



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
**JUDGMENT**

**Reportable**

Case no: 159/2023

In the matter between:

**MAGDALENA JOSINA VORSTER**

**APPELLANT**

and

**CLOTHING CITY (PTY) LTD**

**RESPONDENT**

**Neutral citation:** *Vorster v Clothing City (Pty) Ltd* (159/2023) [2024] ZASCA 53  
(19 April 2024)

**Coram:** MOKGOHLOA, NICHOLLS and HUGHES JJA and  
SEEGOBIN and MBHELE AJJA

**Heard:** 11 March 2024

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 19 April 2024.

**Summary:** Jurisdiction – Magistrates’ Court Act 32 of 1944 (the Act) – whether a claim for damages falls within the monetary jurisdiction of the magistrates’ courts – s 29(1)(g) sets the jurisdictional limit of the value of the subject matter in dispute – s 37(2) applicable.

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## ORDER

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**On appeal from:** Eastern Cape Division of the High Court, Makhanda (Mjali J and Mqumse AJ, sitting as court of appeal):

1. The appeal is upheld with costs.
2. The order of the high court is set aside and substituted with the following:
  - ‘1. The appeal against the order of the regional court is upheld.
  2. The defendant’s special plea is dismissed with costs.
  3. The plaintiff’s action is referred to the regional court for the determination of damages.’

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## JUDGMENT

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**Nicholls JA (Mokgohloa and Hughes JJA and Seegobin and Mbhele AJJA concurring):**

[1] This appeal concerns the monetary jurisdiction of the magistrates’ court in terms of the Magistrates’ Court Act 32 of 1944 (the Act). The oft repeated phrase is that the magistrates’ courts are creatures of statute and have no jurisdiction beyond that provided for in the enabling statute. However, this does not mean that one has to ‘give those powers such a restrictive interpretation as to practically, in many cases lead to a miscarriage of justice.’<sup>1</sup>

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<sup>1</sup> *Rex v Boon* 1913 TPD 12 at 14.

[2] The issue for determination is whether a claim for damages falls within the monetary jurisdiction of the magistrates' courts, which at the time was a maximum amount of R400 000. The Regional Court of the Eastern Cape, Port Elizabeth (the regional court) found that it did not. This was confirmed by the full bench of the Eastern Cape Division of the High Court, Makhanda (the high court). Special leave to appeal was granted by this Court.

[3] The facts of this case are briefly as follows. In September 2015, the appellant, Ms Magdalena Josina Vorster (Ms Vorster), fell and injured herself while shopping in the business premises of the respondent, City Clothing (Pty) Ltd (City Clothing). Pursuant thereto, she claimed delictual damages against City Clothing out of the regional court. In her initial particulars of claim, the quantum of Ms Vorster's claim was R255 856.40. Before the trial commenced, the merits were settled on a 75/25 basis in her favour. The settlement agreement was made an order of court and the issue of quantum was postponed to a later date. The order reads as follows:

- ‘1. Defendant concedes the issue of negligence on a 75/25% basis.
2. Quantum and causality to be postponed *sine die*.’

[4] Before the hearing on quantum Ms Vorster effected an amendment to her particulars of claim, increasing the quantum of her claim from R255 856.40 to R531 225.02 less the 25% apportionment. This resulted in a total claim by Ms Vorster of R398 418.77. City Clothing did not object to the amendment which was duly perfected. It filed a consequential amendment to its plea and did not raise monetary jurisdiction as an issue. However, a month and a half later, City Clothing filed a notice to amend its plea, solely to introduce a special plea that the amount of R531 225.02 exceeded the R400 000 monetary jurisdiction of the regional court. In

her replication, Ms Vorster responded that after the apportionment was taken into consideration, the amount fell within the jurisdiction of the regional court.

[5] The matter proceeded in the regional court only in respect of the special plea. The magistrate found that Ms Vorster had the option to abandon part of her claim to bring it within the jurisdiction of the regional court, but instead she made a deliberate choice to persist with a claim which exceeded the jurisdiction. The magistrate upheld the special plea and found that it was a ‘declinatory plea’ with respect to jurisdiction which, if upheld, brings an end to the action.

[6] An appeal to the high court was dismissed with costs. The high court was of the view that Ms Vorster had taken it upon herself to apportion her claim, thus usurping the function of the court. It was only once the quantum of damages had been proven could the apportionment of 75/25% be applied, said the high court. It held that if a portion of an indivisible claim exceeded the monetary jurisdiction, then the whole claim was beyond the jurisdiction of the regional court. For this it relied on *Jones v Williams*.<sup>2</sup>

[7] The crucial time to determine whether a court has jurisdiction to entertain a matter is at the time when the action commences. This is even so where the plaintiff is responsible for the removal of jurisdiction.<sup>3</sup> Once a court is seized with jurisdiction, it retains that jurisdiction until the matter is concluded.<sup>4</sup> The high court considered this argument but distinguished this matter on the basis that once the quantum was amended the quantitative jurisdiction would have to be re-considered.

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<sup>2</sup> *Jones v Williams* 1911 TPD 536.

<sup>3</sup> *Balfour v Balfour* 1922 WLD 133; *Strydom v Strydom* 1945 (1) PH B32 (WLD).

<sup>4</sup> *Coin Security Group (Pty) Ltd v Smit NO and Others* 1992 (3) SA 333 (AD); [1992] 2 All SA 122 (A) at 344 A.

It also held that it was of no moment that City Clothing did not immediately raise jurisdiction as an objection when Ms Vorster first filed her amended particulars of claim increasing the quantum. It stated that it would be absurd for the court to ‘turn a blind eye on the issue of jurisdiction well aware that it has a bearing on its competence to deal with such a matter.’

[8] In refusing leave to appeal to this Court, the high court found that the application was based on ‘a misconstrued interpretation of the relevant provisions’, as Ms Vorster had taken it upon herself to apply the 25% apportionment before damages were even proven.

[9] The monetary jurisdiction of the magistrates’ court is dealt with in ss 29(1)(g)-(1A) of the Act, which provides:

‘(1) Subject to the provisions of this Act and the National Credit Act 34 of 2005, a court shall have jurisdiction in....

(a) . . . .

(g) 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.

(1A) The minister may determine different amounts contemplated in section (1)(a),(b),(f) and (g) in respect of courts for districts and courts for regional divisions . . .’

[10] It is undisputed that at the relevant time the value of a claim determined by the Minister, as falling within the jurisdiction of the regional court, was between R200 000 and R400 000. This Court, therefore, has to determine whether ‘the claim or the value of the matter in dispute’ exceeds R400 000. Ms Vorster argues that the high court erred in deciding the jurisdiction on the basis of the total damages as opposed to the damages actually claimed, namely R398 418.77. City Clothing on

the other hand contends that Ms Vorster impermissibly usurped the role of the court by deducting the 25% prior to the court making a determination on the actual quantum. It therefore contends that the only amount this Court can have regard to is R531 225.02, being the amount before the apportionment was applied, which falls outside the monetary jurisdiction of the regional court. In addition, City Clothing contends that the claim is indivisible.

[11] Section 29(1)(g) operates to set the jurisdictional limit of the value of the subject matter in dispute.<sup>5</sup> The starting point is the pleadings – jurisdiction is always determined with reference to the pleadings.<sup>6</sup> The test is the amount claimed. A line of cases dating as far back as 1913, have consistently held that in order to determine whether the claim or the matter in dispute fell within the jurisdiction of the magistrates' court (in terms of the relevant proclamation), the court has to simply look at the prayer. If the prayer was for an amount under the prescribed amount, then it fell within the jurisdiction of the magistrates' court.<sup>7</sup> Therefore the sole test is the amount claimed.

[12] In this instance, the amended prayer reads as follows:

‘Wherefore the plaintiff claims:

- (a) Payment of the sum of R398 418.77 for damages as aforementioned;
- (b) Interest on the aforesaid amount, calculated at the prevailing legal rate of 9% per annum as from a date fourteen (14) days from Judgment to date of payment;
- (c) Costs of suit;
- (d) Further and/or alternative relief.’

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<sup>5</sup> *Botha v Andrade and Others* [2008] ZASCA 120; 2009 (1) SA 259; [2009] 1 All SA 436 (SCA) para 15

<sup>6</sup> *Chirwa v Transnet Limited and Others* [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC) para 169; *Baloyi N.O. and Others v Pawn Stars CC and Another* [2022] ZACC 10; 2022 (12) BCLR 1431 (CC) para 25.

<sup>7</sup> *Jackson & Co., v Eggeling* 1913 TPD 403 at 406.

[13] In *Van der Merwe v Van der Merwe*<sup>8</sup> Corbett J, dealt with the ‘value’ of immoveable property in terms of s 29(1)(a) of the Act. He held that the value was the actual market value of the property at the time of the commencement of the action, even though this may fluctuate from time to time. This was the appropriate time to determine the jurisdiction of the magistrates’ court otherwise ‘serious anomalies and absurdities’ could arise in a particular case.<sup>9</sup> The court re-iterated that it is the value of the claim and only that value which determines whether jurisdiction will be conferred upon the magistrates’ court.<sup>10</sup>

[14] From the prayer alone, it is clear that the value of the claim falls within the jurisdiction of the regional court, as the amount claimed is R398 481.77, falling below the R400 000 threshold. The fact that a greater amount has to be determined by the magistrate does not detract from this or have the effect of ousting jurisdiction. Insofar as the regional court may have to have regard to a greater quantum before arriving at the amount claimed, this is dealt with in s 37, a section which the high court erroneously found had no application.

[15] Section 37 provides:

‘(1) In actions wherein the sum claimed, being within the jurisdiction, is the balance of an account, the court may enquire into and take evidence if necessary upon the whole account, even though such account contains items and transactions exceeding the amount of the jurisdiction.

(2) Where the amount claimed or other relief sought is within the jurisdiction, such jurisdiction shall not be ousted merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond the jurisdiction.

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<sup>8</sup>*Van der Merwe v Van der Merwe* 1973 (1) SA 436 (C).

<sup>9</sup> Ibid at 440 B-D.

<sup>10</sup> Ibid at 339 G-H.



(3) In considering whether a claim is or is not within the jurisdiction, no prayer for interest on the principal sum claimed or for costs or for general alternative relief shall be taken into account.’

[16] Section 37(2) permits the court to give a finding beyond its jurisdiction if it is necessary to reach its decision on the matter before it but only if the ‘relief sought is within [its] jurisdiction’.<sup>11</sup> This section serves the purpose of permitting magistrates to have regard to issues which are relevant to the matter before them, which would otherwise not fall within their jurisdiction. The fact that the court may have to inquire into far larger sums, and into complicated accounts worth far more, is irrelevant as long as the value of claim in dispute does not exceed the monetary jurisdiction of the magistrates’ court or regional court.

[17] In this matter, the regional court will have to investigate whether the quantum of R531 225.02 has been proven. But this is not the amount claimed, only 75% has been claimed. The apportionment of 75/25% has already been made an order of court. In these circumstances, it is difficult to understand why is it, by reducing the quantum by 25%, that Ms Vorster has usurped the role of the court. This argument could only hold water where the court had not ordered apportionment. Whatever damages Ms Vorster will finally prove, this quantum will have to be reduced by 25%. But the regional court can never grant an order for more than the amount claimed, namely, R398 481.77. Thus the quantum will always remain within its jurisdiction.

[18] Insofar as the high court relied on *Jones v Williams* to hold that Ms Vorster’s claim was indivisible, this was misplaced. That matter dealt with an action where

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<sup>11</sup> See *Ntshingila and Others v Minister of Police* [2011] ZAWCHC 12; 2012 (1) SA 392 (WCC) para 32 where the dictum in *Tshisa v Premier of the Free State* 2010 (2) SA 153 para 10 is quoted with approval.

the plaintiff had claimed an amount in damages and specific performance. The monetary claim against the defendant was for wrongfully diverting stormwater on his land with a separate amount for trespassing on his land and breaking down the barrier he had erected to keep the stormwater out. The claim for specific performance was an ‘order condemning the defendant to substantially block up the outlet made by him aforesaid forthwith’.<sup>12</sup> The defendant excepted to the summons on the grounds that the second claim was beyond the jurisdiction of the magistrates’ court. The magistrate refused to allow the plaintiff to abandon that claim at the hearing. The court found that the second claim was one *ad factum praestandum* which did not fall within the jurisdiction of the magistrates’ court. Because this was so, the court found that the entire claim was beyond the jurisdiction of the magistrates’ court. It is not apparent how *Jones v Williams* would have any bearing on the present matter. Here, there is only one claim for a monetary amount in damages.

[19] There is no doubt that the value of Ms Vorster’s claim is R398 481.77. This falls within the ambit of s 29(1)(g) read together with s 37(2). In any event, to non-suit Ms Vorster on these grounds would amount to a miscarriage of justice.

[20] In the result the following order is made:

1. The appeal is upheld with costs.
2. The order of the high court is set aside and substituted with the following:
  - ‘1. The appeal against the order of the regional court is upheld.
  2. The defendant’s special plea is dismissed with costs.
  3. The plaintiff’s action is referred to the regional court for the determination of damages.’

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<sup>12</sup> *Jones v Williams* 1911 TPD 536 at 538.

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C E HEATON NICHOLLS  
JUDGE OF APPEAL

## Appearances

For the appellant: N Paterson (with him A White)

Instructed by: Raymond Bojanic & Associates, Gqeberha  
Hendre Conradie Inc, Bloemfontein

For the respondent: M Rodrigues

Instructed by: Palm and Hollander Attorneys, Rooderpoort  
Bezuidenhout Inc, Bloemfontein