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

**Reportable**

Case no: 240/2017

In the matter between:

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| **FRANK DE VILLIERS THERON N.O.** | First Plaintiff |
| **KARIEN THERON N.O.** | Second Plaintiff |
| (In their capacities as trustees of the Theron Family, Trust T474) | |
| and | |
| **FRANK IZAK DUMINY** | First Defendant |
| **KEEVEY AUCTION CC** | Second Defendant |
| **JAC N COETZER AFSLAERS (PTY) LTD** | Third defendant |

**Neutral Citation:** *De Villiers NO and Another v Duminy and Others* (240/2017) [2026] ZAFSHC 312 (22 May 2026)

**Coram:** OPPERMAN J

**Heard**: 6 February 2026

**Delivered**: The 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 at 15h00 on 22 May 2026

**Summary:** Superior Courts Act 10 of 2013 – transfer of proceedings between Divisions – whether transferee court may refuse to entertain matter already transferred under s 27(1) – transferee court obliged to hear matter notwithstanding concerns about convenience-based forum-shopping – convenience of legal representatives alone generally insufficient basis for transfer – judicial scrutiny of transferring court.

## ORDER

1 The matter shall proceed in this Division.

2 Each party to pay their own costs.

## JUDGMENT

**Opperman J**

[1] The present action was transferred from the Northern Cape Division of the High Court to this Division on 3 November 2016. It would appear that the application for transfer was considered on an unopposed basis. As recorded in the plaintiffs' heads of argument, the founding affidavit referred to an agreement between the attorneys representing both parties that the matter be transferred from the Northern Cape Division to the Free State Division of the High Court on grounds of convenience. The basis for the transfer is depicted in the founding affidavit dated 24 October 2016, filed in the application for transfer.

'20. Given the fact that the respective legal representatives of the applicants and the first respondent both practise in Bloemfontein, it is my respectful submission, as advised by Mr Skein, that the transfer of the abovementioned matter to the Free State Provincial Division of the High Court, Bloemfontein, is in the interests of both parties, in that it is more time- and cost-effective to litigate without the use of correspondents.

24. As mentioned above, I have been advised that it is more cost- and time-effective to litigate *without the use of correspondent attorneys*, and it is my respectful submission that it would be

more appropriate and convenient for the parties for the aforementioned matter to be transferred to the High Court, Bloemfontein, for the hearing and adjudication thereof.'[1] (Accentuation added.)

[2] Section 27 of the Superior Courts Act 10 of 2013 (the Act) forms the crux of this matter. The reality of the case is that it was transferred due to the location of the legal representatives. It is stated to be more convenient to the parties and to avoid the costs of correspondent attorneys. According to counsel for the plaintiffs, the first defendant against whom the relief is requested in the action at hand, is a resident of the Western Cape Province and the plaintiffs reside within the Free State Division, being residents of Bloemfontein. The cause of action arose in the Northern Cape. I questioned the jurisdiction of this Court to hear the matter and ordered heads of argument.

[3] A central issue raised in the submissions of counsel for both parties is that the wording of s 27(2) makes it plain that the authority to order the transfer of proceedings vests in the court where the matter was originally instituted. Section 27 of the Act provides:

'(1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court that— (a) the proceedings should have been instituted in another Division or at another seat of that Division; or (b) for the convenience of the parties or witnesses it is desirable that the proceedings be heard in another Division or at another seat of the same Division, that court may, upon application by any party thereto and after hearing all other parties thereto, order that the proceedings be removed to that other Division or seat.

(2) Upon an order under subsection (1), the registrar must forthwith transmit to the registrar of the court to which the proceedings are removed all documents relating to the proceedings,

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[1] '20. Gegewe die feit dat die onderskeie regsverteenwoordigers van die applikante en die eerste respondent beide vanaf Bloemfontein praktiseer is dit my respekvolle submissie, soos geadviseer deur Mnr. Skein, dat die oorplaas van die bovermelde saak na die Vrystaatste Provinsiale Afdeling van die Hoë Hof, Bloemfontein in beide partye se belang is deurdat dit meer tyd en koste effektief is om sonder die gebruik van korrespondente te litigeer.

24. Soos hierbo vermeld is ek geadviseer dat dit meer koste en tyd effektief is om sonder die gebruik van korrespondente te litigeer en is dit my respekvolle submissie dat dit meer gepas en gerieflik vir die partye sal wees dat die voormelde saak na die Hoë Hof Bloemfontein oorgeplaas word vir aanhoor en beregting daarvan.'

whereupon the latter court *may* hear and determine the proceedings in question.' (Accentuation added)

[4] It goes to the 'may or 'must' impasse that the Constitutional Court in *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others*[2] (*SAHRC*) also grappled with:

'The mandatory jurisdiction principle

[24] An issue that bears relevance to the mandatory jurisdiction principle is the meaning of section 169(1)[3] of the Constitution and the implications of that section to the issue at hand. Does it mean that the High Court is at liberty not to entertain matters falling within its jurisdiction? As indicated above, the SAHRC answers this question in the affirmative. At the centre of its proposition was the idea that the word "may" tells us that the section is permissive: the High Court "may," not "must".'

[5] The Constitutional Court ruled:

'[26] Thus, the SAHRC's argument founded on "may" does not gain traction. How then must we interpret section 169(1)? That section serves to confer a power on the High Court to entertain matters falling under the categories set out in paragraphs (a) and (b) of the section. Paragraph (a) concerns constitutional matters. Paragraph (b) is about non constitutional matters ("any other matters"). As Nedbank submitted, this is open ended. It tells us nothing about persons over which and in respect of what physical area of the country a particular Division of the High Court has jurisdiction. As Makgoka JA says in a concurring judgment in Mhlongo (Mhlongo concurrence), the point of reference for determining whether the court has jurisdiction is *"s[ection] 21 of the Superior Courts Act, which regulates the jurisdiction of the various divisions of the High Court over persons and in relation to matters"*.

[27] The imponderables serve to show that it is unsurprising that, as far back as 1938, Schreiner J adopted the position that—

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[2] *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others* [2022] ZACC 43, 2023 (3) BCLR 296 (CC).

[3] **169. High Court of South Africa.** —
(1) The High Court of South Africa *may* decide—
(*a*) any constitutional matter except a matter that—
(i) the Constitutional Court has agreed to hear directly in terms of section 167 (6) (*a*); or
(ii) is assigned by an Act of Parliament to another court of a status similar to the High Court of South Africa; and
(*b*) any other matter not assigned to another court by an Act of Parliament. (Accentuation added)

"[o]n principle it seems to me that in general a Court is bound to entertain proceedings that fall within its jurisdiction . . .. But apart from such cases and apart from the exercise of the Court's inherent jurisdiction to refuse to entertain proceedings which amount to an abuse of its process … I think that there is no power to refuse to hear a matter which is within the Court's jurisdiction. The discretion which the Court has in regard to costs provides a powerful deterrent against the bringing of proceedings in the Supreme Court which might more conveniently have been brought in the Magistrate's Court."

[28] Likewise, in *Agri Wire*, the Supreme Court of Appeal held that "our courts are not entitled to decline to hear cases properly brought before them in the exercise of their jurisdiction".' (Accentuation added and footnotes omitted.)

[6] Section 21 is clear:

'Persons over whom and matters in relation to which Divisions have jurisdiction. —

(1) *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 authority and *all other matters of which it may according to law take cognisance, and has the power—*

(*a*) . . . ;

(*b*) . . . ;

(*c*) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

(2) A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.' (Accentuation added.)

[7] A matter of particular concern arising from the facts of this case is the potential abuse of transfers in terms of s 27 of the Act by litigants and legal practitioners to manoeuvre onto the rolls of the High Courts, with consequent disruption to the proper administration of justice. Convenience to legal representatives alone is generally not decisive. Courts usually give greater weight to the convenience of litigants and witnesses than to that of attorneys or counsel.

[8] Accordingly, the statement: 'Given the fact that the respective legal representatives of the applicants and the first respondent both practise in Bloemfontein . . .' is probably not sufficient on its own to justify a transfer under s 27. It is a relevant factor, of course, but standing alone, it is comparatively weak because it primarily addresses the convenience of the attorneys rather than the parties or witnesses themselves. It might be tantamount to forum-shopping. If this consideration, namely, the prevention of the use of correspondent attorneys for costs purposes, is abused as a basis for transfer, cases from across the country may end up in Divisions where they do not legally belong.

[9] The issue is whether this Court, as the transferee court, may revisit or refuse to give effect to a transfer already ordered in terms of s 27(1). In my view, this Court lacks authority to reconsider the correctness or validity of the transfer order. That does not preclude this Court from making certain observations, *obiter*, regarding the implications of such transfers and the proper application of s 27.

[10] In South African law, the jurisdiction of a Division of the High Court depends upon the existence of a recognised connecting factor between the dispute and the territorial area of jurisdiction of that Division. The principal sources of jurisdiction are s 21 of the Superior Courts Act 10 of 2013 and the common law.

[11] Recognised jurisdictional grounds include: the residence, domicile or presence of the defendant within the jurisdiction; the arising of the cause of action, wholly or in material part, within the jurisdiction; the location of property (*ratio rei sitae*); consent or submission to jurisdiction; attachment to found or confirm jurisdiction; and jurisdiction expressly conferred by statute.

[12] Section 21(1) of the Superior Courts Act provides that 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 . . .'. Traditionally, the primary jurisdictional connecting factors remain the residence or presence of the defendant and the place where the cause of action arose.

[13] In applications under s 27, courts distinguish between factors that found jurisdiction and considerations relevant only to convenience. The location of legal representatives, litigation costs and practical convenience do not ordinarily create jurisdiction, although such considerations may justify a transfer once jurisdiction exists. The phrase 'for the convenience of the parties or witnesses' in s 27(1)*(b)* is interpreted broadly and pragmatically.

[14] Erasmus[4] concluded on s 27 that a Division of the High Court has power to remove proceedings for hearing before another Division of the High Court, even though the latter court originally had no jurisdiction in the matter. The fact that it has no jurisdiction will be a factor to be taken into account in deciding whether the application for removal should be granted on convenience. Also, with reference to case law he noted that:

**'Subsection (2): 'That court may hear and determine the proceedings in question.'** It is submitted that, in the absence of good reason to the contrary, once transferred, the proceedings should be heard and determined in accordance with the local rules and practice of the transferee court . . .'[5]

[15] The transfer has already occurred. The statutory *lacuna*, however, remains apparent: *correspondent attorneys may become moot, and cases may just be transferred for the location and convenience of legal practitioners*. Reliance was placed on *Kampungu v Road Accident Fund* (*Kampungu*),[6] where the court recognised that considerations of convenience may justify the transfer of

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[4] Erasmus, *Superior Court Practice* Vol 1 RS 7 (2025) at D-254.
[5] Ibid RS 7 (2025) at D-254A.
[6] *Kampungu v Road Accident Fund* [2023] ZAECMKHC 37; [2023] 2 All SA 176 (ECG).

proceedings. However, *Kampungu* must be understood in its proper context. The judgment concerned the functioning of circuit courts and access to justice within the territorial jurisdiction of a Division. The reference to 'convenience' was directed at bringing the administration of justice closer to litigants already subject to the jurisdiction of the relevant Division.

[16] *Kampungu* does not establish a general principle permitting litigants to engage in jurisdictional forum-shopping merely because another forum may be perceived to be more convenient. The convenience contemplated by s 27(1)*(b)* must be assessed judicially and contextually, having regard not only to the parties, but also to the proper administration of justice.

[17] In *Petersen v Road Accident Fund* (*Petersen*)[7] the Gauteng Division refused an application to transfer proceedings to the North-West Division. The Court held that considerations such as congested rolls and the possibility of obtaining an earlier trial date did not, without more, justify transfer under s 27(1)(*b*). *The Court further cautioned against indiscriminate transfers between Divisions which may simply shift systemic pressures from one court to another.*

[18] *Petersen* is, however, distinguishable from the present matter. In that case the court was asked to exercise the discretion whether to transfer the matter. Here, by contrast, the transfer order has already been granted by the transferring court, and the proceedings have already been transmitted to this Division in terms of s 27(2).

[19] The proper approach to statutory interpretation is well-established. In *Natal Joint Municipal Pension Fund v Endumeni Municipality,*[8] (*Endumeni*) the Supreme Court of Appeal held that interpretation entails attributing meaning to words used in

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[7] *Petersen v Road Accident Fund* [2024] ZAGPPHC 1352 paras 19-25.
[8] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA) para 18.

legislation having regard to language, context, purpose, and the consequences of competing interpretations. Guidance may also be drawn from *S v Van Rooyen,*[9] where the Constitutional Court considered the meaning of the word 'may' within a statutory framework regulating the suspension of magistrates. The Court held that, although 'may' ordinarily denotes discretion, *context may reveal that the power is coupled with a duty.*

[20] Applying the above principles to s 27(2), I am persuaded that the word 'may' does not confer upon the transferee court a discretion to refuse to entertain proceedings already transferred pursuant to a valid order under s 27(1). First, the statutory scheme clearly separates the transfer decision from the continuation of the proceedings after transfer. The discretion whether a matter should be removed lies with the transferring court. Once that discretion has been exercised and the matter transmitted, the transferee court becomes seized with the proceedings. Secondly, interpreting 'may' as to confer a further discretion upon the transferee court would create the possibility of jurisdictional uncertainty and procedural limbo. A matter could be removed from one Division yet refused by another, leaving litigants without a competent forum and undermining the very purpose of s 27. Thirdly, such an interpretation would undermine certainty, procedural coherence and the efficient administration of justice. A sensible interpretation, consistent with *Endumeni*, requires that the transferee court is empowered and obliged to continue with the matter once it has been properly transferred.

[21] The present matter illustrates the tension inherent in the statutory scheme. Once proceedings have been transferred pursuant to s 27(1), the transferee court is effectively obliged to entertain the matter. A contrary interpretation may result in litigants being denied access to a court as contemplated in s 34 of the Constitution. If transfer applications are granted indiscriminately, however, the consequences for

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[9] *S and Others v Van Rooyen and Others* [2002] ZACC 8; 2002 (50 SA 246 (CC).

the orderly administration of justice may be significant. Courts exercising that discretion must remain astute to the implications of transferring matters between Divisions.

[22] In the present matter, however, the transfer order has already been granted, and the proceedings have already been transmitted to this Division. In those circumstances, this Court is legislatively obliged and competent to hear and determine the matter. I will do so in the interests of justice; this Court being constrained by the statutory framework. Considerations of practicality, expedition, the parties' acceptance of the *status quo*, and the interests of justice all militate against declining jurisdiction. Nevertheless, the matter illustrates the potential for forum-shopping and highlights the need for careful judicial scrutiny when transfer applications are considered under s 27(1).

[23] Given the peculiar circumstances of this case, it is just that each party pay its own costs relating to the postponement and the subsequent preparation and filing of heads of argument.

**Order**

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

1 The matter shall proceed in this Division.

2 Each party to pay their own costs.

[redacted]

**M L OPPERMAN**

**JUDGE OF THE HIGH COURT**

**Appearances**

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|---|---|
| For the plaintiffs: | S Rautenbach |
| Instructed by: | Blignaut Attorneys |
| | Bloemfontein |
| | |
| For the defendants: | J Els |
| Instructed by: | Kramer Weihmann Inc. |
| | Bloemfontein |