

SOUTH AFRICA / JUDGMENT

HL Matlala Properties CC t.a Goragang Hire v Kulasisebenze Trading & Projects (Pty) Ltd (HCA01/2021) [2021] ZALMPPHC 69 (7 October 2021)

[2021] ZALMPPHC 69

COURT

Limpopo High Court, Polokwane

BEFORE

Kganyago, Kgomo

CASE / FILE NUMBER

HCA01/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: HCA01/2021

REPORTABLE:

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED.

In

the matter between:

HL

MATLALA PROPERTIES CC t/a GORAGANG PLANT HIRE

APPELLANT

And

KULASISEBENZE

TRADING & PROJECTS (PTY) LTD

RESPONDENT

JUDGEMENT**KGANYAGO J**

- [1] On 26th June 2014 in Dennilton the appellant sub-contracted the respondent for the supply and installation of concrete block paving for the rehabilitation and maintenance of R25 road from Groblersdal towards Verena for an estimated amount of R998 641-00. According to the respondent, it completed the agreed work during December. During February 2016 the respondent and other contractors approached the appellant in Polokwane demanding payment.
- [2] On 25th February 2016 in Polokwane the appellant signed an acknowledgement of debt undertaking to effect payment to the respondent on or before the 15th March 2016. The appellant failed to pay the respondent on the due date, and the respondent issued summons in the regional court of Groblersdal against the appellant. On its summons the respondent had attached the acknowledgement of debt that was signed in Polokwane.
- [3] The appellant had defended the respondent's action. The appellant in pleading to the respondent's particulars of claim has raised a special plea of jurisdiction. The appellant in its special plea had stated that its registered office and principal place of business is situated in Pretoria outside the area of jurisdiction of Groblersdal, and further that the acknowledgment of debt, which the respondent relies on for its claim, was concluded in Polokwane outside the area of jurisdiction of Groblersdal.
- [4] The matter came before magistrate Mogotlane G who dismissed the appellant's special plea of lack of jurisdiction. The appellant had appealed against the whole judgment and orders of magistrate Mogotlane who dismissed their special plea.
- [5] In this court the appellant argued that the acknowledgment of debt upon which the respondent's claim is based was concluded in Polokwane, and that the regional court Groblersdal does not have jurisdiction over Polokwane. It is the appellant's submission that the court a quo does not have jurisdiction to entertain the respondent's claim within the meaning of section 28(1)(d) of the Magistrates' Courts Act. The respondent submitted that the respondent's claim is based on breach of contract by the appellant and that when the respondent went to Polokwane to go and demand money, the breach was already committed. The respondent further submitted that all that it needs to show is where the contract was concluded, and also where the breach occurred.
- [6] It is common cause that the sub-contract agreement was signed in Dennilton within the area of jurisdiction of Groblersdal regional court, whilst the acknowledgment of debt was signed in Polokwane outside the area of jurisdiction of Groblersdal regional court. The actual work that led to the alleged claim of respondent which led to the signing of the acknowledgment of debt was done within the area of jurisdiction of Groblersdal regional court. What this court must determine is whether the court a quo was correct in dismissing the appellant's

special plea of lack of jurisdiction to entertain the parties' dispute.

[7] Section 28 of the Magistrates' Courts Act[1] read as follows:

“(1) Saving any other jurisdiction assigned to a court by this Act or by any other law, the persons in respect of whom the court shall, subject to subsection (1A), have jurisdiction shall be the following and no other:

- (a) any person who resides, carries on business or is employed within the district or regional division;
- (b) any partnership which has business premises situated or any member thereof resides within the district or regional division;
- (c) any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself or herself;
- (d) any person, whether or not he resides, carries on business or is employed within the district or regional division, if the cause of action arose wholly within the district or regional division;
- (e) any party to interpleader proceedings,...
- (f) any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court;
- (g) any person who owns immovable property within the district or regional division in respect of such property or in respect of mortgage bonds thereon.

(1A) For the purposes of section 29(1B) a court for a regional division shall have jurisdiction if the parties are or if either of the parties is-

- (i) domiciled in the area of jurisdiction of the court on the date on which proceedings are instituted; or
- (ii) ordinarily resident in the area of jurisdiction of the court on the said date and has or have been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date.

(2) 'Person' and 'defendant' in this section include the State.”

[8] In *Cordiant Trading CC v Daimler Chrysler Financial Services*[2] Jafta JA said:

“...‘causes arising’ does not refer to causes of action but to all factors giving rise to a jurisdiction under the common law. Of course, such factors do not exclude a cause of action. It is by now well established that, in appropriate cases, a court which has jurisdiction over the area within which a cause of action arose is competent to decide a matter on that basis alone.”

- [9] In the case at hand, the place where the acknowledgement of debt was signed will ordinarily be the basis to determine the place where the cause of action arose. However, that is not the only factor to be taken into consideration in determining where the cause of action arose. During February 2016 the respondent and other contractors had to approach the appellant in Polokwane demanding for payment for work done in Dennilton emanating

from the sub-contract that was signed in Dennilton. That resulted in the appellant signing the acknowledgment of debt. The sources of the acknowledgement of debt are the work done in Dennilton and sub-contract signed in Dennilton. Had the sub-contract not been signed and the work not performed, the acknowledgment of debt would not have come into existence. Therefore, in my view, the acknowledgment of debt, the sub-contract and the work done cannot be separated. Those are the other factors to be taken into consideration in determining where the cause of action arose.

- [10] In *Sonia (Pty) Ltd v Wheeler*[3] Price AJA said:

“...It is argued that if the money claims stood alone and there were no claim for cancellation, the court would have jurisdiction. Assuming this to be so, assuming that the Eastern District Court could not entertain a claim for a refund of the purchase price if that claim stood alone, it nevertheless seems to me that every consideration of convenience and common sense indicates that where such a money claim is closely associated with the a claim for cancellation of the contract, as is in the case, and it is a consequential claim, following on the cancellation, the same court which has jurisdiction to decree cancellation should have jurisdiction to hear the money claim for a refund of the purchase price, and to order costs.”

- [11] The sub-contract was signed in Dennilton, the work was performed in Dennilton, whilst the appellant head office is in Pretoria. Any dispute arising out of the sub-contract agreement if within the jurisdiction of the regional court, the respondent would have had the option of instituting action in Groblersdal or Pretoria. The claim, which is arising from the acknowledgment of debt, is closely associated to any claim arising out of the sub-contract, and therefore a consequential claim following the work done in Dennilton. The appellant is raising a technical defence but has failed to show what prejudice it will suffer if this matter was to be adjudicated by Groblersdal regional court.

- [12] In *Trans-African Insurance Co Ltd v Maluleka*[4] the court held that technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits. The appellant does not dispute that it had signed a sub-contract with the respondent in Dennilton and that the respondent has performed the work contracted for in Dennilton, and that the appellant following the work signed the acknowledgment of debt performed in Dennilton. The appellant has failed to show what prejudice it will suffer if this matter was to be adjudicated by the Groblersdal regional court. Since the claim as per the acknowledgment of debt is closely associated to any dispute arising out of the sub-contract agreement, the court a quo cannot be faulted in dismissing the appellants special plea of the

court a quo lack of jurisdiction to entertain the

respondent's claim. Whether the respondent will succeed with its claim is not an issue to be determined by this court at this stage. It therefore follows that the appellant's appeal stand to fail.

[13] In the result I make the following order

13.1 The appellant's appeal is dismissed with costs

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA, LIMPOPO DIVISION,

POLOKWANE

I AGREE

KGOMO J

APPEARANCES: Counsel for the appellant : Adv Nel EJJ Instructed by : Barnard INC Attorneys
Counsel for the respondent : Adv Motlatle TP Instructed by : Tsheoga INC Date heard : 27th
August 2021 Electronically delivered on : 7th October 2021

[1] 32 of 1944

[2] 2005 (6) SA 205 (SCA) at 211 D-E

[3] 1958 (1) SA 555 (A) at 562F-G

[4] 1956 (2) SA 273 (A) at 278F

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