



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 033262/19

REPORTABLE: No
OF INTEREST TO OTHER JUDGES: No
REVISED:
28 December 2022

In the matter between:

TSHIFHIWA PHUMUDZO MAHOSI

First Applicant

MAPULA MAHOSI

Second Applicant

And

AFRIBIZ INVEST COLLIN

First Respondent

TSHIFHIWA MASHAWANE

Second Respondent

TSHILOLO JEFFREY RAMOVHA

Third Respondent

MASHAWANA BROS INVESTMENTS

Fourth Respondent

SHILOLO JEFFREY RAMOVHA N.O.

Fifth Respondent

ZACHARIA RATHIYAYA TSHIKUKUVHE N.O.

Sixth Respondent

LAWRANCE AZWINDINI TSHINETISE N.O.

Seventh Respondent

NETSHITUNGULULWANA ARON MPFARISENI N.O.

Eighth Respondent

MATHALISE PETER NNDVHELESENI N.O.

Ninth Respondent

NNDIVHENI GUMANI EPHRAIM N.O.	Tenth Respondent
TSHIVHAGWAHO MANUEL KWINDA N.O.	Eleventh Respondent
TSHIOLOLI TSHIFHIWA N.O.	Twelfth Respondent
MUDAU GEORGE NKUMELENI N.O.	Thirteenth Respondent
MABANANDA EMMA TSHIPFUMELWI N.O.	Fourteenth Respondent

MULENZHE DEVELOPMENT TRUST **Fifteenth Respondent**

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and uploaded on caselines electronic platform. The date for hand-down is deemed to be 28 December 2022.

Summary: Application to interdict the continuation of the construction of a building on a property in Limpopo and declaring the transfer of the property to the respondents to be *void ab initio*. The respondents raising various points *in limine* including territorial jurisdiction of this Court. The principles governing the issue of jurisdiction restated. This court lacks jurisdiction to entertain the dispute as the property and the cause of action fall outside its territorial jurisdiction.

JUDGMENT

Molahlehi J

Introduction

[1] This is an application in terms of which the applicants seek an order interdicting the construction of a building on the land described as ERF number:

10857 Mulenzhe Thetshelesani street, Nandoni Estate, Limpopo Province (the property).

[2] The applicants further seek an order declaring the property transfer to the first and second respondents to be *void ab initio* and that they remain the property owners. The other order sought by the applicants is to have the respondents evicted from the property.

[3] The applicants' claim in the alternative is for payment of damages in the sum of R576 321,18 by the first, second and third respondents.

[4] The first and second respondents oppose the application and dispute the claim to the ownership of the property by the applicants.

The case of the applicants.

[5] The case of the applicants is that they purchased the property in December 2012 in the sum of R30 000.00 from a certain Makuwa. They bought that property to develop it into a residential one. The development of the property began in 2013. In support of the contention that they purchased the property the applicants attached to their founding papers invoices from the Thulamela Municipality.

[6] The applicants allege that the first and second respondents unlawfully entered the property and took occupation in June 2017. They then enquired from the third respondent, who is the local chief, as to why the respondents had occupied the

property. The chief confirmed that the respondents had taken occupation of the property and had undertaken to reimburse them. Following this discussion, the applicants compiled the invoices for their expenses relating to the property. They gave them to the local chief, who later advised that some of the invoices had gone missing.

The case of the respondents

[7] As alluded to earlier, the respondents opposed the application and raised the following points *in limine*:

- (a) That this court has no jurisdiction to entertain the dispute.
- (b) Mis-joinder and non-joinder.
- (c) That the applicants' claim has prescribed.

[8] In relation to the merits of the dispute, the respondents raised the issue of the dispute of facts.

Principles governing jurisdiction

[9] The first point *in limine* in this matter concerns the jurisdiction of this court to determine the dispute between the parties concerning the immovable property. The other issues will follow if it is to be found that this court does indeed have jurisdiction.

[10] The applicants contend in the founding affidavit that this court has jurisdiction to entertain the dispute because the first, second, and third respondents carry their business within the jurisdiction of this court.

[11] The court's jurisdiction has to do with its powers and authority to determine or resolve disputes between the parties. In this respect, the Supreme Court of Appeal in *Gallo Africa Ltd and Others v Sting Music (Pty) Ltd and Others*,¹ defined "jurisdiction" as "the power vested in a court to adjudicate upon, determine and dispose of a matter".

[12] In *MacDonald & Co Ltd v M & M Products Co*,² the Appellate Division held that the power of the court is "territorial and does not extend beyond the boundaries of, or over subjects or subject-matter, not associated with, the Court's ordained territory."

[13] Section 21(1) of the Superior Courts Act,³ provides:

"21(1) A Division has jurisdiction over all person residing in 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 law take cognizance . . ."

[14] *Hebstein and Van Wiensen in Civil Practice of the High Court of South Africa*,⁴ opine that:

¹ 2010 (6) SA 329 (SCA) at para 6.

² 1991 (1) SA 252 (A) at 256G.

³ Act number 10 of 2013

⁴ *Hebstein and Van Wiensen in Civil Practice of the High Court of South Africa*, Vol 1 fifth edition page 77.

"Generally speaking, it may be said that in any action relating to a property, the court within whose territorial jurisdiction the property is situated (the *forum rei sitae*) will have jurisdiction to entertain claims relating to the property."

[15] The learned authors further state that:

"The court within whose territorial limits the property is situated will have exclusive jurisdiction in proceedings involving title to immovable property, including those in which is claimed ownership, possession or a declaration that the property is subject to or free from a real right less than ownership, for example a servitude, claimed by another."

Evaluation

[16] It is common cause in the present matter that the cause of action arose in Limpopo, and the immovable property, which is the sub-matter of the application, is situated in that Province. It follows, therefore, that the provincial or local division of the High Court in Limpopo would have the authority and power to entertain the dispute between the parties.

[17] For the above reason alone, the application stands to fail for lack of jurisdiction.

Order

[18] In the premises, the applicant's application is dismissed with costs.

E Molahlehi

JUDGE OF THE HIGH COURT OF

SOUTH AFRICA, GAUTENG

DIVISION, JOHANNNESBURG.

Representation:

For the applicant: P Rapea of Rapea Attorneys

For the respondents: Adv R Masipa

Attorneys for 1st and 2nd Respondents: Tim Sukazi Incorporated

Attorneys for the 3rd Respondent: TNR Attorneys.

Heard on: 30 August 2022

Delivered: 28 December 2022

