IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable
Case no: 2675/2025

In the matter between:

SUBTROPICO ONLINE (PTY) LTD **APPLICANT**

and

TRI-LOGISTICS (PTY) LTD **RESPONDENT**

Neutral citation: *Subtropico Online (Pty) Ltd v Tri-Logistics (Pty) Ltd* (2675/2025) [2026] ZAFSHC 113 (25 March 2026)

Coram: CRONJÉ AJ

Heard: 19 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 9h30 on 25 March 2026.

Summary: Summary judgment – bona fide defence – jurisdiction – s 23 of the Companies Act 71 of 2008 – no substantive application for condonation – defense on the merits bona fide – application dismissed.

ORDER

1 The summary application is dismissed with costs, counsel's fees to be taxed on scale B.

JUDGMENT

Cronjé AJ

[1] The applicant seeks summary judgment against the respondent for payment of R917 315.00 plus interest and costs. The respondent raises two points *in limine*. It firstly states that since the decision in *Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf Country Estate (Pty) Ltd*[1] *(Sibakhulu)*, a court's jurisdiction is determined only by the registered address of a company and no longer by its principal place of business. It secondly states that the applicant failed to seek condonation for the late filing of the summary judgment application.

[2] In respect of the cause of action, it pleaded a defence, which in the applicant's view is but a shadow of the comprehensive denials in the opposing affidavit and which does not raise a bona fide defence. Although I only need to determine whether the respondent's defences are bona fide, the question of jurisdiction must be considered as it may be decisive for the applicants' entire claim.

Jurisdiction

[3] The summons states that the principal place of business of the respondent is at 15 Kraalkop Street, Kroonstad, Free State Province. In paragraph 2 of the particulars of claim, this address is repeated. In paragraph 3, it is stated that the registered place of business is in the Free State Province. It can be accepted that this is not the case, as the Windeed search document indicates that the registered and postal addresses in Christiana, North West Province.

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[1] *Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf Country Estate (Pty) Ltd* [2011] ZAWCHC 439.

[4] The applicant attached various documents to its particulars of claim, in which the defendant's postal address is indicated as Stellenbosch, Western Cape Province, not Kroonstad. Some of the documents display registration numbers for vehicles that transported the goods, all of which are from the Free State. Some products were loaded at Reitz in the Free State and others in Vryburg in the North West. In a WhatsApp trail, reference is made to a delivery of products at Cape Town. The applicant relies on a webpage e-mail contact form with the name, email address of heste@trilogistics.co.za, and telephone numbers of Hesté and Francois. The form indicates: 'Address 1, 15 Kraalkop, Kroonstad, 9500' and 'Address 2, Po. Box 12611, Die Boord, Stellenbosch, 7613'.

[5] The postal address of one Hester de Beer, a director of the respondent, is indicated as Bethlehem in the Free State, whereas her residential address is at Christiana, incorrectly stated as being in the Free State, as the town is in fact in the North West Province. There is no reference to Kroonstad in the Windeed. The only reference to Stellenbosch in the Windeed is the address of Francois van der Merwe Uys, which matches the postal address on the webpage e-mail contact form. It can therefore be accepted that both the directors listed on the webpage's email contact form at least purport to represent the respondent at the respective addresses.

[6] The applicant served a letter of demand via the Sheriff on Ms Hestie de Beer, a responsible person, apparently not less than 16 years of age, and apparently residing/in charge of the premises at 15 Kraalkop, Kroonstad. I believe that it can reasonably be accepted that Hesté, Hester, and Hestie are the same person. The respondent's contention that the applicant only relies on the registered address is therefore incorrect. The applicant states that the respondent's denial of the principal place of business is a cat-and-mouse game and ignores that the cause of action arose partly in Vryburg, North West Province, and that the respondent's registered office falls within the Free State, this Court's jurisdiction. This is incorrect as these addresses are not in the Free State. It further bemoans the fact that the respondent does not plead facts to substantiate the defence of jurisdiction, and if its address is not as per the Companies and Intellectual Property Commission (CIPC) records, it must tell this Court where it is.

[7] As stated above, Mr Pretorius, on behalf of the respondent, relies on *Sibakhulu*

to argue that a court's jurisdiction is determined solely by the company's registered address and no longer by its principal place of business. In *Sibakhulu*, the court held:

'[21] *The determination of where a company's principal place of business or principal office is situated is a question of fact* (cf. e.g. *Payslip Investment Holdings CC v Y2K Tec Ltd* 2001 (4) SA 781 (C) at 782A-H). *It is thus possible to approach the interpretation of s 23*[2] *of the 2008 Companies Act holding that its requirement that a company's registered office be at the place of its principal office does not exclude the possibility as a matter of fact that a company may, in breach of the requirement, register as its registered office an address which is not the address of its principal office*; and that it would follow in such a case that the conclusions in *Dairy Board* and *Bisonboard* would still hold true: *The company would be legally and factually resident at two places, notwithstanding the evident intention of the legislature that a company's legally chosen place of residence should be the same as its factual place of residence for jurisdictional purposes.* It is, however, also possible to reason that to so hold would defeat the apparent object of the provision, which appears to be to end the potential for a company to have more than one place of residence for jurisdictional purposes and that the statute should not be interpreted in a manner that would defeat its evident objects. Construed in the latter manner s 23 of the 2008 Companies Act provides a materially different statutory backdrop to that which applied when *Dairy Board* and *Bisonboard were* decided.' (Own emphasis.)

[8] In *Steytler N.O. v Fitzgerald*[3] (*Steytler*), the Court held:

'The Court has jurisdiction, concurrent with that of the Supreme Court, "in and over all causes arising, and persons residing and being within the said districts." These words seem to be taken and adopted, *mutatis mutandis*, from those in section 30 of the Charter of Justice, which gives the Supreme Court "jurisdiction in all causes whether civil, criminal, or mixed, arising within the Colony, with jurisdiction over the King's subjects, and all other persons whomsoever residing and being within the said Colony." The words "and persons residing" in the Act of 1864 seem merely

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[2] Section 23(3) and (4) of the Companies Act 71 of 2008, provides:
'Each company or external company must— (a) continuously maintain at least one office in the Republic; and (b) register the address of its office, or its principal office if it has more than one office— (i) initially in the case of— (aa) a company, by providing the required information on its Notice of Incorporation; or (bb) an external company, by providing the required information when filing its registration in terms of subsection (1); and (ii) subsequently, by filing a notice of change of registered office, together with the prescribed fee. (4) A change contemplated in subsection (3) (b) (ii) takes effect as from the later of— (a) the date, if any, stated in the notice; or (b) five business days after the date on which the notice was filed.' Section 1 of the Act defines '"registered office" to mean the office of a company, or of an external company, that is registered as required by section 23.'

[3] *Steytler N.O. v Fitzgerald* 1911 AD 295.

to epitomize the last sentence of the above clause, which may possibly have been intended at that date to prevent any foreigner from pleading that he was judiciable only by his own forum, as in the case of certain consular Courts at the present day. I am not prepared to assent to the suggestion of counsel that the necessary effect of the words used is to require not only that the cause should arise, but that the person must reside there, before the jurisdiction can exist; but, whatever may be the precise significance of the concluding words, it seems sufficient to say that they do not assist the respondents in this case, and that they must rely on the allegation that this is a cause arising in the district. Now, it seems clear, especially on comparing the fuller phraseology of the Charter of Justice that some distinction must be drawn between "cause" and "cause of action." "Cause" means a legal proceeding, a *lis* or *causa,* a process of some kind, whether civil or criminal.'

. . .

'The question the Court has to determine is, whether the Court of the Eastern Districts has the power under the circumstances of this case to issue the process of edictal citation at the suit of the Plaintiffs to compel the appearance of the defendant, who resides at Cape Town, in the Court of the Eastern Districts. The Jurisdiction of the Court is established by Act 35 of 1896, and within the provision of that Act, and of any subsequent amending Statute, and Rules of Court made in pursuance of the Act, we must look for the powers of the Court, and for the mode in which those powers must be exercised. In the 13th section of the Act it is provided that: --- "The Court of the Eastern Districts shall have a Jurisdiction concurrent with that of the Supreme Court in, and over all causes arising, and persons residing and being within all districts of the Colony to the Eastward of, and including the districts of Humansdorp, Uitenhage, Jansenville, Aberdeen, Murraysburg, Richmond, and Hope Town, and within the territories known as the Transkei, Tembuland proper, Emigrant Tembuland, Gcalekaland, Bomvanaland, Griqualand East, Pondoland and Port St. John's." In order to ascertain the nature of the Jurisdiction of the Supreme Court we must turn to section 30 of the Charter of Justice where it is enacted that: --- "The Supreme Court shall have cognisance of all pleas, and Jurisdiction in all causes whether Civil, Criminal, or Mixed, arising within the said Colony, with Jurisdiction over our subjects and all other persons whomsoever residing and being within the said Colony in as full and ample a manner, and to all intents and purposes as the Supreme Court of Justice now existing within the said Colony now hath, and, can lawfully exercise the same".'[4]

[9] Section 21 of the Superior Courts Act 10 of 2013 (Superior Courts Act), embodies similar provisions regarding jurisdiction, stating that a Division has jurisdiction over all persons residing or present in its area, for all causes arising and offences triable within

[4] Ibid at 330-331 and 333.

that area, and for all other matters it is legally authorised to consider.

[10] In *Malvern Trading CC v Absa Bank Ltd*[5] (*Malvern*), the Court considered s 23 of the Companies Act 71 of 2008 (the Companies Act) and case law, including *Sibakhulu*, which arose from the interpretation thereof regarding the courts' jurisdiction over companies, and distinguished the fact that *Malvern* was a close corporation and that s 23 does not apply.

[11] *Van Der Merwe v Duraline (Proprietary) Limited*,[6] dealt with the liquidation of a company. The court did not follow *Sibakhulu* but also held that it is apparent that the Legislature intends to introduce new and distinct legislation in the future to deal specifically with the winding-up and liquidation of insolvent companies. When that eventuates, efficient transitional provisions will be introduced to facilitate a changeover from the Companies Act 61 of 1973, to the new legislation. The court held that such transitional provisions would have to deal with the problems identified by Binns-Ward J in *Sibakhulu*.

[12] In *Burmeister and Another v Spitskop Village Properties Ltd and Others*,[7] the Court dealing with the *Sibakhulu* judgment, held:

'[9] The judgment in *Sibakhulu* was not followed in two subsequent High Court cases: *Lonsdale Commercial Corporation v Kimberley West Diamond Mining Corporation* and *Firstrand Bank Ltd v PMG Motors Alberton* and was impliedly overruled by the Supreme Court of Appeal (the SCA) in *PMG Motors Kyalami (Pty) Ltd and another v Firstrand Bank Ltd, Wesbank Division*. In *Lonsdale*, Lacock J said the following, with which I fully and respectfully agree:

"A finding that the legislature intended the provisions of s 23(3) of the 2008 Act to be construed "for purposes of jurisdiction" (a phrase repeatedly used by Binns-Ward J in *Sibakhulu* (Supra) is, to my mind, tantamount to a finding that the legislature intended to limit or oust a local- and provincial division's jurisdiction derived from the common law and/or section 29 of the Supreme Court Act in respect of the liquidation and or business rescue proceedings of a company that "resides" or has its principal place of business within that Court's area of jurisdiction, but not also its registered address. *I am not persuaded that the reasons advanced by the learned judge justify such a drastic limitation of a Court's jurisdiction. Had the legislature intended to limit a Court's*

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[5] *Malvern Trading CC v Absa Bank Ltd* [2023] ZAGPJHC 541; 2024 (1) SA 478 (GJ) para 55.

[6] *Van Der Merwe v Duraline (Proprietary) Limited* [2013] ZAWCHC 213 para 28. (Dealing with liquidation of a company).

[7] *Burmeister and Another v Spitskop Village Properties Ltd and Others* [2015] ZAGPPHC 1094.

jurisdiction as suggested by Binns-Ward, I would have expected the legislature to have made provision for such drastic limitation in clear and unambiguous terms. This was not expressly done when the 2008 Act was promulgated or since." (Own emphasis.)

[10] The SCA also had occasion to deal with a similar argument in the *PMG Motors* case, which was an appeal against the judgment in the *Firstrand* matter (above). Although neither of the *Sibakhulu* nor *Lonsdale* matters were specifically considered by the SCA, it is clear from its reasoning that the judgment in *Sibakhulu* was not approved. The SCA concluded that the jurisdiction of a court arising from the location of the principal place of business of a company is unaffected by its liquidation. The principal place of business remains unchanged by liquidation and affords the basis for jurisdiction in respect of the applications, such as business rescue. The conclusion is therefore that this Court has the necessary jurisdiction to determine this application.'

[13] In *Firstrand Bank Ltd, Wesbank Division v PMG Motors Alberton (Pty) Ltd and Others,*[8] the Court referred to *Sibakhulu* and held:

'[33] In terms of section 23(3) of the 2008 Act, a company's registered address can only be located at an office maintained by the said company, and not the office of a third party. As such, the company's registered office must be located at its only office or, if it has more than one office, then the registered office must be located at the place of its principal office. The transitional provisions in terms of Schedule 5 of the 2008 Act do not deal with pre-existing companies in terms of the 1973 Act. However, it may be mentioned in this context that rule 4(1)(a)(v) of the Uniform Rules of Court relating to service of proceedings against a company still permits service on an employee of the company at its registered address or its principal place of business, as contemplated in section 12(1) of the 1973 Act. Be that as it may, as already indicated, in the recent case of *Sibakhulu* (*supra*), *Binns-Ward J considered the amendments in the statutory framework in this regard in the context of a court's jurisdiction in relation to a winding-up application. Specifically, in the matter before the court in that case, there was an application for winding-up a company in a division of the High Court and another application to place the same company under supervision for the purposes of business rescue in terms of section of 131(1) of the 2008 Act in another division of the High Court. It is well known in this regard that business rescue proceedings relating to financially distressed companies were not contemplated in terms of the 1973 Act, and accordingly constitutes an innovation introduced by the 2008 Act.*

[34] Binns-Ward J concluded in relation to the facts before him that as section 12(1) of the 1973 Act had been repealed, and there was no equivalent provision in the 2008 Act, jurisdiction in respect of matters arising from the 2008 Act, fell to be determined on common law grounds, unless the 2008 Act reflected a different intention. The court considered it relevant in this context

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[8] *Firstrand Bank Ltd, Wesbank Division v PMG Motors Alberton (Pty) Ltd and Others* [2013] ZAGPJHC 203; [2013] 4 All SA 117 (GSJ).

that the stated objectives of 2008 Act included providing for the efficient rescue of financially distressed companies. The court also considered the unprecedented prescription in section 23(3) of the 2008 Act to be relevant in the circumstances. *The learned Judge, accordingly, found that for the purposes of jurisdiction, at least in relation to matters involving applications for a change of status of a company, a local company resided only at its registered office (which is the same as its principal office in terms of the 2008 Act.).* Therefore, the court held that the only High Court having territorial jurisdiction in respect of an application for winding-up a company or placing a company under supervision for business rescue purposes, is the court where the registered office of the said company is located.' (Own emphasis.) (Footnotes omitted.)

[14] In *PMG Motors Kyalami (Pty) Ltd (in liquidation) and Another v Firstrand Bank Ltd, Wesbank Division*[9] (*PMG*) it was held:

'[9] It has long been recognised as trite that artificial persons such as companies have no bodies and therefore cannot reside in a particular area. They do, however, have directing minds and "the residence of a corporation will be determined by the periodic, usual or habitual location of the directing mind". *This has been held to be the company's "seat of its central management and control, from where the general superintendence of its affairs takes place, and where, consequently, it is said that it carries on its real or principal business*". To say that a company resides at its principal place of business is simply a convenient way of ensuring that the nerve centre of the operations of a company founds jurisdiction in proceedings taken against it. Although section 12 of the Companies Act refers to "the main place of business", this amounts to the same thing for jurisdictional purposes. The dealerships accepted that, on the above basis, the court below had jurisdiction over PMG Kyalami and PMG Alberton prior to their liquidation.

[10] The dealerships submitted, however, that, after liquidation, they could no longer be considered to have a principal place of business. As a result, neither this nor any other ground of jurisdiction applied. For this submission, the dealerships relied on s 1 of the Companies Act. This defines a "place of business" as "any place where the company transacts or holds itself out as transacting business". They pointed out that "transacts" and "holds itself out as transacting business" are used in the present tense. Therefore, they submitted, because the *concursus creditorum* brought about by liquidation "freezes all trading and suspends all other civil proceedings" after liquidation, a company no longer transacts or holds itself out as transacting business and, therefore, no longer has a "place of business". No case was made out, it was submitted, that the dealerships continued to transact or hold themselves out as transacting business because the liquidators had not carried on any part of the business. Therefore jurisdiction could not be founded on the dealerships "residing" within the area

[9] *PMG Motors Kyalami (Pty) Ltd (in liquidation) and Another v Firstrand Bank Ltd, Wesbank Division* [2014] ZASCA 180 (SCA); [2015] JOL 32558 (SCA); 2015 (2) SA 634 (SCA).

of jurisdiction of the court below because they had no principal place of business.

[11] The dealerships could cite no authority for this proposition and I could not find any. The approach of a company having a place of residence is based on a convenient fiction. *The reasoning underlying the fiction concerning the principal place of business being regarded as the residence of a company takes cognisance of at least the following factors. The company has established a physical presence there, it has located its senior management there, records relating to its business dealings with others (which are likely to be relevant to litigation arising from those dealings) are located there and, in many cases, the majority of the employees of the company are stationed there.* All of these factors would make the court within whose jurisdiction the company has its principal place of business a *convenient* one in which to litigate. In most cases it would mean that decisions can be taken concerning the litigation, documents can be readily accessed, authority to litigate and instructions relating to the litigation can be obtained, and persons with knowledge of the transaction in question would be available to consult with legal representatives and attend court with minimal disruption and expense. *Many of these factors, which make a principal place of business a practical place to regard as the place of residence of a company, are unaffected by the liquidation of that company.*

[12] ...

[13] The response of the dealerships to these possibilities was that, immediately on liquidation, the company ceases to have a place of business. If any of these scenarios were to ensue, it would once again obtain a principal place of business because only then would the definition of "place of business" in section 1 of the Companies Act be satisfied. Apart from the fact that this Court had determined the question of residence without reference to the definition of "place of business" in the Companies Act, this seems to me to be a highly artificial approach. It relies only on a strict linguistic approach without taking into account the use of the words in the context of the Companies Act as a whole and, in particular, the context of the practical exigencies in its provisions concerning companies in liquidation. ...' (Own emphasis.)

[15] In *Apleni v African Process Solutions (Pty) Ltd and Another,*[10] the Court, inter alia, referred to *Gallo Africa Ltd and Others v Sting Music (Pty) Ltd and Others,*[11] where the Supreme Court of Appeal (SCA) considered the wording of the predecessor of s 21 of the Superior Courts Act, where Harms DP found:

'*However, our courts have for more than a century interpreted it to mean no more than that the jurisdiction of the High Court is to be found in the common law. For the purposes of effectiveness the defendant must be or reside within the area of jurisdiction of the court... Although*

[10] *Apleni v African Process Solutions (Pty) Ltd and Another* [2018] ZAWCHC 160 para 18 (*Apleni*).
[11] *Gallo Africa Ltd and Others v Sting Music (Pty) Ltd and Others* [2010] ZASCA 96; 2010 (6) SA 329 (SCA) [2011] 1 All SA 449 (SCA); 2010 BIP 256 (SCA).

effectiveness "lies at the root of jurisdiction" and is the rationale for jurisdiction, "it is not necessarily the criterion for its existence". What is further required is a ratio jurisdictionis. The ratio in turn, may, for instance, be domicile, contract, delict and, relevant for present purposes, ratione rei sitae. It depends on the nature of the right or claim whether the one ground or the other provides a ground for jurisdiction. Domicile on its own, for instance, may not be enough.' (Emphasis in original.)

[16] Reference was also made to *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd*,[12] where the then Appellate Division quoted, with approval, a particular passage from the decision of an earlier case of 1912 of the same division, where it was said: '*The presence of a contemplated defendant would of course be an important element in the enquiry; but the question in each instance would be whether a particular "cause" was one of which the court concerned could, according to the principles of law, rightly take cognisance... The claim being based upon tort and the Provincial Division being neither the forum loci delicti nor the forum rei, it is clear that, apart from the machinery of arrest, the enquiry would have to be answered in the negative.*'[13] (Emphasis in original.)

[17] In *Wild & Marr (Pty) Limited v Intratrek Properties (Pty) Limited*,[14] the Court considered *Sibakhulu* and provided an overview of the case law as it stood when it delivered its judgment:

'[7] Other than this decision, there is no support for the proposition that the court exercising jurisdiction over the registered address has sole jurisdiction.

[8] In the Gauteng Division, in the decision in *Burmeister & Another v Spitskop Village Properties & Others* [2015] ZAPPHC 1094 (21/09/2015), Makgoka J disapproved the decision in *Sibakhulu*. At [8] - [10] of the judgment, the issue is addressed, not by countering the reasoning in *Sibakhulu*, but by referring to, and relying on, several other decisions said to disapprove the decision in *Sibakhulu*...

[9] In my view these decisions relied on in *Burmeister*, save for that of Lacock J, are not dispositive of the proposition that duality has been preserved. The post liquidation phase in the PMG Motors cases is a clear basis for distinguishing them.

To argue thus that these decisions disapprove or overrule the *Sibakhulu* decision is, with respect, doubtful.

[10] The SCA's dictum in *PMG Motors* does not address the duality issue expressly, and I am hesitant to read into those remarks that the court contemplated disposing of that thesis.

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[12] *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd.* [1987] ZASCA 87; [1987] 2 All SA 447 (A).

[13] *Apleni* para 19.

[14] *Wild & Marr (Pty) Limited v Intratrek Properties (Pty) Limited* [2019] ZAGPPHC 613.

[11] The notion of the court's jurisdiction being ousted in *Lonsdale,* is in my view, an exaggerated proposition with which I cannot agree. *The jurisdiction of the court is conferred by statute in respect of a juristic entity which, by a fiction, is said to be at a place; if the reforming statute creates a different arrangement that is merely more restrictive about the place where the fiction resides, it does seem obvious to me that the re-arrangement infringes on the court's jurisdiction or inhibits reasonable access to a court by any litigant. No threat is created by this procedural provision to the courts' basic functioning nor to litigants' constitutional rights of access to justice.*

[12] Accordingly, what remains is one decision in the Gauteng Division, which does not interrogate the reasoning in *Sebakhulu,* against the proposition, and one distinguishable decision, supposedly against the proposition.

[13] However, *Sibakhulu* was expressly disapproved in the Cape Division in *Van der Merwe v Duraline (Pty) ...'* (Own emphasis.)

[18] In *Mfwethu Investments CC t.a Recharger Prepaid Meters v Citiq Meter Solutions (Pty) Ltd t/a Citiq Prepaid (Mfwethu),*[15] the Court was inclined to follow *Sibakhulu*:

'[9] For purposes of s 21(1) of the Superior Courts Act 10 of 2013 (formerly s 19(1)(*a*) of the Supreme Court Act 59 of 1959), the question whether a cause 'arises' within a court's area of jurisdiction is determined by common law. *The provision that the court has jurisdiction 'over all persons residing or being in' such area does not enlarge the jurisdiction endowed by the words 'causes arising'. At common law, however, the residence (but not the mere physical presence) of a defendant or respondent within the court's area of jurisdiction is, in most types of claims, a circumstance which enables one to say that the cause 'arises' within the court's area of jurisdiction* (*Bisonboard Ltd v K Braun Woodworking Machinery (Pty) Ltd* [1990] ZASCA 86; 1991 (1) SA 482 (A) at 490 H-492I; *Bid Industrial Holdings (Pty) Ltd v Strang & others* [2007] ZASCA 144; 2008 (3) SA 355 (SCA) para 53).

[10] It follows that, to the extent that Recharger's argument is that the court has jurisdiction merely because Recharger's office in Cape Town causes it to be physically present within the court's territory, the argument is unsound and must be rejected. *The court will only have jurisdiction – or to put it differently, the cause at issue in the present case could only be said to be one arising within this court's territory – if Citiq resides in this court's territory.*

[11] Recharger's counsel made extensive reference to the recent judgment in *Apleni v African Process Solutions (Pty) Ltd & another* [2018] ZAWCHC 160. He emphasised passages in the judgment which referred to effectiveness. However, and as the cases cited by the learned judge in that matter show, effectiveness, while it may lie at the root of, or be the rationale for, the

[15] *Mfwethu Investments CC t.a Recharger Prepaid Meters v Citiq Meter Solutions (Pty) Ltd t/a Citiq Prepaid* [2020] ZAWCHC 40; 2020 (6) SA 578 (WCC).

common law grounds of jurisdiction, is not itself an independent ground of jurisdiction (*Gallo Africa Ltd & others v Sting Music (Pty) Ltd & others* [2010] ZASCA 96; 2010 (6) SA 329 (SCA) para 10). The writ of a division of the High Court runs throughout South Africa (s 42(2) of the Superior Courts Act), so that in principle any division could give an effective judgment against an *incola* of South Africa who is a *peregrinus* in that division's territory, yet it is clearly not the law that every division in South Africa has jurisdiction over any person who is resident somewhere in South Africa.

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[26] *In my view, third parties are better served by treating the registered office as dispositive.* In order to know in which court to sue, third parties need only consult the information registered with the CIPC. If they could not place complete reliance on the registration, the company might notionally object to jurisdiction on the basis that its principal office is in fact in the territory of some other court. Third parties cannot be expected to know, and may have no means of finding out, where the general administration of a company is centred.

[27] However, and even if I were to assume that *Sibakhulu Construction* is wrong, and that a company may for purposes of jurisdiction be regarded as resident at its principal place of business in South Africa, even though that is not its registered office, *it was for Recharger to establish facts to show that Citiq's Cape Town office, rather than its Midrand office, is its principal place of business in South Africa, and that this court thus has jurisdiction* (*Mayne v Main* 2001 (2) SA 1239 (SCA) para 1).' (Own emphasis.)

Commentaries on jurisdiction

[19] Harms[16] opines that merely having an office at a place does not change the fact that both the principal place and the registered place of business should be the same. An address at a principal place suffices only for service of process:

'A domestic corporation or legal person is resident both at the place where its registered office is located and where its principal place of business is. In other words, it may have a dual residence. It is not resident at a place where it *simply has a place of business* that is not its principal place of business. There is a vast difference between a corporation's principal place of business and its principal place of business within the court's jurisdiction: the first may establish jurisdiction, while the second a place where service of process may take place...'

[20] Van Loggerenberg,[17] opines:

'In general, a court is bound to entertain proceedings that fall within its jurisdiction. This is known

[16] D Harms *Civil Procedure in the Superior Courts* (2019) at A-20.
[17] D E van Loggerenberg *Erasmus: Superior Court Practice*, (2025) at D-186.

as the mandatory jurisdiction principle. The principle is, however, not absolute. In *Commissioner, South African Revenue Service v Richards Bay Coal Terminal (Pty) Ltd* the Constitutional Court held that it was important to recognize at a conceptual level why a court that is assigned jurisdiction is entitled to decline to exercise it in certain circumstances. Those reasons lie in a mixture of policy considerations that seek to protect the integrity of the administration of justice, such as abuse of process, and practical matters relating to the proper, efficient and economical use of judicial resources and the right of access to courts. If the mandatory jurisdiction principle was regarded as absolute, courts would be obliged to consider and adjudicate all matters, even those whose consideration would stand in conflict with the interests of justice. Abuse of process and vexatious litigation were some exceptions to the general rule. It could not be argued that in such instances the right of access to court had to prevail, and courts had no discretion to regulate their own processes. Such a proposition would offend section 173 of the Constitution and also stood as a threat to the integrity and the proper functioning of the administration of justice. *A division of the High Court having jurisdiction in respect of a cause may also, in certain circumstances, decline to exercise that jurisdiction in favour of some other court or tribunal which also has jurisdiction to deal with it. This occurs in the case of, for example, submissions to arbitration, contracts vesting jurisdiction in some other court (or tribunal), lis alibi pendens, forum non conveniens and comity.*' (Footnotes omitted.) (Own emphasis.)

[21] In respect of the residence of a domestic company, Van Loggerenberg[18] notes:
'In *Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf Country Estate (Pty) Ltd (Nedbank Ltd Intervening)* Binns-Ward J, with reference to winding-up and business rescue proceedings, held that under the Companies Act 71 of 2008 a company resides for purposes of jurisdiction as contemplated in s 19(1)*(a)* of the (now repealed) Supreme Court Act 59 of 1959, only at its registered office which, for jurisdictional purposes, is under the Companies Act 71 of 2008 required to be one and the same as its principal place of business. Binns-Ward J held that on a proper interpretation of s 23(3) of the Companies Act 71 of 2008:
(i) the company itself is obliged to maintain its registered office;
(ii) the registered office and principal place of business of the company are required to be at one and same place;
(iii) the requirement that the company register its principal office is clearly intended for the benefit of third parties, who might wish to obtain information about it, communicate with it, or in any manner formally transact with or in connection with it;
(iv) the registered office (alias the principal place of business) of the company is the address at which the world at large can transact with the company effectively.

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[18] Ibid at D-185-186.

The decision in the *Sibakhulu* case, in so far as it concerns jurisdiction in winding-up matters (as distinct from business-rescue proceedings), was made *obiter* and was, in the context of the jurisdiction of the High Court to determine an application for the winding-up of a company, not followed in *Van der Merwe v Duraline (Pty) Ltd* and *Wild & Marr (Pty) Ltd v Intratek Properties (Pty) Ltd*, in both of which it was held that the dual-jurisdiction regime was not abolished by the Companies Act 71 of 2008 (i e that the High Court within the area of jurisdiction in which the registered office of the company or the main place of business of the company is situate has jurisdiction in respect of the company as contemplated in s 12(1) of the Companies Act 61 of 1973). In *Mfwethu Investments CC v Citiq Meter Solutions (Pty) Ltd* it was held, in the context of a delictual claim (where it is well established that the court will have authority over a defendant who is resident in its area of jurisdiction), that the Companies Act 71 of 2008 abolished dual corporate residence and that the registered address of the respondent company was dispositive of the company's place of residence.

Although, generally speaking, the principal office of a company is not necessarily equivalent to its principal place of business, it is submitted that for purposes of jurisdiction based on residence under the Companies Act 71 of 2008, it is. In other words, the 'principal office' of a company as contemplated in s 23(3) of the Companies Act 71 of 2008 constitutes, for jurisdictional purposes, its statutory home where it is to perform its corporate functions and where it is regarded as at all times present and ready to conduct and control its administrative affairs. Viewed in this context, the required notional connection with a court's area within which the principal office is located, is present.' (Footnotes omitted.) (Own emphasis.)

Discussion

[22] The jurisdiction of the High Court is determined by the Supreme Court Act and the common law. Its jurisdiction is explicitly limited by a number of specific pieces of legislation that confer jurisdiction on specific courts and tribunals. In *Minister of Law and Order and Others v Hurley and Another,*[19] it was stated that:

'It is a well recognised rule in the interpretation of statutes, it has been stated by this Court, "that the curtailment of the powers of a court of law is, in the absence of an express or clear implication to the contrary, not to be presumed."'

This finds expression in *Lonsdale Commercial Corporation v Kimberly West Diamond Mining*[20] where the Court held that it would constitute a drastic limitation of a Court's jurisdiction, and had the legislature intended to limit a Court's jurisdiction as suggested

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[19] *Minister of Law and Order and Others v Hurley and Another* [1986] 2 All SA 428 (A); 1986 (3) SA 568 (A) at 584A.

[20] *Lonsdale Commercial Corporation v Kimberly West Diamond Mining* [2013] ZANCHC 11 para 6.

by Binns-Ward, it would have expected the legislature to have made provision for such drastic limitation in clear and unambiguous terms. Legislation that limits the Courts' jurisdiction is always explicit.

[23] In *Steytler,*[21] it was held that jurisdiction is inter alia established by statute. Sections 1 and 23 of the Companies Act do not define a court for purposes of jurisdiction. The purpose of s 23 is, in my view, more administrative.

[24] *Sibakhulu* and those that followed thereafter, in my view, do not support an absolute ousting of the High Court's jurisdiction. Most of the cases that refer to *Sibakhulu* were decided against the same backdrop of liquidation and business rescue proceedings.[22] Those matters relate to status. I believe that it can be accepted that, for that purpose too, s 23 has an objective to ensure that the central office knows what it needs to meet. *Sibakhulu*, in any event, provides that the principal place can be established as a fact. If it were merely the registered address, establishing such a fact would be unnecessary. The dual residence of a company is not excluded.

[25] I do not understand the SCA to hold in *PMG*[23] that concurrent or dual residence is abolished. The Court considered several factors in determining the principal place of business. That would be the presence of a director at an address indicated as the first address on the contact form, who also accepted service. It would not be inconvenient for the respondent to litigate in Bloemfontein, as Kroonstad is a mere 200 km from Bloemfontein. The respondent designated the director by email address, too. The applicant relies on the contract, and this Court can take cognisance of the cause.

[26] It should be noted that *Mfwethu* did not rule out the possibility that another court may have jurisdiction if a cause of action, not strictly arising from the Companies Act, occurs outside the jurisdiction of the court with jurisdiction under s 23. Therefore, the determination of jurisdiction still requires a factual investigation, and the fact that the registered address is in another court's jurisdiction remains, in my view, at best a prima facie impression.[24]

[21] Op cit fn 3 at 333.
[22] Op cit fn 9 paras 33, 34 and 44.
[23] Op cit fn 10 para 11.
[24] Op cit fn 18 para 32.

Condonation

[27] It is accepted that the summary judgment was filed out of time. Mr Van Niekerk, for the applicant, relies on rule 27(3) of the Uniform Rules of Court, which provides that a court may, if good cause is shown, condone any non-compliance with the rules. In *Zealand v Milborough*,[25] Jones J remarked: 'a measure of flexibility is required in the exercise of the Court's discretion. An apparently good defence may compensate for a poor explanation…'.

[28] Whilst his reference to *McGill v Vlakplaats Brickworks (Pty) Ltd*[26] is relevant to the principle; it should not be elevated to cater for all cases. In *McGill*, the plaintiff did not comply with the provisions of rule 17(4)*(b)*, in that the summons did not set out the full names and occupation of the plaintiff. Condonation was granted.

[29] *Pareto Ltd and Another v Kotze*[27] provides an elucidating overview of cases in which the question of condonation in summary judgment proceedings was addressed. It did not detract from the provisions of the rules and the principles that condonation can only be granted when there is an explanation for the delay and good cause shown.

[30] My appreciation of the applicant's case is that many things went wrong in getting the claim in court. Importantly, though, there is no condonation application, and I do not have enough facts and explanations to grant condonation for the late prosecution of the application. Compliance with the rules for condonation and time frames within which the application must be launched also constitute requisites for jurisdiction.

Bona fide defence

[31] Summary judgment can only be granted in exceptional circumstances where the applicant's case is unanswerable, and no real defence is raised. In *Cellsecure Monitoring and Response (Pty) Ltd and Others v South African Securitisation Programme (RF) Limited*,[28] the full bench held that subrule 32(3) requires defendants resisting summary

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[25] *Zealand v Milborough* 1991 (4) SA 836 (SE) at 838D.
[26] *McGill v Vlakplaats Brickworks (Pty) Ltd* [1981] 1 All SA 44 (W); 1981 (1) SA 637 (W) at 643C.
[27] *Pareto Ltd and Another v Kotze* [2025] ZAWCHC 338; [2025] 4 All SA 450 (WCC) paras 8–17.
[28] *Cellsecure Monitoring and Response (Pty) Ltd and Others v South African Securitisation Programme (RF) Limited* [2025] ZAGPPHC 98 para 26.

judgment to set out the nature, grounds, and material facts of their defence fully. Bald or bare denials are inadequate. Defendants must provide sufficient particularity to disclose a *bona fide* defence. While exhaustive detail is unnecessary, the facts and grounds must be coherent and plausible to establish a reasonable prospect of success at trial.

[32] Although not called on to determine the merits, I anticipate that when the arguments on the merits are heard, the respondent may be found to have raised just enough to show that it may have a bona fide defence. This view does not impede the parties from arguing the application on the merits at all, and it should not be deemed that this is binding on me or another court when hearing the application.

[33] Considering the plea and the respondent's answering affidavit before me, it can be said that the defence is thin, but raising the issue of jurisdiction and the lack of a condonation application does raise a bona fide defence. The last word has not been spoken on the implications for claims in jurisdictions other than where the registered office and principal place of business are situated. Summary judgment is not denied because I make a definitive finding on jurisdiction, but because that issue can be finally determined at trial. It suffices as a bona fide defence for present purposes. The lack of a condonation should be added to the denial of summary judgment.

Costs

[34] There is no reason why costs should not follow the result, and the applicant has to pay the costs of the application.

Order

[35] In the result, the following order is made:

1 The summary application is dismissed with costs, counsel's fees to be taxed on scale B.

[redacted]

P R CRONJé

ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant:	X T Van Nierkerk
Instructed by:	M L Schoeman Attorneys, Pretoria c/o Honey Attorneys, Bloemfontein
For the respondent:	W Pretorius
Instructed by:	Hannes Pretorius Bock & Bryant, Cape Town c/o Van Wyk Preller Attorneys, Bloemfontein.