



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

Reportable

Case No: 996/2019

In the matter between:

MAGALIES WATER

Plaintiff

and

MADIBENG LOCAL MUNICIPALITY

First Defendant

MINISTER OF WATER AND SANITATION

Second Defendant

MINISTER OF FINANCE

Third Defendant

M E MANAKA

Fourth Defendant

NORTH WEST MEC FOR FINANCE

Fifth Defendant

Coram: Petersen ADJP

Heard: 21 April 2026

Judgment reserved: 22 May 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 10h00 on 03 July 2026.

Summary: Jurisdiction – Superior Courts Act 10 of 2013 – Territorial jurisdiction of High Court – Court raising jurisdiction *mero motu* – Interpretation of Government Notices issued under s 6(3) – Relationship between Superior Courts

Act and Magistrates' Courts Act – Whether subsequent restructuring of magisterial districts alters territorial jurisdiction of High Court Divisions – Doctrine of incorporation by reference – Jurisdiction by submission – Subsequent determination under s 6(3) with effect from 1 July 2026 placing Madibeng (Brits) within North West Division – Territorial jurisdiction not established – Matter transferred to Gauteng Division, Pretoria in terms of s 24(1) of the Superior Courts Act.

JUDGMENT

PETERSEN ADJP

Introduction

[1] During the hearing of this action on 21 April 2026, this Court, *mero motu*, raised whether this Division possesses territorial jurisdiction to determine the dispute. Because jurisdiction concerns the lawful authority of a court to exercise judicial power, the issue was separated for determination before the merits of the action were determined.

[2] Jurisdiction is foundational. A court derives its authority from the Constitution and legislation enacted pursuant thereto and may exercise judicial power only within the limits prescribed by law. It follows that where doubt exists concerning jurisdiction, a court is not dependent upon the parties to raise the issue. It is obliged to satisfy itself that it possesses jurisdiction before adjudicating the dispute. Neither consent, acquiescence, nor considerations of convenience can confer jurisdiction where the law withholds it.

[3] By order granted on 21 April 2026, the plaintiff was directed to file written submissions on the question of jurisdiction. The first defendant was afforded an opportunity to respond. Both parties subsequently filed comprehensive written submissions which have materially assisted this Court.

Procedural background

[4] The plaintiff instituted action proceedings in this Division during 2019. It is a Water Board established under the Water Services Act 108 of 1997. The first defendant is Madibeng Local Municipality. The remaining defendants are organs

of State or public office-bearers who have taken no active part in the present jurisdictional dispute.

[5] The plaintiff claims payment for services rendered in the operation and maintenance of bulk water infrastructure belonging to the first defendant within the first defendant's municipal area. The services were rendered within the North West Province. The agreements were administered principally from Rustenburg, and the alleged breaches consist of the first defendant's failure to pay the agreed charges.

[6] Since its institution, the litigation has followed an extensive procedural course. Pleadings closed, discovery was completed, interlocutory proceedings were finalised and the matter became trial-ready after numerous pre-trial conferences. Throughout that period, the first defendant participated fully in the proceedings, pleaded on the merits, participated in the joinder of the second to fifth defendants, and abandoned a special plea unrelated to territorial jurisdiction. At no stage before the Court raised the issue did any party question the jurisdiction of this Division.

Statutory framework

[7] The jurisdiction of every Division of the High Court derives from the Constitution and the Superior Courts Act 10 of 2013. Section 21(1) confers jurisdiction over persons residing or being within a Division's area, causes arising within that area and all other matters of which the Division may according to law take cognisance. Section 21(2) extends that jurisdiction to parties properly joined to proceedings over which the Division already has jurisdiction.

[8] Territorial jurisdiction is determined by s 6 of the Superior Courts Act. Section 6(3) empowers the Minister of Justice and Constitutional Development, after consultation with the Judicial Service Commission, to determine by notice in the Government Gazette the area of jurisdiction of each Division. Those notices, therefore, constitute the operative legal instruments by which the territorial competence of the various Divisions is defined.

[9] The present dispute concerns the interaction between ss 6 and 21. The plaintiff contends that, properly interpreted, the Government Notices issued under s 6 place Madibeng Local Municipality within the territorial jurisdiction of this Division. Alternatively, it submits that the first defendant has submitted to the jurisdiction of this Court through its conduct during the litigation. The first defendant disputes both propositions.

The plaintiff's submissions

[10] The plaintiff advances two independent grounds of jurisdiction. First, it contends that the relevant Government Notices, interpreted contextually in accordance with *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹, establish that Madibeng now falls within the jurisdiction of this Division. Secondly, it submits that the first defendant has, through almost seven years of active participation in these proceedings without objection, submitted to this Court's jurisdiction.

[11] Regarding territorial jurisdiction, the plaintiff relies upon four Government Notices. Government Notice 30 of 15 January 2016 allocated Madibeng to the Gauteng Division. General Notice 270 of 31 March 2017 published the Minister's intention to transfer Madibeng to the North West Division. Government Notice 408 of 29 March 2018 constituted the operative determination of the territorial jurisdiction of the Gauteng and North West Divisions. Finally, Government Notice 5762 of 17 January 2025, issued under the Magistrates' Courts Act 32 of 1944, restructured the magisterial districts of the North West Province and established the Bojanala Platinum Magisterial District, seated at Rustenburg, of which Madibeng forms part.

[12] The plaintiff submits that these notices must be interpreted as a coherent legislative sequence. It argues that the 2017 Notice demonstrates the Minister's settled intention to incorporate Madibeng into the North West Division and that the omission of Madibeng from the operative provisions of the 2018 Notice was an inadvertent drafting omission. According to the plaintiff, the 2025 restructuring of magisterial districts confirms that Madibeng now forms part of the same magisterial district as areas already falling within this Division. Any contrary interpretation, it submits, produces the anomalous result that a single magisterial district is divided between two High Court Divisions.

[13] The plaintiff further submits that, where two interpretations are reasonably available, the Court should adopt the interpretation that better promotes the constitutional right of access to the courts. It argues that alignment between the territorial jurisdiction of this Division and the geographical boundaries of the North West Province best serves that constitutional objective.

[14] In the alternative, the plaintiff submits that the first defendant has submitted to this Court's jurisdiction by entering an appearance to defend,

¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 17.

pleading on the merits, participating fully in the litigation, joining additional defendants, abandoning its special plea, and allowing almost seven years to elapse before the jurisdictional issue arose. Relying principally upon *Purser v Sales*², it submits that such conduct constitutes a tacit submission to jurisdiction preserved by s 21(1) of the Superior Courts Act.

The first defendant's submissions

[15] The first defendant submits that the plaintiff's argument cannot overcome the plain language of the operative Government Notices issued under s 6 of the Superior Courts Act. Government Notice 30 expressly allocated Madibeng to the Gauteng Division, and Government Notice 408 did not alter that allocation. The 2017 Notice was merely a notice of intention and never acquired legislative force.

[16] The first defendant further submits that the 2025 Notice, having been issued under the Magistrates' Courts Act, regulates only the organisation of magistrates' courts and cannot impliedly amend the territorial jurisdiction of High Court Divisions determined under the Superior Courts Act. It relies upon *KTS General Trading CC v Madibeng Local Municipality and Others*³ and *Go Touch Resort-Season CC v Rural Informal Dwellers Association*⁴, both of which held that Madibeng falls within the jurisdiction of the Gauteng Division.

[17] Regarding submission, the first defendant contends that waiver is never presumed and that the plaintiff bears the onus of proving a conscious and informed abandonment of the right to object to jurisdiction. Mere participation in litigation, even over an extended period, is insufficient. It points out that the jurisdictional issue was raised by the Court rather than by either litigant, which, it submits, is inconsistent with any inference of deliberate waiver.

Discussion

Territorial jurisdiction

[18] The question is whether Madibeng Local Municipality falls within the territorial jurisdiction of this Division as determined under s 6 of the Superior Courts Act. The answer depends upon the proper interpretation of the Government Notices issued under that section. It does not depend upon

² *Purser v Sales; Purser and Another v Sales and Another* 2001 (3) SA 445 (SCA) para 16.

³ *KTS General Trading CC v Madibeng Local Municipality and Others* [2023] ZANWHC 225.

⁴ *Go Touch Resort-Season CC and Another v Rural Informal Dwellers Association and Another* (60735/2021) [2022] ZAGPPHC 50 (20 January 2022) para 12.

considerations of convenience, administrative desirability, or the practical connection between the dispute and the North West Province.

[19] The applicable principles of interpretation are settled. As explained in *Natal Joint Municipal Pension Fund v Endumeni Municipality*, interpretation is a unitary exercise in which language, context, and purpose are considered together. Context cannot, however, be employed to attribute to legislation a meaning which its language cannot reasonably bear.

[20] The plaintiff correctly submits that the relevant Government Notices must be read together. They form part of a legislative sequence enacted pursuant to s 6(3) of the Superior Courts Act. The enquiry nevertheless remains directed at identifying the legal effect of the operative instruments rather than reconstructing the Minister's administrative intentions.

[21] Government Notice 30 of 15 January 2016 expressly allocated Madibeng to the jurisdiction of the Gauteng Division. That position can change only if the allocation is subsequently altered by another determination made under s 6(3) of the Superior Courts Act.

[22] The plaintiff places considerable reliance upon the 2017 Notice of Intention. That reliance is misplaced. The notice invited public comment on proposed amendments. It did not itself determine territorial jurisdiction. Although it demonstrates that the Minister contemplated transferring Madibeng to the North West Division, contemplated legislation is not enacted legislation. Courts interpret what the Minister ultimately determined, not proposals which preceded that determination.

[23] The operative enquiry is therefore whether Government Notice 408 of 29 March 2018 altered the position established in 2016. It did not. The notice neither removes Madibeng from the Gauteng Division nor expressly includes it within the North West Division. The plaintiff submits that the omission resulted from a drafting error that should be corrected by contextual interpretation. I am unable to agree.

[24] Territorial jurisdiction defines the lawful authority of a superior court to exercise judicial power. Where Parliament has required that territorial boundaries be determined by notice in the Government Gazette, those boundaries must be ascertainable with certainty from the operative legal instrument itself. Courts

should not infer amendments to jurisdictional boundaries unless the language of the determination clearly permits that conclusion.

[25] The plaintiff's principal argument is founded upon Government Notice 5762 of 17 January 2025. It submits that because the notice establishes the Bojanala Platinum Magisterial District, incorporating Madibeng with Kgetleng Rivier, Madikwe, Moses Kotane, and Swartruggens under a single magistracy seated at Rustenburg, the territorial jurisdiction of this Division necessarily expanded to include Madibeng.

[26] That submission requires consideration of the relationship between the Superior Courts Act and the Magistrates' Courts Act. Government Notice 5762 was issued under s 2 of the Magistrates' Courts Act. Its purpose was to reorganise magisterial districts within the North West Province. It did not purport to amend or replace any determination made under s 6 of the Superior Courts Act. Government Notice 408, by contrast, derives its authority exclusively from s 6(3) and determines the territorial jurisdiction of High Court Divisions.

[27] The plaintiff's argument necessarily assumes that the reference in the 2018 Notice to magisterial districts incorporates every future amendment made under the Magistrates' Courts Act. In other words, it assumes an ambulatory incorporation by reference, so that each subsequent alteration of magisterial districts automatically alters the territorial jurisdiction of the High Court.

[28] That assumption cannot be sustained. Whether legislation incorporates another statutory instrument as it exists from time to time depends upon the language employed and the legislative context. Nothing in s 6 of the Superior Courts Act or in Government Notice 408 suggests that Parliament intended future administrative restructuring of magistrates' districts automatically to redefine the territorial jurisdiction of High Court Divisions. On the contrary, s 6 prescribes a specific mechanism by which those boundaries are to be determined after consultation with the Judicial Service Commission and publication in the Government Gazette.

[29] Acceptance of the plaintiff's construction would have consequences extending well beyond the present dispute. It would permit the territorial jurisdiction of High Court Divisions to change indirectly whenever the Minister exercised powers under an entirely different statute. Such a construction would effectively circumvent the procedure prescribed by s 6 of the Superior Courts Act

and undermine the certainty which jurisdictional boundaries are intended to provide.

[30] Legal certainty is itself an important constitutional value. Litigants and courts are entitled to know with reasonable certainty which Division possesses jurisdiction before proceedings are instituted. Equally, the constitutional principle of legality requires courts to exercise judicial power only within the territorial limits established by law. Constitutional values inform statutory interpretation; they cannot justify attributing a legal consequence to legislation that its language does not support.

[31] I accept that the present statutory scheme may produce an administrative anomaly. A municipality situated wholly within the North West Province remains subject to the jurisdiction of the Gauteng Division, and the 2025 restructuring of magisterial districts may make that arrangement appear less satisfactory than before. The existence of an anomaly, however, does not empower a court to rewrite delegated legislation. If clarification or realignment is desirable, it is for the Minister acting under s 6 of the Superior Courts Act rather than the courts. I discuss the action taken by the Minister in this regard, below, under the discussion of the determination of 2 July 2026.

[32] The plaintiff further submits that *KTS General Trading CC v Madibeng Local Municipality and Others* should not be followed. Although that decision is not binding upon a court of equal jurisdiction, considerations of judicial comity and legal certainty require departure from an earlier decision only where it is clearly wrong. Having independently considered the statutory framework, I am not persuaded that *KTS* was incorrectly decided. Its conclusion accords with the language of the operative Government Notices and with the legislative scheme established by the Superior Courts Act. The subsequent decision in *Go Touch Resort-Season CC* reaches the same conclusion.

[33] Nor does s 34 of the Constitution alter the analysis. The constitutional right of access to courts guarantees access to a court of competent jurisdiction. It does not authorise a court to assume jurisdiction which legislation has withheld. Where a matter has been instituted in the wrong Division, transfer to the competent Division gives effect to, rather than limits, the constitutional guarantee.

[34] I accordingly conclude that Madibeng Local Municipality remains subject to the territorial jurisdiction of the Gauteng Division. The plaintiff has therefore failed to establish jurisdiction on the first basis advanced.

The determination of 2 July 2026

[35] On the eve of the delivery of this judgment, the Minister published Government Notice 7648 in Government Gazette 54935 of 2 July 2026, issued in terms of s 6(3)(a) and (c) of the Superior Courts Act and operative with effect from 1 July 2026.⁵ The notice withdraws, amongst others, Government Notice 408 of 29 March 2018 and re-determines the areas under the jurisdiction of the main and local seats of the Divisions of the High Court of South Africa.

[36] In terms of the Schedule to the new determination, the area under the jurisdiction of this Division now comprises the entire North West Province, including the Bojanala Platinum Magisterial District with the main seat at Rustenburg and, expressly, the Madibeng (Brits) Sub-District, excluding only the Ga-Rankuwa (Odi) and Moretele (Temba) Sub-Districts. The anomaly identified earlier in this judgment has accordingly been corrected, with prospective effect, through precisely the mechanism which s 6 of the Superior Courts Act prescribes.

[37] The new determination does not, however, avail the plaintiff in these proceedings. Paragraph 2 of the notice contains an express transitional provision. Proceedings which have already been placed on the court roll for trial, but which have not been concluded before the coming into effect of the notice, must be concluded as if the notice had not been published. This action, which was trial-ready and enrolled for hearing when the jurisdictional question was separated for determination, falls squarely within that provision. It must accordingly be concluded under the previous dispensation, in terms of which Madibeng Local Municipality (Brits) falls within the territorial jurisdiction of the Gauteng Division.

Jurisdiction by submission

[38] The plaintiff advances an alternative basis for jurisdiction. It submits that, irrespective of the territorial allocation established by the Government Notices, the first defendant submitted to the jurisdiction of this Court through its conduct during almost seven years of litigation. Reliance is placed upon the first defendant's appearance to defend, its plea on the merits, participation in interlocutory proceedings and joinder applications, abandonment of its special

⁵ GN 7648 in GG 54935 of 2 July 2026: Determination of the Areas under Jurisdiction of the Main and Local Seats of the Divisions of the High Court of South Africa, issued in terms of s 6(3)(a) and (c) of the Superior Courts Act 10 of 2013, read with Item 16(6)(a) and (b) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, with effect from 1 July 2026.

plea, and failure to raise any jurisdictional objection until the Court raised the issue.

[39] The common law recognises submission or prorogation as a basis upon which jurisdiction may, in appropriate circumstances, be established. That doctrine survives the enactment of the Superior Courts Act through the concluding words of s 21(1), which preserve matters of which a Division may “according to law” take cognisance. The doctrine, however, developed primarily in relation to jurisdiction over the person. The present case raises the different question whether parties may, by consent or conduct, enlarge the territorial jurisdiction of a High Court Division where that jurisdiction has been fixed by legislation enacted under s 6 of the Superior Courts Act.

[40] There is considerable force in the view that statutory territorial jurisdiction stands on a different footing from personal jurisdiction because it concerns the legislative allocation of judicial authority rather than merely a procedural right available to litigants. It is unnecessary, however, to determine that broader question. Even assuming in the plaintiff’s favour that territorial jurisdiction may be established by submission, the plaintiff must still prove that the first defendant knowingly and unequivocally waived its right to object to this Court’s jurisdiction.

[41] Waiver is never presumed. The onus rests upon the party alleging it. As explained in *National Arts Council and Another v Minister of Arts and Culture and Another*⁶ and reaffirmed in *Financial Sector Conduct Authority v Financial Services Tribunal and Others*⁷, the conduct relied upon must be consistent only with an intention to abandon the relevant right. Mere participation in litigation, oversight, or mistaken assumption does not suffice.

[42] The first defendant undoubtedly participated extensively in these proceedings. It pleaded on the merits, exchanged discovery, attended pre-trial conferences, participated in the joinder of additional defendants, and prepared the matter for trial. Those facts explain why the plaintiff regarded this Court as the accepted forum for determination of the dispute. They do not, however, establish

⁶ *National Arts Council and Another v Minister of Arts and Culture and Another* 2006 (1) SA 215 (C) para 37.

⁷ *Financial Sector Conduct Authority v Financial Services Tribunal and Others* (009838/2023) [2025] ZAGPPHC 675; 2025 (6) SA 591 (GP) (9 July 2025) para 35.

that the first defendant consciously abandoned a known right to object to territorial jurisdiction.

[43] The jurisdictional issue was raised by the Court itself rather than by either litigant. The abandonment of the first defendant's special plea is of no assistance to the plaintiff because that plea concerned compliance with the Institution of Legal Proceedings against Certain Organs of State Act and bore no relation to territorial jurisdiction. Similarly, participation in interlocutory proceedings and joinder applications is equally consistent with the shared assumption that this Court possessed jurisdiction. It is not conduct consistent only with a conscious and informed waiver.

[44] The plaintiff has therefore failed to discharge the onus resting upon it. Even if territorial jurisdiction were capable of being conferred by submission, the facts of this case do not establish the unequivocal waiver required by our law. The plaintiff's alternative basis for jurisdiction must accordingly fail.

Effectiveness

[45] The plaintiff finally relied upon the principle of effectiveness. It submitted that the first defendant's assets, infrastructure and operations are situated within the North West Province, that the plaintiff conducts its operations principally from Rustenburg, and that any judgment granted by this Court would in practice be enforced within this Province.

[46] The principle of effectiveness concerns the practical utility of judicial orders. It assumes that jurisdiction otherwise exists and seeks to ensure that courts do not exercise judicial power where their orders cannot be effectively enforced. It is not an independent source of jurisdiction. Once it is concluded that this Division lacks territorial jurisdiction under the Superior Courts Act, the principle cannot alter that conclusion.

Conclusion

[47] The plaintiff's submissions exposed an anomaly in the present statutory framework that has persisted for many years. There is obvious practical attraction in the proposition that a municipality situated wholly within the North West Province should ordinarily litigate in the North West Division. Parliament has entrusted the determination of territorial jurisdiction to the Minister acting under s 6 of the Superior Courts Act. The Minister has now exercised that power in the determination of 2 July 2026, but its transitional provision requires that this

action, already enrolled for trial, be concluded under the previous determination. This Court is bound to apply that determination accordingly.

[48] The plaintiff has failed to establish either of the jurisdictional bases upon which it relies. The operative Government Notices issued under s 6(3) of the Superior Courts Act do not place Madibeng Local Municipality within the territorial jurisdiction of this Division. Nor has the plaintiff proved that the first defendant submitted to this Court's jurisdiction. This judgment determines only the question of jurisdiction and expresses no view on the merits of the plaintiff's substantive claim.

[49] It does not follow that the action should be dismissed. The litigation has been pending since 2019. Pleadings have closed, discovery has been completed, and the matter is trial-ready. To require the plaintiff to institute fresh proceedings would unnecessarily duplicate costs and delay the determination of the dispute. Section 24(1) of the Superior Courts Act empowers a Division, where the interests of justice so require, to transfer proceedings to another Division having jurisdiction. The present matter is an appropriate case for such an order.

Order

[50] I accordingly make the following order:

1. It is declared that the North West Division of the High Court of South Africa lacks territorial jurisdiction to determine this action.
2. In terms of s 24(1) of the Superior Courts Act 10 of 2013, the action is transferred to the Gauteng Division of the High Court of South Africa, Pretoria.
3. The Registrar of this Court is directed, in consultation with the Registrar of the Gauteng Division, Pretoria, to take all administrative steps necessary to transmit the court file, pleadings, record, and all associated documents to that Division.
4. Upon transfer, the matter shall proceed subject to such case-management directions as may be issued by the Gauteng Division.
5. The costs occasioned by the determination of the jurisdictional issue shall be costs in the cause.



A H PETERSEN

ACTING DEPUTY JUDGE PRESIDENT

NORTH WEST DIVISION, MAHIKENG

Appearances

For the Plaintiff: Adv A E Ayayee

Instructed by: Kgomo Attorneys Incorporated, Mahikeng

For the First Defendant: Adv R Masipa

Instructed by: Marivate Attorneys

c/o M E Tlou Attorneys, Mahikeng