



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

REPORTABLE

Case no: 118/2025

In the matter between:

MVELELI VA

Appellant

and

KING SABATA DALINDYEBO LOCAL MUNICIPALITY

Respondent

and

Case no: 125/2025

In the matter between:

MTHETHO HLAMANDANA

First Appellant

BHEKAMEVA ROYAL FAMILY

Second Appellant

and

PREMIER, EASTERN CAPE

PROVINCIAL GOVERNMENT

First Respondent

**MEC, COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS, EASTERN CAPE
ISIKELO TRADITIONAL COUNCIL
ADV. N. JAMES N.O.**

Second Respondent

Third Respondent

Fourth Respondent

REASONS FOR ORDERS GRANTED ON 28 APRIL 2026

Govindjee J

[1] These appeals were heard together because they raise the same anterior question, namely whether a full court sitting at a local seat of a division may entertain an appeal where the Supreme Court of Appeal has granted leave to appeal specifically to the main seat of that division. Although the procedural histories differ, it was convenient to determine that common issue in a single judgment. Separate orders were made in each matter on that day with reasons to follow. These are the reasons.

Mveleli Va v King Sabata Dalindyebo Local Municipality (Va)

[2] The appellant approached this court, sitting as a single judge, for the return of his motor vehicle, which had been seized by members of the respondent. The application was dismissed with costs. An application for leave to appeal suffered the same fate. On 25 November 2025, the SCA granted leave to appeal 'to the Full Court of the Eastern Cape Division of the High Court, Grahamstown'. Thereafter, the appellant filed a notice of appeal in this court on 5 December 2025 and a notice of set down on 18 February 2026, with the result that the matter was enrolled for hearing on this court's roll.

[3] The respondent opposed the matter, inter alia, on the basis that it was irregular for the appeal to be set down for hearing in Mthatha when the SCA had granted leave to appeal to this division sitting at its main seat in Makhanda.

[4] All courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation.¹ The High Court of South Africa consists of Divisions determined by the Superior Courts Act 10 of 2013 (the Act), with one or more seats in each division.² The Act provides that the main seat of the Eastern Cape Division (the division) is 'Grahamstown', now known as Makhanda.³ When the Act came into operation on 23 August 2013, s 50 provided that various existing High Courts became local seats of the relevant divisions. Thus, the Eastern Cape High Court, Mthatha, became a local seat of this division,⁴ and its pre-existing area of jurisdiction became part of the area of jurisdiction of the division.⁵

[5] Section 50 of the Act must be read with s 21(1) of the Act, which provides that a division has jurisdiction over all persons residing or being within, and in relation to all causes arising and all offences triable within, its area of jurisdiction.⁶ The local seats of the division are endowed with concurrent jurisdiction over smaller areas than that enjoyed by the main seat.⁷ In addition, s 6(4)(a) provides that the main seat of the division has concurrent appeal jurisdiction over the area of jurisdiction of any local seat of that division. The Judge President of the division may direct that an appeal against a decision of a single judge or of a magistrates' court within that area of jurisdiction be heard at the main seat of the division.⁸

[6] It is therefore clear that this court would, in the ordinary course, enjoy territorial competence to entertain the present appeal, the cause of action having

¹ Section 171 of the Constitution.

² Section 169(2) of the Constitution.

³ Section 6(1)(a) of the Act. The main seat of the Eastern Cape Division is still described in the Superior Courts Act as 'Grahamstown'. The town's official geographical name was changed from Grahamstown to Makhanda (GN 641 in GG 41738 of 29 June 2018). The Judge President of the division has also issued a directive that, for purposes of court process, the division be referred to as the 'Eastern Cape Division, Makhanda'. I accordingly use 'Makhanda' when referring to the main seat, save when quoting the Act or the SCA's order.

⁴ Section 50(1)(c) of the Act. The history of the creation of this court was summarised in *Thembanani Wholesalers (Pty) Ltd v September and Another* 2014 (5) SA 51 (ECG) (*Thembanani*).

⁵ See *Kamupungu v Road Accident Fund* [2023] ZAECKMHC 37; [2023] 3 All SA 176 (ECG); 2023 (4) SA 627 (ECM) para 13.

⁶ Section 21(1) of the Act.

⁷ *Thembanani* fn 4 para 10, citing C Hoexter & M Olivier (eds) *The Judiciary in South Africa* (Juta, 2014) at 19–20.

⁸ Section 6(4)(a) of the Act.

arisen within its area of jurisdiction, and that the main seat in Makhanda likewise enjoys concurrent appeal jurisdiction by virtue of s 6(4)(a). The difficulty in proceeding to the merits lies not in the ordinary principles of concurrent jurisdiction, but in the terms of the order made by the SCA.

[7] There can be little doubt that the granting of leave to appeal by the SCA constitutes an order made under s 17 of the Act.⁹ In terms of its provisions, an applicant whose application for leave to appeal has been refused by the court of first instance may apply to the SCA for leave to appeal. The application is ordinarily considered by two judges of that court, who may dispose of it without hearing oral argument and who may grant or refuse the application or refer it to that court for consideration.¹⁰ Importantly, leave to appeal may be granted subject to such conditions as the court concerned may determine.¹¹

[8] The SCA has confirmed that the ordinary principles applicable to the interpretation of documents also apply to the interpretation of a court's judgment or order. That includes an order of that court granting leave to appeal under s 17(2) of the Act.¹²

'The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention.'

⁹ There is no essential difference between an 'order' and a 'judgment': *HLB International (South Africa) (Pty) Ltd v MWRK Accountants and Consultants (Pty) Ltd* 2022 (5) SA 373 (SCA) para 18. The order granting leave to appeal on application is often loosely referred to in practice as leave granted 'on petition', wording which does not appear in the Act itself: see, for example, *Sithangu v Capricorn District Municipality* [2023] ZASCA 151 (*Sithangu*) para 20.

¹⁰ Section 17(2)(b) – (d) of the Act. The language of s 17 is itself consistent with the characterisation of the grant of leave as an order of court. Section 17(2)(d) empowers the judges considering the application to 'order' that it be argued before them, and thereafter to grant or refuse the application or refer it to the court for consideration.

¹¹ Section 17(5) of the Act.

¹² *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* 2013 (2) SA 204 (SCA) para 13, as endorsed by the Constitutional Court in *Eke v Parsons* 2016 (3) SA 37 (CC); 2015 (11) BCLR 1319; [2015] ZACC 30; para 29. On the interpretation of orders granted following an application in terms of s 17 of the Act, see *Sithangu* fn 9 para 23.

[9] Properly construed, the order granting leave to appeal is unambiguous. It granted leave to appeal to the full court of this division sitting at Grahamstown, now Makhanda. That court was plainly a competent forum to hear the appeal and its specification was not incidental. It is, at the least, consistent with the inference that leave was granted in the terms sought, and the order did not grant leave simply to a full court of the Eastern Cape Division.¹³ On its language, read in context and in light of its manifest purpose, the order directed that the appeal be heard by a full court sitting at the main seat of the division.

[10] It is true that s 17(6)(a) of the Act provides that, where leave is granted to appeal against a decision of a division sitting as a court of first instance before a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, save in circumstances where leave is granted to the SCA. Read literally, the Act therefore directs that leave be granted to the division, rather than to a specific seat, which would notionally enable the matter to be heard, at the direction of the Judge President, at any of the seats in the division which enjoy jurisdiction. The difficulty is that the SCA did not stop at directing a full court of the division; it specifically identified the full court at Grahamstown. In those circumstances, to permit the appeal to be heard in Mthatha would be to disregard the order that was made, rather than give effect to it.

[11] The Constitution provides that an order or decision issued by a court binds all persons to whom and organs of state to which it applies.¹⁴ The Constitutional Court has repeatedly emphasised that court orders, whether correctly or incorrectly granted, must be obeyed unless and until they are properly set aside. That principle is foundational to the effectiveness of the judicial process and the rule of law.¹⁵

¹³ Section 17(5) of the Act.

¹⁴ Section 165(5) of the Constitution.

¹⁵ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) para 59. Also see *Municipal Manager OR Tambo District Municipality v Ndabeni* (2022) 43 ILJ 1019 (CC) paras 23–26.

[12] In addition, our system of precedent requires lower courts to follow both the legal determinations and the orders of courts higher in the judicial hierarchy. As the Constitutional Court has explained:¹⁶

‘This argument raises issues concerning the principle that finds application in the Latin maxim of *stare decisis* (to stand by decisions previously taken), or the doctrine of precedent ... What it boils down to, according to [Hahlo & Kahn], is: “Certainty, predictability, reliability, equality, uniformity, convenience: these are the principal advantages to be gained by a legal system from the principle of *stare decisis*.” Observance of the doctrine has been insisted upon, both by this court and by the Supreme Court of Appeal. And I believe rightly so. The doctrine of precedent not only binds lower courts, but also binds courts of final jurisdiction to their own decisions. These courts can depart from a previous decision of their own only when satisfied that that decision is clearly wrong. *Stare decisis* is therefore not simply a matter of respect for courts of higher authority. It is a manifestation of the rule of law itself, which in turn is a founding value of our Constitution. To deviate from this rule is to invite legal chaos.’ (References omitted.)

[13] The result, in the present matter, is that this court is bound to give effect to the order of the SCA granting leave to appeal to a full court sitting in Makhanda. It follows that, notwithstanding the ordinary principles of concurrent jurisdiction within the division, the appeal cannot be entertained by this court consistently with the terms of that order.

[14] It may be added that the fact that the same judges may sit from time to time at different seats of the division, or that the matter might conceivably have been heard virtually, is immaterial. Judges allocated appeal duties exercise authority as members of a court sitting at a particular seat in accordance with the allocation of roles and responsibilities made by the Acting Judge President (AJP) under the Act;¹⁷ they are not a free-floating panel able to assume whatever seat designation may appear convenient. This court is sitting in Mthatha, whether physically or by virtual means, and not at the main seat in Makhanda. The matter is enrolled for hearing in Mthatha, and the use of virtual means cannot alter the seat at which this court is

¹⁶ See, for example, *Camps Bay Ratepayers’ and Residents’ Association and Another v Harrison and Another* 2011 (4) SA 42 (CC) para 28.

¹⁷ See s 6(4)(c): the Judge President of a division may assign all the judges of that division within the division as he or she deems fit.

sitting. It would be artificial, and contrary to the AJP's proper allotment of duties, to suggest otherwise merely because the hearing could, notionally, take place online. The real question is not one of practical convenience, but whether the appeal may lawfully be entertained by this court consistently with the order of the SCA. For reasons already given, it may not. Nor does the inherent power of this court assist, since that power cannot be used to justify a course inconsistent with a binding order of a superior court.¹⁸

Mthetho Hlamandana and Another v Premier, Eastern Cape and Others
(Hlamandana)

[15] The same issue arises in this matter, albeit against a different procedural background. In this matter, the appellants' attorney explains that, after the SCA granted leave to appeal, he initially proceeded on the basis that the appeal lay to the main seat and prepared the notice of appeal accordingly. Only thereafter, following engagement with the registrar's office and what was conveyed as the position of the AJP, was the matter redirected to Mthatha and the notice amended. The issue is therefore raised in a form that squarely engages the question whether an administrative step within the division could overtake the terms of the SCA's order.

[16] The appellants contend that nothing turns on the SCA's reference to Grahamstown; that Mthatha retained concurrent jurisdiction because the matter emanated from its territorial area; and that, on the authority of *Standard Bank of SA Ltd and Others v Mpongo and Others*,¹⁹ (*Mpongo*) this court cannot decline to hear an appeal properly brought before it.

[17] Subject to what follows, the reasoning in *Va* applies equally here. Properly understood, *Mpongo* does not answer the present difficulty. It is authority for the ordinary statutory position that, within a division, the main seat has jurisdiction over the whole province and is obliged to entertain matters that fall within the jurisdiction

¹⁸ See *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 (A) at 7E–I. Cf *National Credit Regulator v Lewis Stores (Pty) Ltd and Another* 2020 (2) SA 390 (SCA) paras 57 and 58, where the SCA, in special circumstances, invoked its inherent power to condone an irregular procedural route to avoid a gross technicality and a waste of resources. That situation is distinguishable from the present, where the difficulty lies in the terms of the SCA's own order.

¹⁹ *Standard Bank of SA Ltd and Others v Mpongo and Others* 2021 (6) SA 403 (SCA) (*Mpongo*) para 31.

of a local seat because of its concurrent jurisdiction.²⁰ The case did not, however, concern the effect of an order of the SCA granting leave to appeal specifically to the full court at the main seat. The present issue is not whether this court would otherwise have been a competent seat. It is whether, once the SCA directed that leave to appeal be granted to the full court at Makhanda, the appeal could nevertheless be enrolled and heard at Mthatha. That question is not addressed by *Mpongo*.

[18] Nor can the core difficulty be overcome by what was conveyed from the registrar's office or by an administrative allocation within the division. There is no statutory basis for concluding that the powers of judicial administration vested in the Judge President, in directing the enrolment of a particular matter, include a power to vary the legal effect of an order made by the SCA in the matter itself.²¹ This point is reinforced by the wording of s 6(4)(a) of the Act. It expressly empowers the Judge President to direct that an appeal from the area of jurisdiction of a local seat may be heard at the main seat of the division but contains no converse provision authorising the reverse.²²

[19] This approach is reinforced by an illustration discussed in Herbststein and Van Winsen, drawn from an extra-curial contribution by Malcolm Wallis. The example highlights precisely the difficulty that arises when, after the SCA has granted leave to appeal to a specified seat, a directive is issued within the division pointing elsewhere. It also suggests that, in Gauteng, it was considered impermissible to seek, by directive, in effect, to vary the SCA's choice of seat:²³

'A further problem has recently come to light. Applications for leave to appeal addressed to the Supreme Court of Appeal sometimes ask for leave to appeal to the local seat of a division in disregard of the provisions of s 6(4)(a) of the Superior Courts Act. The grant of an order in those terms has the potential to cause chaos, as occurred recently in the Gauteng Division. An order by the Supreme Court of Appeal granted leave to appeal to the Gauteng

²⁰ *Mpongo* fn 19 para 88.

²¹ See *Mhlongo and Others v Mokoena NO and Others* 2022 (6) SA 129 (SCA) para 12.

²² Section 6(7) empowers the Judge President, after consultation with the Minister, to hold a sitting at a place other than the main or a local seat of the division where that is expedient or in the interests of justice. That provision concerns an exceptional sitting other than at the main seat or a local seat and does not assist the appellant in the present circumstances.

²³ M Wallis 'What's in a name? A note on nomenclature' (2020) 137 SALJ 25 at 31.

Local Division of the High Court [the local seat]. The appellant obtained a directive from the Deputy Judge President that the appeal be heard in Pretoria [the main seat, and a court which, in terms of s 6(4), would have enjoyed jurisdiction] and delivered a record to the court in Pretoria. The Deputy Judge President then reversed his previous directive in the light of the Supreme Court of Appeal order. All this is most undesirable.’

[20] While the present matter is, in one sense, the converse of the Gauteng example, it should lead to the same conclusion. Although Mthatha would ordinarily have been a competent seat for the hearing of the appeal, the SCA granted leave specifically to the full court at Makhanda. That component of the order was certainly not a nullity, as suggested during argument. The AJP’s directive, as conveyed by the registrar, could not displace that order or authorise the appeal to be set down and heard in Mthatha notwithstanding the terms on which the SCA granted leave to appeal.

[21] It is unnecessary for present purposes to speculate as to whether, and if so how, the SCA could be approached to vary its order, or whether any application might competently be brought for the removal of the appeal from one seat to another. No such application served before this court, and the matter must be decided on the basis on which it was enrolled and argued.²⁴ If, as appears from the above, the AJP could not make a determination that had the effect of overtaking the SCA’s order, it follows that the parties themselves could not achieve that result by consent. The SCA’s order is a binding order of a superior court, and the parties could not by agreement authorise the enrolment and hearing of the appeal in a manner inconsistent with its terms.²⁵

[22] It follows that the appeal in this matter could not lawfully be enrolled and heard in Mthatha consistently with the terms of the SCA’s order. As is the case with the *Va* matter, the appeal must accordingly be struck from the roll.

Costs

²⁴ Cf *Thembanani* fn 4 para 13.

²⁵ Section 165(5) of the Constitution.

[23] As to costs, a distinction must be drawn between the two matters. In *Va*, the respondent squarely raised the irregularity flowing from the terms of the SCA's order, yet the matter remained enrolled for hearing in Mthatha. In those circumstances, there is no reason to depart from the ordinary rule that costs follow the result. In *Hlamandana*, however, the position is different. The papers indicate that the appellants' attorney initially proceeded on the footing that the appeal lay to the main seat, and that the subsequent enrolment in Mthatha followed what was conveyed from the registrar's office as the AJP's position. In those circumstances, fairness dictates that there should be no order as to costs.

Orders

[24] For these reasons, the following orders were issued:

1. In *Va v King Sabata Dalindyebo Local Municipality*, the appeal is struck from the roll with costs.
2. In *Hlamandana and Another v Premier, Eastern Cape and Others*, the appeal is struck from the roll with no order as to costs.

A GOVINDJEE
JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

M MAKAULA
JUDGE OF THE HIGH COURT

I agree.

M T JORDAAN
ACTING JUDGE OF THE HIGH COURT

Heard: 28 April 2026

Delivered: 30 April 2026

Appearances:

Va v King Sabata Dalindyebo Local Municipality

For the Appellant: Adv SST Mapekula

Instructed by: Chuma Ngqongwa Attorneys Inc.
Mthatha

For the Respondent: Mr Malala

Instructed by: Mvuzo Notyesi Inc
Mthatha

Hlamandana & Another v Premier, EC & Others

For Appellants: Adv L.L Ngumle

Instructed by: D.Z. Dukada & Company
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