

SOUTH AFRICA / JUDGMENT

**Kintetsu World Express South Africa (Pty) Ltd v
LCD Consultants CC, Aveng Trident Steel (Pty)
Ltd v Steel Plate and Piping (Pty) Ltd, Trident
Speciality Steel v Ngobozane (11741/13, 13043/13,
14213/13) [2013] ZAGPJHC 241 (2 October 2013)
[2013] ZAGPJHC 241**

COURT

South Gauteng High Court, Johannesburg

BEFORE

Monama

CASE / FILE NUMBER

11741/13, 13043/13, 14213/13

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IN

THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

REPUBLIC OF SOUTH AFRICA

Case No: 11741/13

DATE:02/10/2013

In the matter between:

KINTETSU WORLD EXPRESS SOUTH AFRICA

(PTY)

LIMITED.....APPLICANT

and

LCD CONSULTANTS CC

(Registration Number

2002/031862/32).....RESPONDENT

Case No. 13043/13

AVENG TRIDENT STEEL (PTY)

LTD.....APPLICANT

STEEL PLATE AND PIPING (PTY)

LTD.....RESPONDENT

Case No. 14213/13

TRIDENT SPECIALITY

STEEL.....APPLICANT

PATRICIA NOMAMBELE

NGOBOZANE.....RESPONDENT

JUDGMENT

MONAMA J

- [1] This is a joint judgment relating to these three applications. The facts of these three matters are almost similar. The applicants are represented by the same counsel. They all involve money judgment and are all unopposed.
- [2] On 12 June 2013 when these matters were called I raised the concern. I was concerned because during the three occasions that I sat in Court Three during the last term I noticed an increased volume of cases which fall within the monetary jurisdiction of the regional civil court being brought to the high court. On one occasion I cautioned that in appropriate cases, I will dismiss the claim and not merely deal with such situation by way of costs. Notwithstanding my firm and strong warning the situation has not improved. On contrary, there is a substantial increase. In case of Motrade 432(Pty) Ltd v Dr Clarence Mini Case No. 43262/2012 the money claim was R60 000.00. This practice is unacceptable.
- [3] The first matter of Kintetsu World Express South Africa (Pty) Ltd v LCD Consultant CC the claim is for the payment of R138278.84 plus interests thereon. The second case is Aveng Trident Steel (Pty) Ltd v Steel Plate and Piping (Pty) Ltd. The claim is for the payment of the sum of R192673.36 plus interests thereon. The last matter is Trident Speciality Steel v Patricia Nomambhele Ngobozane Case No: 14213/13. In this matter the claim is for the payment of the sum of R291 072.89 together with interest thereon.
- [4] I now briefly deal with the cases seriatim. In case number 11741/2013 the applicant's principal place of business is in Boksburg. The respondent's domicilium is in Kempton Park. The court with appropriate jurisdiction is Kempton Park regional civil court. In casu 13043/2013 the applicant is domiciled in the Germiston area. The first respondent's domicilium is in Bruma, Johannesburg. The second respondent's domicilium is in Boksburg whereas the third and fourth respondents are domiciled in Germiston. The appropriate regional civil court is in Germiston. Finally in case number 14213/2013 the applicant's principal place of business is in Germiston and the respondent's chosen domicilium is in Germiston. Therefore, the regional civil court of Kempton Park and Germiston are relevant and appropriate courts.
- [5] All these actions are for the monetary payments. They are based on the contract of sale and delivery of goods. These claims are brought by way of application. In these three applications I indicated my strong view to dismiss the applications unless cogent reasons are advanced why these matters were not dealt with in the appropriate regional court. Mr Swanepoel, who appeared for all the applicants, provided me with his heads of arguments to persuade me to grant the orders in terms of the notice of motion. At

the end of the argument, I reserved the judgment. This is now my

judgment.

[6] Before I deal with the argument raised I record the following common cause facts. In casu it is common cause that the monetary claims fall within the jurisdiction of the Magistrate's Court Act¹ ("the Act") and the Government Notice². The jurisdiction of the regional court in respect of the causes of action and the monetary value is governed by Section 29(1) of the Act. The said Section provides that:

"29(1) subject to the provisions of this Act and the National Credit Act, 2005, the court in respect of causes of action, shall have jurisdiction in –

Actions in which is claimed the delivery or transfer of any property, movable from time to time by notice in the Gazette; Action of ejectment against the occupier of any premises or land within the district: provided that, where the right occupation of any such premises or land is in dispute between the parties, such right does not exceed the amount determined by the Minister from time to time in the Gazette in clear value to the occupier; Actions for the determination of a right of way, notwithstanding the provisions of Section 46;

Actions on or arising out of a liquid document or a mortgage bond. Where the claim does not exceed the amount determined by the Minister from time to time by notice in the Gazette; Actions on or arising out of any credit agreement as defined in section 1 of the National Credit Act, 2005; Action in terms of section 16(1) of the Matrimonial Property Act, 1984, where the claim or value of the property in dispute does not exceed the amount determined by the Minister from time to time by notice in the Gazette;

(fA) actions including an application for liquidation, in terms of the Close Corporations Act, 1984 (Act 69 of 1984);

Actions other than those already mentioned in this section where the claim or the value of the matter in dispute does not exceed the amount determined by the Minister from time to time by notice in the Gazette."

The above jurisdiction is extensive. The only proviso is that the ceiling is currently three hundred thousand rands. Furthermore, these actions are for money judgment and finally that the applicants are dominis litis.

[7] The real issue is whether the applicants were justified in bringing these applications in the high court with concomitant costs order sought and not the regional civil court. However, their rights as dominis litis stand to be considered regard being had to the relevant legislative framework and the policy regarding access to justice as envisaged in the Constitution of the Republic of South Africa³.

- [8] The current legislative framework grants the regional court monetary jurisdiction up to three hundred thousand rands.⁴ This current monetary ceiling has been progressive. Immediately after the granting of the increased monetary and allied jurisdictions there were sustained training to empower the relevant judicial officers to tackle their responsibilities.
- [9] There are cogent reasons for the increased jurisdiction. Amongst those reasons, one finds the accessibility to justice at reasonable costs. The increased monetary jurisdiction is governed by Government Notice No. 670 published in Government Gazette No. 33418 dated 29 July 2010. The provisions come into effect on 9 August 2010. The preamble thereof provides:

“Establishment of courts for regional divisions for the adjudication of certain civil disputes (designation of the seat of the said court in each regional division); The appointment of places within each regional division for the holding of a court for the adjudication of certain civil disputes and the local limits within which such courts shall have jurisdiction; and determination of monetary jurisdiction for causes of action in respect of courts for the regional division.” [The underlining provided for emphasis.]

Schedule 1 thereof contains a list of all the regional courts to which it applies throughout the Republic⁵. In Johannesburg, for example, it has a seat in Kliptown and Johannesburg (both seats have concurrent jurisdiction). The areas

under these seats cover all the areas of Soweto and some areas of the southern and northern suburbs of Johannesburg. The Randburg seat covers Randburg and Alexandra. The Roodepoort seat covers also Krugersdorp, Randfontein. The Germiston court covers Alberton. The Vereeniging court includes areas of Meyerton and Vanderbiljpark. The Springs court covers Nigel, Brakpan and Heidelberg. The purpose of the seats relieves the litigants in the high courts and by the same token offers them accessibility in the other courts at reasonable cost.

- [10] I now turn to the grounds raised by the applicants. The applicants raised three grounds why I should deal with these monetary applications. First, it is argued that the application procedure is limited in the regional civil court. This argument is based on the fact that such a court is a creature of the statute. In this regard they rely on the decision of *Mokoena v Minister of Law and Order*⁶. This submission stands to fail because it is misplaced and misapplied. That case dealt with an application in terms of Sections

30 and 31 of the Criminal Procedure Act⁷ for the return of certain goods. The matter was not dealt with in terms of Section 29 of Act 44 of 1932 although the court made reference thereto.

[11] Without deciding on whether the application procedures in the regional court are limited or not in regional civil court, I find that the applicants had a choice as dominis litis. If, it was of the view that the application procedures is not applicable, then they should have instituted their claim by action procedure which is obviously applicable.. There is no reason why they should circumvent these provisions of the Act.

[12] The second submission is that the claims are for specific performance and accordingly the Magistrate's Court has no jurisdiction in terms of Section 46 (2) (C) of the Act. The Section provides that:

“(2) A court shall have no jurisdiction in matters-

- (c) in which is sought specific performance without an alternative of payment of damages except in-
- (i) the rendering of an account in respect of which the claim does not exceed the amount determined by the Minister from time by

notice in the Gazette

(ii) the delivery or transfer of property, movable or immovable, not exceeding in value the amount determined by the Minister from time to time by notice in the Gazette; and

(iii) The delivery or transfer of property, movable or immovable, exceeding in value the amount determined by the Minister from time to time by notice in the Gazette where consent of the parties has been obtained in terms of Section 45.”

In all the three matters the applicants seek payment of money and interest thereon. This may be a specific performance in a narrow sense. The submission in respect of the specific performance in the wide sense does not apply herein.

[13] In any event, the above section has given rise to conflict judgments. In *Sydney Clow and Company Ltd v Herzberg*⁸ it was held that the term ‘specific performance’ should be extended to include a return of property in a vindicatory action. The same view was adopted in *Olivier v Stoop*⁹ and *Malkiewicz v Van Niekerk and Fourouclas Investments CC*¹⁰.

[14] The judgments referred to above are contradicted in three cases 11. Be that as it may, the view by Van Reenen J in *Tuckers Land and Development Corporation (Edms) Bpk v Van Zyl*¹² is in my view preferable. The learned Judge traced the history of the Section and held that:

“-Die interssante feit wat uit hierdie geskiedenis blyk is dat alhoewel daar heelwat regterlike verskil was oor die landdroshof se bevoegheid om daadwerklike vervulling te gelas, daar nooit enige twyfel bestaan het oor die bevoegdheid on eise wat in munt geklink het, hetsy as skuld, skade vergoeding of andersins, af te dwing nie. En ons het die historiese feit dat die howe reeds duisende der duisende sodanige bevele gemaak het.”

The courts have issued order for specific performance. Accordingly the submission on the specific performance stands to be rejected. Those courts have always made such orders. The above view finds support in the current Government's approach in the increased monetary jurisdiction.

- [15] The present cases deal with the payment of money and not specific performance in the wide sense. In any event the court has discretion. In these matters there are three applications for money judgment. It cannot be assumed or inferred that the drawer of the application was unaware of the monetary jurisdiction. On the contrary the only reasonable inference is that they were taking chances. Worst still it can be assumed he decided not to follow the rules but to ignore them. The regional courts are a reality. They must be utilised. The increase jurisdiction is now almost two and half years old and the persistent disregard thereof is totally unacceptable.
- [16] The division of the courts exist for a good reason. The litigants are entitled to have reasonable access to justice as provided for in the Constitution of the Republic of South Africa. The litigants are entitled to access justice at reasonable costs. The costs of litigation in the high court are prohibitive. The litigants cannot circumvent the need to inexpensive justice but refusing to approach an appropriate regional court for their relief on the basis that such courts are ineffective. The continued utilization of the said court will increase their efficiency, if indeed such inefficiency does exist.
- [17] I could have deal with the matter and award the costs on the regional civil court scale. However, the facts of the cases do not justify such approach. This approach does not amount to the closing of the doors to the litigant. However, the time has come to demonstrate that an abuse cannot be tolerate. The applicants' attorneys embarked on this practice in more than one matter and the proliferation is on the increase. The three matters are indicative of the attitude of the applicants or their legal representative. In order to give an effect to these increased jurisdictions, the court must insist that the regional civil courts are utilised. These are not appropriate cases where the costs of the magistrate court will address the flagrant disregard of the rules and the Act. There is a distinct division between the court and their jurisdiction. The litigants are not large to convert the high court to the regional civil court. Such conversion amount to an abuse.
- [18] The high court must be seen to be discouraging the litigants who bring the matter that properly belong to the regional civil court. A prudent litigant is expert to determine any limitation upon the litigation prior to the institution of a claim. If they fail to do so then they do so at their own risk.
- [19] In the circumstances of these cases, the following order is made
- a. All the three applications are dismissed.

RE MONAMA

JUDGE OF THE SOUTH GAUTENG HIGH COURT

Counsel for the Applicants: Adv.JA Swanepoel

Instructed by Schwarz North Inc., Johannesburg

Ref: Ms Roux/Caroline/C782

(For case No. 11741/2013 and case No. 13043/2013)

Instructed by: Wertheim Becker Inc. Johannesburg

Ref: Mr D Reccoce/fj/3708 (TRS45)

(For case No. 14213/2013)

1 Act 32 of 1944 as amended.

2 Government Notice 670 published in Government Gazette no. 33418 of 29 July 2010.

3 Section 34 of Act 108 of 1996.

4 Schedule 2 of Government Notice – Government Notice 33418 of 29 July 2010

5 See schedule 1 of the Government Notice 670 of 29 July 2010.

6 1991(3) SA 187 (T)

7 Act 51 of 1977

8 1938 TPD 201 at 206.

9 1978 (1) SA 196 (T) at 201 and 202 C-D.

10 2008 ALL SA 57 (T) at 60 E - F

11 Zinman v Miller 1956 (3 SA 8(T) at 12D –E, Carpert Contracts (Pty) Ltd v Grabler 1975 (2) SA 43 (T) at 439

12 1977

(3) SA 1041 (T) at 1048 E-F.

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