

SOUTH AFRICA / JUDGMENT

**IEMAS Financial Services (Co-operative) Limited v
Fieland; IEMAS Financial Services (Co-operative)
Limited v Claasen; IEMAS Financial Services
(Co-operative) Limited v Kalanie; IEMAS Financial
Services (Co-operative) Limited v Sathu; IEMAS
Financial Services (Co-operative) Limited v
Mkhwanazi; IEMAS Financial Services
(Co-operative) Limited v Makatong (18726-2016;
93244-15; 96970-15; 75686-15; 40873-16; 96640-15)
[2017] ZAGPPHC 575 (8 September 2017)
[2017] ZAGPPHC 575**

COURT

North Gauteng High Court, Pretoria

BEFORE

E.M. Kubushi

CASE / FILE NUMBER

18726/2016; 93244/15; 96970/15; 75686/15;
40873/16; 96640/15

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

8/9/2017

CASE

NO: 18726/2016

In

the matter between:

IEMAS
FINANCIAL SERVICES (CO-OPERATIVE)
LIMITED PLAINTIFF
and
FIELAND
HENDRIK
GEORGE DEFENDANT
CASE
NO: 93244/15
CLAASEN,
C F
BERYL DEFENDANT
CASE
NO: 96970/15
IEMAS
FINANCIAL SERVICES {CO-OPERATIVE}
LIMITED PLAINTIFF
KALANIE,
JEROME
WERNICK DEFENDANT
CASE
NO:75686/15
SATHU
SIMILO
SIMON DEFENDANT
CASE
NO: 40873/16
MKHWANAZI
MXOLISI
EMMANUEL DEFENDANT
CASE
NO: 96640/15
MAKATONG
VIVIAN DEFENDANT

JUDGMENT

KUBUSHI J

- [1] Various matters were placed on the unopposed roll in terms of Uniform Rule 31 (5) (A) and (b) (vi). The matters are similar in nature hence I decide to deal with them all in this judgment. The case numbers for the said matters are the following: 18726/2016; 40873/2016; 75686/2015; 93244/2015; 96640/2015; and 96970/2015. I stood the matters down and reserved judgment in all the matters, and this is the judgment.

- [2] The plaintiff in all the applications before me is a credit provider in terms of the National Credit Act 34 of 2005 ("the NCA"). The plaintiff entered into a number of small unsecured written credit agreements ("the credit agreements") with the defendants. In the matters before me, the plaintiff claims, amongst others, the enforcement of the terms of the credit agreements against the defendants, respectively, and repayment of the balance and interest owed by the defendants to the plaintiff as a result of the breach of the said credit agreements.
- [3] The credit agreements were entered into at various places and the defendants chose their respective domicilia citandi et executandi at these places. The respective places where the credit agreements were concluded and the respective domicilia citandi et executandi fall outside the area of jurisdiction on this court.
- [4] In terms of the credit agreements payment by the defendants to the plaintiff was to be made by way of debit order facility whereby funds would be transferred electronically from the defendants' salary accounts with their respective employers, to the plaintiff's banking account on the last day of every month. The allegation is that the defendants respectively breached the terms of the agreements by failing to make the required payments to the plaintiff, hence these proceedings.
- [5] The plaintiff pleads in its particulars of claim against each respective respondent that this court has jurisdiction to adjudicate the applications in the light that performance in the form of payment by the defendants was to be made at the plaintiff's business address in Centurion, which falls within the area of jurisdiction of this court.
- [6] The summonses issued against the respective defendants were duly served upon the defendants. The dies induciae has since elapsed and the plaintiff now seeks default judgments against all the respective defendants on the ground of their failure to deliver their notices of intention to defend.
- [7] The registrar referred the applications for default judgment for hearing in open court.[1] I am informed that the registrar was of the view that this court does not have jurisdiction, he as a result referred the applications to this court for the determination of jurisdiction. The registrar relied on the unreported judgment in *Blue Chip 2 (Pty) Ltd v Ryneveldt*. [2] In that judgment the court had to determine whether it could be said that, in circumstances where a notice in terms of s 129 (1) (a) of the NCA ("the s 129 (1) notice") was delivered outside the magistrate's court area of jurisdiction, the cause of action arose wholly within that magistrate's court area of jurisdiction as provided for in s 28 (1) (d) of the Magistrates' Court Act 32 of 1944 ("the Magistrates' Court Act"). That court concluded that such delivery outside the area of jurisdiction of the magistrate's court was fatal to the claim since the cause of action did not wholly arise within the district or regional division of the magistrate's court concerned.

[8] The plaintiff is, however, of the opinion that this court has jurisdiction. The plaintiff's counsel submits that the judgment

quoted by the registrar is distinguishable from the present matters because in that judgment the jurisdiction sought was premised on the provisions of s 28 (1) (d) of the Magistrates' Court Act wherein the requirement is that the cause of action arose wholly within the area of jurisdiction of the court. In the matters before me the jurisdiction is founded on performance of the agreement, so it is argued. I agree.

[9] Firstly, it is a generally accepted rule of our law that the cause of action (*ratio rei gestae*), that is, the conclusion of a contract and/or the performance thereof, which occurred within the area of jurisdiction of a court, is a ground for founding jurisdiction.[3] In the instances before me, the plaintiff relies on performance (payment) of the credit agreements to found jurisdiction in each of the matters. Payment was to be effected in Centurion which falls within the area of jurisdiction of this court. It is not the act of effecting a transfer of money but the receipt thereof in the banking account of the recipient that constitutes payment.[4] Therefore, performance of the credit agreements, in the matters before me, was to be made in Centurion, when the plaintiff receives the respective payments in its banking account. That performance, would, as a result, vest this court with the necessary jurisdiction.

[10] Secondly, s 21 (1) of the Superior Courts Act 10 of 2013 provides that a Division of the High Court has jurisdiction in relation to all causes arising within its area of jurisdiction. The requirement of jurisdiction in the High Court is thus different from the requirement in the magistrates' court. In the magistrates' court the requirement is that the cause of action arose wholly within the area of jurisdiction whereas in the High Court the requirement is simply that the cause arose within the area of jurisdiction. The delivery of the s 129 (1) notice outside an area of jurisdiction of the High Court, as is the case in the applications before me, does not affect the cause of action and/or the jurisdiction of the court.

[11] When a place of performance is relied upon for jurisdiction, the breach in respect of which the defendant is sued must be a breach of a duty which he or she was bound to perform within the court's jurisdiction.[5] In the respective applications before me, the cause of action, that is the performance of the respective credit agreements, arose within the area of jurisdiction of this court. That, the s 129 (1) notices were delivered outside this court's area of jurisdiction, is of no moment. I am satisfied that this court has the necessary jurisdiction to hear and determine the default judgment applications.

[12] The plaintiff has in all the applications complied with the requirements of the NCA. The defendants have all been duly served with the summonses and the default judgment applications.

[13] I, therefore, make the following order:

1. The drafts judgments marked "XY" and initialled in respect of all the applications referred to in this judgment are granted.

E.M.KUBUSHI

JUDGE OF THE HIGH COURT

Counsel for Plaintiff : Adv. T Steyn

Instructed by : ODBB Attorneys

Date heard : 30 August 2017

Date of judgment : 08 September 2017

[1] See Uniform Rule 31 (5) (b).

[2] (499/15) [2016] ZASCA 98 (03 June 2016).

[3] See 1996 (2) SA 106 (C).

[4] See Bush and Others v BJ Kruger Incorporated and Another 2013 (2) All SA 148 (GSJ) para 67.

[5] See Veneta Mineraria Spa v Carolina Colliers (Pty) Ltd 1985 (3) SA 633 (D) at 643B-D.

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