

SOUTH AFRICA / JUDGMENT

Engelbrecht v Schweizer Tyres and Another (777/13) [2020] ZANWHC 72 (31 August 2020) [2020] ZANWHC 72

COURT

North West High Court, Mafikeng

BEFORE

M E Mahlangu

CASE / FILE NUMBER

777/13

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION - MAHIKENG

CASE NO: 777/13

In the matter between:

MARI LEONI ENGELBRECHT

PLAINTIFF

and

SCHWEIZER TYRES

1ST DEFENDANT

JOHAN MUNNIK 2ND DEFENDANT

REASONS

FOR JUDGEMENT

MAHLANGU AJ

- [1] On 4 June 2013, the plaintiff instituted a civil action in this Court against the defendants, in which she claimed delictual damages for injuries she sustained whilst she was in the employ of the defendants. The incident happened on 29 June 2010.

[2] The defendants filed a special plea contending that, this Court has no jurisdiction to hear the matter.

[3] At the hearing of this matter, an application to separate the special plea from the merits was made. The application was granted by this court.

[4] The following are common cause between the parties:

4.1 that the whole cause of action arose in the town of Schweizer Reneke.

4.2 that, at the institution of this proceedings, Schweizer Reneke was governed by the North West Provincial Government and that this Court did not have jurisdiction in respect of it.

4.3 that at the time of the institution of the action, Schweizer Reneke fell within the area of jurisdiction of the Gauteng North High Court, Pretoria.

4.4 that Schweizer Reneke was incorporated into the jurisdiction of the North West High Court in 2018.

[5] At the time of the institution of this matter, jurisdiction of the High Courts was regulated by section 19 of the Supreme Court Act 59 of 1959. This act has since been repealed by section 55 of the Superior Courts Act, Act 10 of 2013, which came into operation on 29 August 2013 (SCA).

[6] Section 21 of the SCA provides that:

“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 jurisdiction and all other matters of which it may according to the law to take cognizance, and has the power...”

[7] The easiest way at the time could have been for the plaintiff to transfer the action to the North Gauteng High Court or remove the matter and institute it at the North Gauteng High Court.

[8] Section 3 of the Interim Rationalisation of Jurisdiction of High Court Act, Act 41 of 2001 (Rationalisation Act) provides that:

“Transfer of proceedings from one High Court to another:

(1) if any civil proceedings have been instituted in any High Court, and it appears to the Court concerned that, such proceedings:-

(a) should have been instituted in another High Court; or

(b) would have more conveniently or more appropriately heard or determined in another Court, the court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other High Court.”

- [9] Section 3 of Rationalisation Act specifically provides for a situation where the action is instituted in the wrong court e.g where the action is instituted in the Regional Court, whereas it was supposed to be instituted in the High court.
- [10] With effect from 18 April 2018, Schweizer Reneke was incorporated into the area of jurisdiction of this Court.
- [11] This Court is now the only court that has jurisdiction over this matter. It is impossible to transfer this matter to another court at this stage.
- [12] Advocate Heystek SC submitted that, plaintiff did not remove the matter from this Court to institute it in another court because she was going to be faced with the objection of prescription as a special plea. In response the plaintiff submitted that the special plea of prescription could not be dealt with in this matter as it was not brought up as a special plea in the pleadings.
- [13] In *Ngqula v South African Airways (Pty) Ltd* 2013 (1) SA 155 (SCA) it was held that prescription must be tested if and when it is raised in the pleadings. Therefore prescription as a special plea was not before this Court and could not be dealt with.
- [14] Section 173 of the Constitution provides that:-

“Inherent power-The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interest of justice”.

- [15] The legislature changed the jurisdiction of the courts but did not deal with what should happen in cases which have been instituted in wrong courts and have to be transferred to another court. There is therefore a lacuna that was left by the legislature when the new jurisdictions of the courts were created.
- [16] In the matter of *MEC for Health and Social Development, Gauteng v DZ obo WZ* 2018(1) SA 355 (CC) at para 28 it provides that:

“Development occurs not only when a common-law rule is changed altogether or a new rule is introduced, but also when a court needs to determine whether a new set of facts falls within or beyond the existing rule”

- [17] For these reasons, I am of a view that this court has jurisdiction to entertain this matter, otherwise

plaintiff's right in terms of section 34 of the Constitution would have been denied. The plaintiff would be left with no court to go to and she would not have any recourse of the injuries she sustained at the defendants' premises.

- [18] In so far as the second defendant is concerned, according to the plaintiff, the second defendant has since been sequestered and no order is sought against him.

ORDER

Consequently, the following order is made:

- (i) The special plea is separated from the merits of this matter.
- (ii) The special plea is dismissed with costs;
- (iii) Each party to pay its costs of 28 July 2020.

M E MAHLANGU

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION : MAHIKENG

APPEARANCES:

For the Plaintiff : Adv JHF Pistor (SC)

For the Defendant : Adv M. Heystek

DATE OF REASONS : 31

August 2020

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