

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates	NO



**IN THE HIGH COURT OF SOUTH AFRICA  
NORTHWEST DIVISION, MAHIKENG**

**CASE NUMBER: M15/2019**

In the matter between:-

**ANDRIES JOHANNES DREYER N.O  
ERICA MARCIA DREYER N.O**

**1<sup>st</sup> Applicant  
2<sup>nd</sup> Applicant**

**(In their capacities as Trustees of the  
DOORNFONTEIN TRUST NO.T144/88)**

and

**STANDARD BANK LIMITED**

**Respondent**

**CORAM: MFENYANA J**

This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date for hand-down is deemed to be **07 February 2024**.

**ORDER**

The application is dismissed with costs.

## **JUDGMENT ON LEAVE TO APPEAL**

### **MFENYANA J**

- [1] The narrow issue for determination in this application for leave to appeal is whether Section 127(8)(a) of the National Credit Act 34 of 2005, ousts the jurisdiction of the High Court in enforcing credit agreements.
- [2] The applicants seek leave to appeal to the Full Court of this Division against a judgment of mine handed down on 17 November 2022. Although the amended notice of application for leave to appeal stipulates that leave to appeal is sought “against the whole of the judgment and orders including the costs order”, and sets out various grounds of appeal, I was later informed that the applicants had abandoned the other grounds of appeal and sought leave to appeal only in respect of the ground stated above.
- [3] The said ground of appeal is crafted as follows:

*“The learned Judge erred in finding that the above Honourable Court’s jurisdiction is not excluded for purposes of proceedings for judgment enforcing the credit agreement.”*

[4] Section 127(8)(a) states:

If a consumer-

*(a) fails to pay an amount demanded in terms of subsection (7) within 10 business days after receiving a demand notice, the credit provider may commence proceedings in terms of the Magistrates’ Courts Act for judgment enforcing the credit agreement.*

[5] The applicants thus contend that the NCA specifically stipulates that the proceedings may be commenced in the Magistrates’ Court, and not in the High Court. This, the applicants attribute to the differences in the judgment procedures of the High Court and the Magistrates’ Court. For this reason, the legislator intended to clothe the Magistrates’ Court with the necessary jurisdiction irrespective of the amount involved in order to protect consumers, which protection is not afforded in terms of the Superior Courts Act, so contended the applicants.

- [6] The Constitutional Court, the Supreme Court of Appeal (SCA), and the high courts have pronounced on this aspect. In *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others*<sup>1</sup> the Constitutional Court dealt with a related question of whether a High Court may decline to adjudicate a matter over which the magistrates' court has jurisdiction. In paragraph 29 the Constitutional Court found that "(t)here is no discretionary power to decline the assumption of jurisdiction over a matter within the jurisdiction of a court."
- [7] A few years earlier in *Standard Bank of South Africa Ltd and Others v Mpongo and Others*<sup>2</sup> (*Mpongo*), the SCA had ruled that a High Court is obliged to entertain a matter falling within the jurisdiction of the Magistrates' Court, by virtue of its concurrent jurisdiction. It held that a finding to the contrary, was not in line with the law, and a ruling that it was an abuse of the of process to bring a matter falling within the jurisdiction of the magistrates' court, to the High Court was unsupportable.

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<sup>1</sup> 2023 (3) SA 36 (CC).

<sup>2</sup> 2021 (6) SA 403 (SCA).

[8] I understand the applicants' case to be that Section 127(8)(a) does not give a party a choice of fora. That is indeed the case. They challenge this court's reliance on *Mpongo* on the basis that *Mpongo* is distinguishable in so far as it pertained to the concurrent jurisdiction of the High Court and the Magistrates' Court. The applicant argue that the jurisdiction of the High Court was not specifically excluded whereas Section 127 proceedings are specifically assigned to the Magistrates' Court. Thus the applicants aver that Section 127(8)(a) ousts the jurisdiction of the High Court. They fell short of arguing that the jurisdiction of the High Court is specifically excluded.

[9] The applicants further place reliance on Section 169 of the Constitution for the proposition that the High Court may decide any constitutional matter except a matter that is assigned to another court of a status similar to the High Court and any other matter assigned to another court by an Act of Parliament. They argue that in the circumstances of the present case, the National Credit Act, being an Act of Parliament assigns matters for the enforcement of credit agreements to the Magistrates' Court, in the form of Section

127(8)(a).

[10] The general rule is that an ouster of the jurisdiction of the High Court cannot be lightly assumed. If such emanates, as the applicants suggest, from a provision of an Act of Parliament, the provision must expressly say so in clear language. A clear example of an ouster is contained in Section 157(1) of the Labour Relations Act which specifically confers exclusive jurisdiction to the Labour Court on all matters to be determined by the Labour Court in terms of the Labour Relations Act. Another example can be found in the Competition Act where Section 62 confers exclusive jurisdiction to the Competition Tribunal and the Competition Appeal Court. In the absence of such express provision, the contention by the applicants is unsustainable.

[11] In *Nedbank Ltd v Mateman and Others; Nedbank Ltd v Stringer and Another*<sup>3</sup>, a decision which was relied on by the respondent, the court noted that generally, there is a strong presumption against the ouster or curtailment of the High Court's jurisdiction. There court went further to state there is also no express provision in the NCA ousting the jurisdiction

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<sup>3</sup> 2008 (4) SA 276 (T).

of the High Court. What the NCA has done, is to create additional jurisdiction for magistrates' courts with regard to the kinds of claims envisaged in the NCA, without ousting the jurisdiction of the High Court. Thus, the applicants' contention that the magistrates' court afford greater protection for the consumer including rearranging the debt their processes, is not equivalent to an ouster.

[12] The rule in interpreting statutory provisions is that in the absence of an express provision or clear implication to the contrary, the curtailment of the powers of court of law is not to be presumed.<sup>4</sup> I posit that in order to reach a conclusion that the legislative provision 'clearly implies' the ousting of jurisdiction, the language employed in the provision must go further, as in the examples cited. There is no such implication in Section 127(8)(a).

[13] I align myself with the sentiments expressed in *Mateman*, that Section 127(8)(a) "does not deal, and was not intended to deal, with the jurisdiction of the High Court or the ousting thereof".

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<sup>4</sup> See in this regard: *Minister of Law and Order and Others v Hurley and Another* 1986 (3) SA 568 (A).

[14] I am of the view that the applicants have not met the threshold set out in Section 17(1)(a) of the Superior Courts Act, which as Plasket AJA (as he then was) clarified in *Smith v S*<sup>5</sup> as follows:

*“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”*

[15] I have dispassionately considered the submissions by the applicants, and I cannot find any reasonable prospect that another court would come to a different finding, or a compelling reason why the appeal should be heard.

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<sup>5</sup> 2012 (1) SACR 567 (SCA).



**Order**

[16] In the result I make the following order:

- i) The application is dismissed with costs.

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**S MFENYANA  
JUDGE OF THE HIGH COURT  
NORTHWEST DIVISION MAHIKENG**

**APPEARANCES:**

**FOR THE APPLICANTS: G MAREE**

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**DATE RESERVED: 01 AUGUST 2023**

**DATE OF JUDGMENT: 07 FEBRUARY 2024**