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

**CASE NO: 2114/20**

**In the matter between:-**

**LUCIA KHUMAGADI MODIRAPULA**

**Plaintiff**

**and**

**PANDELANI PAUL MBEDZI**

**Defendant**

**CORAM: MFENYANA J**

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date and time for hand-down is deemed to be **05 January 2024**.

**Summary:** Request for default judgment – jurisdiction – a judgment granted where the court has no jurisdiction is a nullity.

## **ORDER**

- (1) The application is dismissed.**
- (2) There shall be no order as to costs.**

## **JUDGMENT**

### **Mfenyana J**

- [1] This is an application for default judgment arising from an action for damages flowing from an alleged defamation by the defendant.
- [2] The plaintiff instituted proceedings against the defendant alleging that the latter had defamed her by posting certain statements on the Facebook social media platform, in which he stated that the plaintiff had contributed to the death of her own daughter and accusing the plaintiff of having an affair with one Justice.

- [3] The plaintiff avers that the said statements by the defendant were wrongful and defamatory and were made with the intention to defame the plaintiff and injure her reputation. She claims an amount of R600 000 for damages consequent upon injury to her reputation.
- [4] Having been served with the summons on 20 January 2022, the defendant did not enter appearance to defend. At the outset it must be stated that while the defendant filed a document it terms “the answering affidavit”, this is not a notice of intention to defend within the meaning and contemplation of the Rules.
- [5] In the particulars of claim the plaintiff states that the defendant resides at Strubensvale in Springs.
- [6] The proceedings were instituted by the plaintiff in this Division, on the premise that this Court has the necessary jurisdiction over the matter, as the plaintiff resides within the area of jurisdiction of this Court.

[7] It is thus apposite to first deal with the issue of jurisdiction, as it has a bearing on the merits of the matter. To be precise, a finding that this Court has no jurisdiction is fatal to the plaintiff's claim.

[8] It is trite that a court can only adjudicate a dispute over which it has jurisdiction. In *Gallo Africa Ltd v Sting Music (Pty) Ltd*, Harms DP explained the issue of jurisdiction thus:

*'[O]ur courts have for more than a century interpreted it to mean no more than that the jurisdiction of the High Court is to be found in the common law. For the purposes of effectiveness, the defendant must be or reside within the area of jurisdiction of the court... Although effectiveness "lies at the root of jurisdiction" and is the rationale for jurisdiction, "it is not necessarily the criterion for its existence". What is further required is a ratio jurisdictionis. The ratio, in turn, may, for instance, be domicile, contract, delict, and, relevant for present purposes, racione rei sitae. ... ."*

[9] In the present case, the defendant is a *peregrinus* of the NorthWest Division but an *incola* of the Gauteng Division. This much is evident from the particulars of claim, where the plaintiff

states that the defendant resides in Strubensvale, Springs which is within the area of jurisdiction of the Gauteng Division.

[10] The plaintiff claims the jurisdiction of this Court on the basis that she is resident within its area of jurisdiction. That submission is misplaced as the court does not found jurisdiction on that basis but on whether the defendant resides within that court's area of jurisdiction, or whether the cause of action arose thereat. It is also not alleged by the plaintiff that the cause of action arose within this e area of jurisdiction of this Court.

[11] The law pertaining to the jurisdiction of the court is well established, that a judgment granted in circumstances where the court lacks jurisdiction, is a nullity. As early on as 1883, in *Willis v Cauvin*<sup>1</sup> our courts recognised that a judgment where the court has no jurisdiction is of no force or effect. This approach was endorsed in later decisions and in 1904, Mason J (with Innes CJ and Bristowe J concurring) observed in *Lewis & Marks v Middel*<sup>2</sup>:

*"[T]he authorities are quite clear that where legal proceedings are initiated against a party, and he is not*

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<sup>1</sup> 4 NLR 1883.

<sup>2</sup>1904 TS 291.

*cited to appear, they are null and void; and upon proof of invalidity the decision may be disregarded, in the same way as a decision given without jurisdiction, without the necessity of a formal order setting it aside.”<sup>3</sup>*

[12] This approach remains in place and has been cited with approval by the Supreme Court of Appeal in *Travelex Limited v Maloney and Another* <sup>4</sup>, and in *The Master of the High Court (North Gauteng High Court, Pretoria) v Motala NO & Others*.<sup>5</sup>

[13] I align myself with the decisions cited in the preceding paragraphs. This Court lacks the jurisdiction to entertain this matter.

[14] As to the question whether or not a specific court has jurisdiction, in civil matters the court with jurisdiction must either be the court in which the cause of action arose, or the court which has geographical jurisdiction over the area in which the defendant resides. Absent any allegation that the defendant is ordinarily resident within the jurisdiction of this court, or that the cause of action either wholly, or in part arose within its jurisdiction, this Court has no jurisdiction over this matter.

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<sup>3</sup>Paragraph 303.

<sup>4</sup>(823/15) ZASCA 128 27 September 2016.

<sup>5</sup>(172/11) [2011] ZASCA 238 (1 December 2011).

[15] It seems to be the case in the present proceedings that the default judgment sought by the plaintiff is not competent for the foregoing reasons. It consequentially follows that any resultant judgment that could be obtained by the plaintiff in these circumstances, would be ineffectual and null and void.

[16] With regard to costs, it cannot be said that any prejudice has been suffered by the defendant in the circumstances. The matter is not defended and thus the defendant cannot claim to have been put out pocket by the plaintiff's action. The application falls to be dismissed for lack of jurisdiction.

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

- (1) The application is dismissed.**
- (2) There shall be no order as to costs.**

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S MFENYANA  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
NORTHWEST DIVISION, MAHIKENG

**Appearances:**

On behalf of the Plaintiff : D C Kruger  
Instructed by : DC Kruger Attorneys  
Email : [amandakruger@telkomsa.net](mailto:amandakruger@telkomsa.net)

On behalf of the Defendant : No appearance

Reserved : 11 April 2023  
Handed down : 05 January 2024