

SOUTH AFRICA / JUDGMENT

Smith and Another v Gush (2024/076823) [2024] ZAGPJHC 897 (13 September 2024) [2024] ZAGPJHC 897

COURT

South Gauteng High Court, Johannesburg

BEFORE

Beyers

CASE / FILE NUMBER

2024/076823

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Policy

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

No. 2024-076823

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED: NO

13/09/2024

In

the matter between:

SEAN

SMITH

First

Applicant

LESLEY

SMITH

Second

Applicant

and

SCOTT

GUSH

Respondent

This judgment was

handed down electronically by circulation to the parties'

representatives via e-mail, by being uploaded

to Court Online and by

release to SAFLII. The date and time for hand- down is deemed to be

10h00 on September 2024.

JUDGMENT

BEYERS, AJ:

- [1] This is an application, brought on an urgent basis, wherein the Applicants inter alia seek the following final relief against the Respondent:

"1. That the applicants' non-compliance with the Uniform Rules of Court relating to forms, directives, service and time periods is condoned and this application is dealt with as a matter of urgency in accordance with Uniform Rule 6(12).

2. The respondent is interdicted from:

- a. Repeating or publishing the defamatory statements set out in various emails annexed to the founding affidavit as annexures 'FA3', 'FA6', 'FA7', 'FA8', 'FA9', 'FA10', 'FA12' and 'FA13'.
- b. Referring to the applicants and their business as a 'Ponzi Scheme' or to the applicants as conductors of a 'Ponzi Scheme' in any email communications or other method of communication of whatsoever nature to any third parties.
- c. Referring to the applicants as 'thieves', 'fraudulent', 'con-artists', 'criminals' or any similar description, in any communications, email or otherwise, to any third parties.
- d. Encouraging or soliciting third parties to repeat and disseminate the statements regarding the applicants in terms of prayer 2(a), (b) and (c) above to further third parties.

3. The respondent is directed to publicly retract the statements made in annexures 'FA3', 'FA6', 'FA7', 'FA8', 'FA9', 'FA10', 'FA12' and 'FA13' to the founding affidavit and to issue an apology and retraction to the applicants in respect of the statements and to furnish the third parties to whom the statements were made a copy of the retraction and apology and to furnish proof that such retraction and apology has been furnished to the third parties within SEVEN (7) days of the granting of this order.
4. The respondent is ordered to pay the costs of this application on the attorney and client scale including the costs of counsel on 'Scale B'."
- [2] The application is opposed by the Respondent on a number of grounds, including:
 - a. That the application is not urgent;[1]
 - b. That this Court does not have jurisdiction to entertain the application[2]; and
 - c. That the Applicants have not satisfied the requirements for a final interdict.
- [3] Since the presence of jurisdiction is a foundational requirement for the relief sought, this is addressed at the outset.
- [4] An order given where the Court has no jurisdiction is a nullity[3] and does not require to be set aside[4]; it could simply be ignored.[5]
- [5] S 21(1) of the Superior Courts Act, 10 of 2013, provides that a "... Division has jurisdiction over all persons residing or being in, and in relation to all causes arising ... within, its area of jurisdiction ..."
- [6] The Applicants' case in its founding papers to establish the jurisdiction of this Court in respect of the relief sought is set out as follows in paragraphs 12 and 13 of the Founding Affidavit:[6]

"12. The respondent is Scott Gush, an adult male businessman and director of Prime Trade Finance (RF) (Pty) ('PTF') and who presently resides at Dainfern Johannesburg, Gauteng and who carries on business at PTF's registered business address being the B[...] C[...], Corner 3[...] and C[...] Roads, B[...], Johannesburg.
13. On the basis of the respondent's residence and the place where the cause of action arose this Court has jurisdiction to hear this application." (underlining added)
- [7] In par 141 of the Founding Affidavit the Applicants further aver that:[7]

"My legal representatives, in the short time that this application was prepared were not able to ascertain the residential address of the respondent prior to launching these proceedings. In the circumstances, this application will be served on the registered

address of PTF for which the respondent is a director (in compliance with Rule 4(1)(a)(iii) of the Uniform Rules). I pause to mention that Sherman, who acts for the investors in PTF has also tried to ascertain the respondent's residential address without success. In these circumstances, the best form of service (personal service) is unlikely. Nevertheless, serving on PTF's registered business address constitutes proper service in terms of the Uniform Rules. The applicants humbly request that this Court to excuse the applicants

inability to effect personal service on the respondent.”

[8] This latter statement by the First Applicant contradicts the allegation as to the Respondent's place of residence in paragraph 12 of the Founding Affidavit.

[9] The Applicants further tendered a Service Affidavit deposed to by the Applicants' attorney, which reflected the steps taken to attempt “to ensure that prompt notice of the relief sought and steps to be taken by the respondent were brought to the respondent's

attention”. [8] These steps included attempted, unsuccessful service by the Sheriff of the application on a company of which the Respondent is allegedly a director, an email to an attorney in the employ of the firm that represented such company, an email to an erstwhile attorney of such company and an email to the Respondent's private email address. [9]

[10] The fact that the papers in the application ultimately did come to the Respondent's knowledge does not, of course, establish jurisdiction.

[11] In his Answering Affidavit, the Respondent alleges that:

- a. He is currently residing in the United Arab Emirates; [10]
- b. That he neither resides nor is employed at an address with the jurisdiction of this Court; [11]
- c. That he is a resident of the United Arab Emirates where he has resided for approximately one year to date of his affidavit (19 July 2024); [12]
- d. That he left South Africa on 12 September 2021, as a result of various business transactions of Prime Trade Finance FR (Pty) Ltd that had soured for reasons unrelated to the matter at hand; [13]
- e. As pending litigation regarding these business transactions have resulted in various threats having been levelled against his person

and his life, it was in his best interests to move abroad, where he has remained to date; [14]

- f. He attached, as annexure “C” to his affidavit, proof of his residence in the United Arab Emirates. Annexure “C” is a Resident Identity Card in respect of the Respondent, which inter alia indicates that: [15]
- i. It was issued by the United Arab Emirates Federal Authority for Identity and Citizenship, Customs and Port Security;

- ii. An ID number was issued to the Respondent;
- iii. His nationality is that of the United Kingdom;
- iv. It was issued on 15 September 2022 and endures until 14 September 2025.

[12] In their Replying Affidavit, the Applicants contend, inter alia, that:

- i. Even if this Court finds that the Respondent was not resident within this Court's territorial jurisdiction at the time of service of the application, this Court still has jurisdiction on the basis of the location in which the cause of action arose.[16]
- ii. A High Court has jurisdiction in relation to all causes arising within its jurisdiction although it does not have jurisdiction over the person of the defendant.[17]
- iii. This is subject to the qualification that the Respondent must be an incola of the Republic, or if he is a peregrinus on attachment to found jurisdiction must have been made.[18]
- iv. The Respondent is not a peregrinus of the Republic and therefore no attachment to found jurisdiction is necessary, because he is still domiciled in the Republic.[19]
- v. The Respondent has only lived in the United Arab Emirates for one year and has not indicated that he regards it as his permanent home, and he has not stated that he has no intention of returning to South Africa.[20]

[13] It should be noted that the Applicants' contentions as to the alleged domicile of the Respondent was raised for the first time in reply. The Respondent has had no opportunity to respond to these allegations. In addition, and in any event, an applicant is obliged to make out its case in its founding papers. As indicated above, the case in the founding papers was based on the Respondent's place of residence and the allegation that the cause of action arose within this Court's area of jurisdiction. This application stands to be determined accordingly.

[14] It is necessary, as a point of departure, to review the relevant legal principles that govern the jurisdiction of this Court:

- a. Since the original jurisdiction of each division of the High Court is territorial, the dominus litis must, in suing a person residing in the Republic, select the Court in whose area such person is "residing" or "the cause arises".[21]
- b. The construction to be given to the word "resides" in a context similar to the present is addressed as follows by Van Loggerenberg:[22]

"The construction to be given to the word 'resides' in a context similar to that of the present section was dealt with at length by Centlivres JA in Ex Parte Minister of Native Affairs.[23] From the observations made in that case and in numerous others,[24] the following general principles emerge:

1. In a large number of statutes relating to the jurisdiction of a court, the court is given jurisdiction over a person (i.e. a defendant) who resides within its area. In this regard the legislature has simply followed the common-law rule, actor sequitur forum rei.[25]
2. The question is not one of domicile but of residence. A defendant may have a domicile at one place and a residence at another.[26]
3. A person can have more than one residence.[27] Where a person is to be sued on the ground of residence, it must be done in the area in which the person is residing at the time when the summons is served.[28]
4. A person cannot be said to reside at a place which is temporarily being visited, nor does a person cease to reside at a place even though such person may be temporarily absent on certain occasions and for short periods.[29]
5. The courts have studiously refrained from attempting 'the impossible task' of giving a precise or exhaustive definition of the term 'residence'; the question whether a person resides at a particular place at any given time depends upon all the circumstances of the case read in the light of the general principles referred to above.[30]

It has been suggested[31] that the definition which is most appropriate is the one set out in *Hogsett v Buys*[32] and quoted by Centlivres JA in *Ex Parte Minister of Native Affairs*,[33] namely, there must be 'some good reason for regarding it as his place of ordinary habitation at the date of service'.

The following definition by De Villiers CJ has also met with approval:

'When it is said of an individual that he resides at a place it is obviously meant that it is his home, his place of abode, the place

where he generally sleeps after the work of the day is done.[34]

6. 'Perhaps the best general description of what is imported by residence is that it means a man's home or one of his homes for the time being; though exactly what period or what circumstances constitute home is a point on which it is impossible to lay down any clear defined rule.'[35]
7. Although a person may have more than one residence, for the purpose of s 21(1) of the Act a person can only be residing in one place at any given moment.[36]
- 8 A person's intention is not necessarily conclusive. The objective facts must be looked at to decide the question of factual residence.[37]
9. A common-sense and realistic approach must be adopted when deciding whether, having regard to all the circumstances, a person can be said to reside at a particular place for the purpose of s 21(1) of the Act.[38]

10. For purposes of jurisdiction the concept of vagabundus is not recognized. A person must reside somewhere.[39]
11. The choice of a domicilium citandi et executandi within the area of jurisdiction of a division of the High Court is not enough to confer jurisdiction upon that court.[40]
12. Jurisdiction by virtue of residence is lost when the resident removes altogether from the district.[41] The removal must be permanent[42] and voluntary (though this is not entirely free from doubt) in the sense that it is not forced.[43] It must be clear from the evidence, which covers the conduct of the person as well as such person's expressed intention,[44] that the person intends to abandon the residence and this abandonment may be clear even though the person might have left the person's

family behind within the former jurisdiction.[45]

13. The onus of proving a change in residence lies on the party alleging it.[46]"

(Underlining added)

- c. "Such African Courts have in many instances accepted the principle that jurisdiction depends on the power of the Court to give an effective judgment. Thus, in *Steytler NO v Fitzgerald* it was said that a Court can only be said to have jurisdiction in a matter if it has the power not only of taking cognisance of the suit, but also of giving effect to the judgment."[47]
- d. "The principle of effectiveness has been said to be the basis of the rule that the Court will not entertain an action against a peregrinus

unless either his person[48] or his property has been attached."[49]

- e. Effectiveness does not per se confer jurisdiction on a court: the inquiry is a dual one in that the Court must consider first whether there is a recognised ground of jurisdiction and, if there is, then whether the doctrine of effectiveness is satisfied.[50]
- f. The effect of the attachment of the property of a peregrinus is either to confirm an accepted ground of jurisdiction (ratio jurisdictionis) or to found jurisdiction by providing a basis on which the Court may assume jurisdiction where there is no ratio jurisdictionis.[51]
- g. An attachment of property is not appropriate where the claim concerns an order in the nature of an interdict. No Court has coercive

jurisdiction beyond its territorial limits and an order of attachment of property cannot give it such jurisdiction.[52]

- [15] Turning to the facts in the instant case, it is clear on the papers that the Respondent is not resident within the Republic. He lives abroad and has done so since at least a year prior to the institution of the instant proceedings. The Respondent is a peregrinus, and the effectiveness of an order against him in the nature of the relief sought in this application is at issue.
- [16] The relief sought is that of a final interdict, the effectiveness of which is entirely dependent on the presence of the Respondent within the Republic. Accepting in the Applicants' favour that the cause of action arose within the area of jurisdiction of this Court, the Respondent is not resident within the Republic and even an attachment of the Respondent's property within the Republic would not render an interdict effective against the Respondent.[53]
- [17] In the circumstances I am of the view that this Court does not have the necessary jurisdiction to issue an order against the Respondent for the relief sought in the Notice of Motion.
- [18] I therefore issue the following order:

- i. The Applicant's application is dismissed, with costs on party and party Scale C.

J BEYERS

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 23 July 2024

Date of

Judgment:

13 September 2024

APPEARANCES:

For the Applicants: Adv RW Grunder

Instructed by:

Pravda & Knowles Attorneys

For the Respondent: Adv M Desai

Instructed by: RHK Attorneys Inc

- [1] Answering Affidavit, paras 5 to 13, Caselines pp 02-244 to 02-252.
- [2] Answering Affidavit, paras 16-22, Caselines pp 02-252 to 02-253.

- [3] The Master of the High Court (North Gauteng High Court, Pretoria) v Motala NO 2012 (3) SA 325 (SCA) at 331H – 333C.
- [4] At 331H – 333C.
- [5] Van Loggerenberg, D.E. Erasmus, Superior Court Practice, Vol 1, Third Edition, p D-179; S v Absolom 1989 (3) SA 154 (A) at 164F; Campbell v Botha [2008] ZASCA 126; 2009 (1) SA 238 (SCA) at 244 A-B; MEC for Health, Eastern Cape v Kirkland Investments (Pty) Ltd t/a Eye and Lazer Institute 2014 (3) SA 481 (CC).
- [6] Founding Affidavit, paras 12-13, Caselines, pp 02-13 and 02-14.
- [7] Founding Affidavit, par 141, Caselines, pp 02-48 – 02-49.
- [8] Service Affidavit, par 6, Caselines, p 02-202.
- [9] Service Affidavit, paras 7 to 13, Caselines, pp 02-203 to 02-205.
- [10] Answering Affidavit, par 1, Caselines, p 02-243.
- [11] Answering Affidavit, par 16, Caselines, p 02-252.
- [12] Answering Affidavit, par 17, Caselines p 02-252 and 02-260.
- [13] Answering Affidavit, par 18, Caselines, p 02-252.
- [14] Answering Affidavit, paras 19 and 20, Caselines, pp 02-252 to 02-253.
- [15] Annexure “C” to Answering Affidavit at Caselines, p 02-270.
- [16] Replying Affidavit, par 57, Caselines, p 02-291.
- [17] Replying Affidavit, par 64, Caselines, p 02-292.
- [18] Replying Affidavit, par 65, Caselines, pp 02-292 and 02-293.
- [19] Replying Affidavit, paras 66 – 67, Caselines, pp 02-293.
- [20] Replying Affidavit, paras 60 and 68c, Caselines, pp 02-292 and 02-293.
- [21] Van Loggerenberg, supra, p D-183; Estate Agents Board v Lek 1979 (3) SA 1048 (A) at 1059F; Els v Weideman 2011 (2) SA 126 (SCA) at 132 D-G.
- [22] Van Loggerenberg, supra, pp D-184-185.
- [23] 1941 AD 53.
- [24] Cowie v Pretorius Municipality 1911 TPD 628; Robinson v Commissioner of Taxes 1917 TPD 542; Cohen v Commissioner for Inland Revenue 1946 AD 174; Cleeve v Minister of the Interior 1956 (2) SA 223 (T) at 226A-227D; Van Coller v Commissioner of Child Welfare 1956 (4) SA 807 (O); Biro v Minister of the Interior 1957 (1) SA 234 (T); H v Commissioner of Taxes 1960 (2) SA 695 (SR); S v Fazzie 1964 (4) SA 673 (A) at 681H-682E; S v Ndlovu 1967 (2) SA 90 (GW); Tick v Broude 1973 (1) SA 462 (T); S v Pikashe 1975 (2) SA 583 (C) at 589A-H;

Incorporated General Insurance Ltd v Reinecke 1976 (1) SA 591 (A) at 599A-E; Mthiya v Black Affairs Administration Board, Western Cape 1983 (3) SA 455 (C) at 467B-469A; Zwyssig v Zwyssig 1997 (2) SA 467 (W) at 470E-471F; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243A-F; Terblanche NO v Damji 2003 (5) SA 489 (C) at 499E-G.

- [25] Norman v Davis (1888) 9 NLR 2020; Breedle & Co v Bowley (1895) 12 SC 401; Forbes v Uys 1933 TPD 362 at 370; Ex parte Minister of Native Affairs 1941 AD 53 at 59; Tick v Broude 1973 (1) SA 462 (T) at 469D-F.
- [26] Bank of Africa v Cohen 1905 TH 54 at 56; Langerman v A/port 1911 CPD 376 at 379; Chapman v D:4/ton 1914 EDL 274 at 276, approved In Ex parte Minister of Native Affairs 1941 AD 53 at 59; Robinson v Commissioner of Taxes 1917 TPD 542 at 547; Tick v Broude 1973 (1) SA 462 (T) at 468A-471E; Zwyssig v Zwyssig 1997 (Z) SA 467 (W) at 470F-471C; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243B; Terblanche v Damji 2003 (5) SA 489 (C) at 499F-G.
- [27] Norman v Davis (1888) 9 NLR 220; Ngadi v Temba (1905) 22 SC 574; Maritz v Erasmus 1914 CPD 120; Ex parte Minister of Native Affairs 1941 AD 53 at 59; Zwyssig v Zwyssig 1997 (2) SA 467 (W) at 470F; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243C.
- [28] Norman v Davis (1888) 9 NLR 220; Blom v Swart (1894) 8 EDC 105; Ngadi v Temba (1905) 22 SC 574; Buck v Parker 1908 TS 1100; Langerman v Alport 191 1 CPD 376; Hogsett v Buys 1913 CPD 200; Becker v Forster; Karsten v Forster 1913 CPD 962; Maritz v Erasmus 1914 CPD 120; Ex parte Minister of Native Affairs 1941 AD 53 at 59; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243C. The date with reference to which residence is tested is that of the beginning of the action (Norman v Davis (1888) 9 NLR 220). In Mills v Starwell Finance (Pty) Ltd 1981 (3) SA 84 (N) it was decided that the time of service of the summons is the time at which to determine whether the court before which the defendant
- is summoned is a court of competent jurisdiction.
- [29] Cowie v Pretoria Municipality 1911 TPD 628 at 632; Ex parte Minister of Native Affairs 1941 AD 53 at 59; Cleeve v Minister of the Interior 1956 (2) SA 223 (T) at 226H-227A; Mthiya v Black Affairs Administration Board, Western Cape 1983 (3) SA 455 (C) at 467F-468A; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243C-D.
- [30] Ex parte Minister of Native Affairs 1941 AD 53 at 59-60; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243D-E; Terblanche NO v Damji 2003 (5) SA 489 (C) at 489H.
- [31] By Galgut J in Tick v Broude 1973 (1) SA 462 (T) at 469E.
- [32] 1913 CPD 200 at 205; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243F-G.
- [33] 1941 AD 53 at 59; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243I-F-G.
- [34] Breedle & Co v Bowley (1885) 12 SC 401 at 403, cited with approval in Buck v Parker 1908 TS 1100 at 1105; Ebrahim v Minister of the Interior 1976 (1) SA 878 (D) at 884H-885A; Mayne v Main 2001 (2) SA 1239 (SCA) at 1243F-I; Terblanche NO v Damji 2003 (5) SA 489 (C) at 500B-E.

See also *Phillips v Commissioner of Child Welfare, Bellville* 1956 (2) SA 330 (C) at 334F-H. In *H Kroomer Ltd v Beckett & Co Ltd* 1912 WLD 53 at 59, Bristowe J said: ‘Generally speaking I suppose that for the purpose of jurisdiction a living person may be said to reside where he lives or where his home is.’

- [34] *Breedle & Co v Bowley* (1985) 12 SC 401 at 403, cited with approval in *Buck v Parker* 1908 TS 1100 at 1105; *Ebrahim v Minister of the Interior* 1976 (1) SA 878 (D) at 884H-885A; *Mayne v Main* 2001 (2) SA 1239 (SCA) at 1243F-I; *Terblanche NO v Damji* 2003 (5) SA 489 (C) at 500B-E. See also *Phillips v Commissioner of Child Welfare, Bellville* 1956 (2) SA 330 (C) at 334F-H. In *H Kroomer Ltd v Beckett & Co Ltd* 1912 WLD 53 at 59, Bristowe J said:

‘Generally speaking I suppose that for the purpose of jurisdiction a living person may be said to reside where he lives or where his home is.’

- [35] Per Bristowe J in *Robinson v Commissioner of Taxes* 1917 TPD 542 at 548; *Zwyssig v Zwyssig* 1997 (2) SA 467 (W) at 4701-471A.
- [36] *Mayne v Main* 2001 (2) SA 1239 (SCA) at 1243F; *Terblanche NO v Damji* 2003 (5) SA 489 (C) at 4991.
- [37] *Mayne v Main* 2001 (2) SA 1239 (SCA) at 1248I-J; *Terblanche NO v Damji* 2003 (5) SA 489 (C) at 500A.
- [38] *Mayne v Main* 2001 (2) SA 1239 (SCA) at 1243I-1244A.
- [39] *Mayne v Main* 2001 (2) SA 1239 (SCA) at 1249B; *Terblanche NO v Damji* 2003 (5) SA 489 (C) at 499J-500A.
- [40] *Geyser v Nedbank Ltd: In re Nedbank Ltd v Geyser* [2006] ZAGPHC 50; 2006 (4) SA 544 (W) at 546D-E; but see *Geyser v Nedbank Ltd: In re Nedbank Ltd v Geyser* 2006 (5) SA 355 (W) at 360E-G.
- [41] *Hogsett v Buys* 1913 CPD 200; and see *Tick v Broude* 1973 (1) SA 462 (T) at 469D-471F.
- [42] *Samuel v “SS” Brother* (1904) 18 EDC 2 at 4; *Goedhals & Du Toit v Pienaar* 1908 EDC 157 at 158. See also *Buck v Parker* 1908 TS 1100 at 1104.
- [43] Thus, change of residence caused by compulsory deportation was held not to deprive the court of jurisdiction in a matter affecting the welfare of children (*Children’s Aid Society v Cohen* 1910 WLD 59).
- [44] *Langerman v Alport* 1911 CPD 376; and see *Buck v Parker* 1908 TS 1100.
- [45] *Norman v Davis* (1888) 9 NLR 220.
- [46] *Allie v Christiaans* (1909) 19 CTR 474; *Messenger v Resident Magistrate of Albert*, and *Michelson & Singer* 1913 EDL 522; *Muller v Daniler* 1912 JWR 328; *Mayne v Main* 2001 (2) SA 1239 (SCA) at 1242H; *Terblanche NO v Damji* 2003 (5) SA 489 (C) at 498G.

- [47] Herbstein & van Winsen, *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa*, Fifth Edition, p63 and authorities cited at footnote 160.
- [48] The arrest of a person to found or confirm jurisdiction is now unconstitutional – See *Bid Industrial Holdings (Pty) Ltd v Strang (Minister of Justice and Constitutional Development, Third Party)* 2008 (3) SA 355 (SCA)).
- [49] Herbstein & Van Winsen, *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa*, supra, p63; *Mali v Mali* 1982 (4) SA 569 (SE) at 570 F-H.
- [50] *Venita Mineroria Spa v Carolina Colteries (Pty) Ltd (in liquidation)* 1987 (4) SA 883 (A) at 891 C; *Bison Board Ltd v Braun Woodworking Machinery (Pty) Ltd* [1990] ZASCA 86; 1991 (1) SA 482 (A) at 499E-F; Herbstein & Van Winsen, *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa*, supra, p64.
- [51] Herbstein & Van Winsen, *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa*, supra, p96.
- [52] *Di Bona v Di Bona* 1993 (2) SA 682 (C) at 692 and 695; Herbstein & Van Winsen, *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa*, supra, p107.
- [53] See Herbstein & Van Winsen, *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa*, supra, p107: ‘(a) Interdict Where an interdict is claimed against a peregrinus, the court will have jurisdiction if, in the case of a mandatory interdict, the act is to be carried out in its area, or in the case of prohibitory interdict, the act against which the interdict is claimed is about to be done in its area. A South African court has no jurisdiction in respect of acts performed or to be performed outside of the Republic and cannot entertain applications for interdicts in respect of such acts. This lack of jurisdiction cannot be cured by an attachment. Where a court does have jurisdiction to grant an interdict against a peregrine defendant, no attachment or submission is necessary.’
- [53] See Herbstein & Van Winsen, *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa*, supra, p107:

‘(a) Interdict

Where an interdict is claimed against a peregrinus, the court will have jurisdiction if, in the case of a mandatory interdict, the act is to be carried out in its area, or in the case of prohibitory interdict, the act against which the interdict is claimed is about to be done in its area. A South African court has no jurisdiction in respect of acts performed or to be performed outside of the Republic and cannot entertain applications for interdicts in respect of such acts. This lack of jurisdiction cannot be cured by an attachment. Where a court does have jurisdiction to grant an interdict against a peregrine defendant, no attachment or submission is necessary.’

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