendowns Police Station and transported him to Klerksdorp in the North-West Province, where he was detained for two days in the police holding cells.

[5] On 10 November 2020, the plaintiff was brought before the Christiana Magistrates' Court in the North-West Province. A new case docket was opened under CAS No: 91/10/2020. The plaintiff appeared on multiple occasions between November 2020 and July 2021. On 13 July 2021, the charges were withdrawn, and the plaintiff was released.

[6] Of importance is that the plaintiff's own pleadings establish that two separate case numbers were issued: one in respect of the arrest in Gauteng (CAS 52/11/2020) and another in respect of the prosecution in the North-West Province (CAS 91/10/2020). The plaintiff does not allege that he was prosecuted under the Brackendowns docket. Instead, the prosecution proceeded under a separate docket in Christiana.

The parties' submissions

[7] The plaintiff submits that this Court has jurisdiction to adjudicate the entire matter, including the wrongful arrest and the initial detention in Gauteng. He argues that the defendants have consented to jurisdiction in their pleadings and in the pre-trial minute. He further contends that the detention constitutes a

continuous wrong. Because a substantial part of that wrong occurred within this Court's territorial jurisdiction, the whole claim may be adjudicated here. He relies on the doctrine of *causa continentia* and considerations of convenience, justice, and good sense.

[8] The defendants argue that this Court lacks jurisdiction over the wrongful arrest and the initial detention. They contend that the arrest was a single, completed act in Gauteng and that the first defendant is domiciled in Pretoria. They submit that the principle of *actor sequitur forum rei* dictates that the plaintiff should have instituted his claim for unlawful arrest in the Gauteng Division. They argue that the doctrine of a continuous wrong pertains to the law of prescription and cannot be transposed to the question of territorial jurisdiction. Finally, they contend that convenience cannot create jurisdiction where none exists.

Power of the court to raise jurisdiction mero motu

[9] Before addressing the merits of the jurisdictional challenge, it is necessary to dispose of a procedural objection raised by the plaintiff in his replying arguments. The plaintiff contends that the defendants' objection to jurisdiction is procedurally irregular because it was not raised by way of a special plea but was instead raised by this Court mero motu.

[10] This objection is without merit. It is a fundamental principle of our law that a court lacks the power to adjudicate a matter over which it has no jurisdiction. A court is not only entitled but is duty-bound to satisfy itself as to its own jurisdiction, even if the parties do not raise the point.

[11] It was held in *Cusa v Tao Ying Metal Industries and Others*¹ that:

‘Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, *mero motu*, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality.’

[12] Accordingly, the raising of the jurisdictional question by this Court was not only procedurally proper but also an exercise of this Court’s duty. The plaintiff’s objection on this ground is dismissed.

Territorial jurisdiction

[13] The territorial jurisdiction of a High Court is governed by s 21(1) of the Superior Courts Act², which provides:

‘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...’

[14] The classic definition of jurisdiction was provided by the Supreme Court of Appeal (‘the SCA’) in *Graaff-Reinet Municipality v Van Ryneveld’s Pass Irrigation Board*³

‘Jurisdiction means the power or competence of a Court to hear and determine an issue between parties, and limitations may be put upon such power in relation to territory, subject matter, amount in dispute, parties etc.’

¹ *CUSA v Tao Ying Metal Industries and Others* (CCT 40/07) [2008] ZACC 15; 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC) ; [2009] 1 BLLR 1 (CC) ; (2008) 29 ILJ 2461 (CC) (18 September 2008) para 67.

² Superior Courts Act 10 of 2013.

³ *Graaff-Reinet Municipality v Van Ryneveld’s Pass Irrigation Board* 1950 (2) SA 310 (A) at 424.

The consent to jurisdiction argument

[15] The plaintiff submits that the defendants have consented to this Court's jurisdiction. He points to the pleadings and the pre-trial minute, which he contends contain an unconditional consent to jurisdiction found in the pre-trial minute. It should be noted that the allegations in the particulars of claim pleading the arrest in Brackendowns are denied in the defendant's plea, and that the issue of jurisdiction was not pertinently addressed in the pre-trial minutes, save for an agreement that the case should not be transferred to another court.

[16] I now turn to consider whether the pre-trial minute constitutes valid consent to this Court's jurisdiction over the wrongful arrest claim. The pre-trial minute, signed by both parties on 2 December 2022, records under the heading 'ISSUES THAT ARE NOT IN DISPUTE BETWEEN THE PARTIES' that the parties agreed that the following issues are not in dispute:

'Jurisdiction; Locus Standi; Arrest of the plaintiff by the 1st Defendant; Date of the Arrest; Detention of the plaintiff; Prosecution of the plaintiff by the 2nd Defendant.'

[17] The plaintiff submits that this constitutes an unconditional consent to jurisdiction. The defendants, in their written submissions, contend that the pre-trial minute does not reflect a considered consent to this Court's adjudication of a claim that arose outside its territorial jurisdiction. It is evident from the pre-trial minute that the parties did not direct their minds to the question of whether this Court has territorial jurisdiction over the wrongful arrest claim. The pre-trial minute records jurisdiction as an issue not in dispute, without differentiating among the various claims. The parties appear to have assumed, without analysis, that this Court would have jurisdiction over the entirety of the plaintiff's claims simply because the action was instituted in this Division.

[18] It is trite that parties may consent to the jurisdiction of a court that would otherwise lack jurisdiction, provided that the court is competent to exercise jurisdiction over the subject matter of the dispute. However, where a court lacks inherent jurisdiction over the subject matter, consent cannot confer jurisdiction. In *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd*⁴ the Court quotes with approval the dictum of Innes CJ in *Ueckermann v Feinstein* 1909 TS 913:

‘I think it must be recognised as settled law in South Africa that there can be no prorogation in regard to cases where the Court has no authority at all to adjudicate upon the subject-matter of the dispute; because in such cases, the matter at issue being by law outside the cognisance of the Court, the consent of parties cannot confer a coercive jurisdiction upon the Court, which the law expressly denies to it.’

[19] The principle is clear: consent to jurisdiction, whether express or implied, cannot cure the absence of traditional grounds of jurisdiction. The consent recorded in the pre-trial minute, even if regarded as a submission to this Court’s jurisdiction, does not absolve the requirement that this Court has jurisdiction over the cause of action itself. The wrongful arrest claim lacks a traditional connection to the North West Division: the arrest took place in Gauteng, the docket was opened under Brackendowns CAS No: 52/11/2020, and the first defendant is domiciled in Pretoria.

[20] The pre-trial minute does not demonstrate that the parties applied their minds to the specific question of whether this Court could adjudicate a wrongful arrest that occurred in Gauteng. The inclusion of jurisdiction as an issue not in dispute is, at best, an assumption of jurisdiction rather than a considered consent. Such an assumption cannot confer jurisdiction where none exists. A

⁴ *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd* 1987 (4) SA 883 (A) at 920.

court's jurisdiction is a matter of legal power and competence, not of convenience or, least of all, the parties' assumptions.

[21] For these reasons, the pre-trial minute does not constitute a valid consent to this Court's jurisdiction over the wrongful arrest claim. Even if it were to be construed as such, the absence of traditional grounds of jurisdiction renders such consent ineffective.

[22] However, the purported consent to this Court's jurisdiction does not assist the plaintiff in the wrongful arrest claim. The issue is not whether this Court has jurisdiction over any of the claims, it does. The issue is whether this Court has jurisdiction over the wrongful arrest claim specifically. *Veneta Mineraria* laid down the principle that consent cannot confer jurisdiction over a claim that has no traditional ground connecting it to a court's area.

[23] I need not decide this point definitively because, as will become apparent, I am of the view that this Court has jurisdiction over a substantial portion of the plaintiff's claims on established principles of territorial jurisdiction. The question of consent, therefore, does not arise for determination.

The distinction between arrest and detention

[24] It is well established that wrongful arrest and wrongful detention are separate causes of action⁵. The arrest is a single, completed act that occurs at a specific moment when the arrestee's movement is placed under the SAPS' control. In the present matter, the arrest occurred on 7 November 2020 at Nyasa Logistics in Alberton, Gauteng. All the facts necessary to prove this cause of action, the deprivation of liberty, the absence of a warrant, and the lack of

⁵ See *Ngcobo v Minister of Police* 1978 (4) SA 930 (D).

reasonable suspicion occurred in Gauteng. A case docket was opened under Brackendowns CAS No: 52/11/2020.

[25] The detention, by contrast, is a continuous act that lasts for as long as it persists. In *Barnett and Others v Minister of Land Affairs and Others*⁶ the SCA distinguished between a single wrongful act and continuous wrong as follows:

“...concept which has become well-recognised in the context of prescription, namely that of a continuous wrong. In accordance with this concept, a distinction is drawn between a single, completed wrongful act – with or without continuing injurious effects, such as a blow against the head – on the one hand, and a continuous wrong in the course of being committed, on the other. While the former gives rise to a single debt, the approach about a continuous wrong is essentially that it results in a series of debts arising from moment to moment, as long as the wrongful conduct endures...”

The jurisdiction of this Court

[26] Applying these principles to the facts of this case, the conclusion emerges that, in the wrongful arrest claim, the cause of action arose and was completed in its entirety in Alberton, Gauteng, on 7 November 2020. The case docket opened in respect of this arrest was Brackendowns CAS No: 52/11/2020. This Court lacks territorial jurisdiction over the wrongful arrest claim.

[27] In the detention claim, the detention commenced in Gauteng on 7 November 2020 and continued overnight at Brackendowns Police Station. On 8 November 2020, the plaintiff was transferred to Klerksdorp in the North-West Province. From that point until his release on 13 July 2021, the plaintiff was detained within the territorial jurisdiction of this Court. As detention is a

⁶ *Barnett and Others v Minister of Land Affairs and Others* 2007 (6) SA 313 (SCA) para 20.

continuous wrong, each day of detention in the North-West Province gives rise to a separate cause of action arising within this Court's area of jurisdiction.

[28] In the malicious prosecution claim, the prosecution occurred entirely within the North-West Province. The case docket was opened under CAS No. 91/10/2020, and all court appearances were held at the Christiana Magistrates' Court. This Court has clear territorial jurisdiction over this claim.

The doctrine of *causa continentia*

[29] The question that arises is whether this Court, having jurisdiction over the detention claim (from 8 November 2020 onwards) and the malicious prosecution claim, may also assume jurisdiction over the wrongful arrest claim, which arose outside its territory.

[30] In *Roberts Construction Co Ltd v Willcox Bros (Pty) Ltd*⁷, the SCA considered the question of jurisdiction in a case where a single contract for the construction of a bridge spanning two provinces gave rise to a claim. The Court held that, because the cause of action was indivisible, arising from a single contract, it was established that a court with jurisdiction over part of an indivisible cause may assume jurisdiction over the whole. The doctrine exists to avoid fragmentation of litigation and conflicting judgments; the partial invalidity of a claim does not render the entire claim invalid.

The applicability of *causa continentia*

[31] The critical question is whether the plaintiff's claims for wrongful arrest, wrongful detention, and malicious prosecution are sufficiently interconnected to

⁷ *Roberts Construction Co Ltd v Willcox Bros (Pty) Ltd* 1962 (4) SA 326 (A).

justify the application of the *causa continentia* doctrine. A significant difficulty appears in the plaintiff's case. The plaintiff's own pleadings establish that two separate case numbers were issued. Brackendowns CAS No: 52/11/2020 was opened in respect of the arrest in Gauteng. A separate docket, CAS No: 91/10/2020, was opened in the North West Province in respect of the prosecution. The plaintiff does not allege that he was prosecuted under the Brackendowns docket. This suggests that the prosecuting authority in the North West was proceeding under a separate case number, which weakens the argument that the arrest and the prosecution are part of a single, indivisible legal transaction.

[32] Furthermore, the arrest and the detention are separate delicts. The arrest was a single, completed act that occurred entirely in Gauteng. The detention that followed, while factually linked to the arrest, is a separate cause of action. The fact that the plaintiff was transferred to the North West Province does not retroactively confer jurisdiction over the arrest on this Court.

Considerations of convenience, justice, and good sense

[33] The plaintiff argues that it would be inefficient and contrary to the interests of justice to require him to litigate his wrongful arrest claim in the Gauteng Division and his detention and malicious prosecution claims in this Division. He submits that the same witnesses, the same documentation, and the same central factual question, the lawfulness of the initial deprivation of liberty, underpin all claims.

[34] It may readily be accepted that there is a factual connection between the arrest and the subsequent detention and prosecution. The same witnesses may indeed be required to testify in respect of both the arrest and the detention. The

question of whether the arrest was lawful is foundational to determining whether the subsequent detention was lawful. However, I am mindful of the defendants' submission that convenience cannot create jurisdiction where none exists. In *Roberts Construction*, the indivisibility was legal, arising from a single contract. Here, the indivisibility is factual and practical, not legal. The arrest and the detention are separate delicts, and the arrest was completed in Gauteng before the detention in the North-West commenced.

Conclusion and order

[35] Having considered the pleadings and the written submissions, I arrive at the following conclusions: This Court has clear territorial jurisdiction over the detention claim from 8 November 2020 to 13 July 2021, being the period during which the plaintiff was detained within the North West Province; and the malicious prosecution claim, which arose entirely within the North West Province. This Court does not have territorial jurisdiction over the wrongful arrest claim, which arose and was completed in Alberton, Gauteng, on 7 November 2020, under Brackendowns CAS No: 52/11/2020.

[36] The doctrine of *causa continentia*, while recognising that a court with jurisdiction over a part of a cause may exercise jurisdiction over the whole in the interests of convenience and justice, does not compel this Court to assume jurisdiction over a claim that has no territorial connection to its area. In the alternative, this Court cannot assume jurisdiction over a claim merely because it would be convenient to do so or because the plaintiff made a procedural choice that now results in fragmentation.

Order

[37] In the circumstances, I make the following order:

1. It is declared that this Court has territorial jurisdiction to adjudicate the plaintiff's claim for wrongful detention in respect of the period from 8 November 2020 to 13 July 2021 and the plaintiff's claim for malicious prosecution.
2. It is declared that this Court does not have territorial jurisdiction to adjudicate the plaintiff's claim for wrongful arrest, which arose in Gauteng on 7 November 2020 under Brackendowns CAS No: 52/11/2020.
3. The plaintiff is granted leave to amend his particulars of claim within 20 (twenty) days of this judgment to remove the claim for wrongful arrest, failing which that claim shall be deemed to be struck out.
4. The costs of this jurisdictional hearing shall be costs in the cause.

M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

For plaintiff	:Adv M Skhosana
Instructed by	:Mabotju Attorneys
	:Pretoria
	:c/o Lehabe Attorneys
	:Mahikeng
For defendant	:Adv MJ Motsusi
Instructed by	:State Attorneys
	:Mmabatho