



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

The Standard Bank of SA Ltd and Others v Thobejane and Others (38/2019 & 47/2019) and The Standard Bank of SA Ltd v Gqirana N O and Another (999/2019) [2021] ZASCA 92 (25 June 2021).

Today the Supreme Court of Appeal (SCA) handed down a judgment upholding the appeals against the Gauteng Division of the High Court, Pretoria and the Eastern Cape Division of the High Court, Grahamstown with no orders of costs.

In both the Gauteng and Eastern Cape Divisions of the High Court, the Judges-President posed questions to Full Courts about whether those courts had the power to refuse to hear matters that were within their jurisdiction when such matters were also within the jurisdiction of the Magistrates' Court. The enquiry was prompted by the idea that defendants were prejudiced by being sued in the High Court rather than a Magistrates Court because of having to travel further to court than the, supposedly, nearby magistrates court and because legal costs were higher in the High Court etc. It was also a concern that matters that could have been sued out of the Johannesburg seat of the High Court were instead sued out of the Pretoria seat burdening the Latter Court's rolls.

The Gauteng Court held that suing in the High Court for a sum that was within the Magistrates' Court jurisdiction was an abuse of the process and a violation of s 34 of the Constitution which guarantees access to a court to address a dispute over any legal right. To remedy this abuse, the Gauteng Court ordered that no matter that could be brought in the Magistrates' Court could be sued out of a High Court and no matter that could be brought in Johannesburg seat of the High Court could be brought in Pretoria seat. However, it held that in exceptional circumstances, if a matter was of such a nature that it was more appropriate that a High Court hear it, an application to get leave to do so should be made to the relevant High Court before issuing summons.

The SCA held that a court has no power to refuse to hear a matter within its jurisdiction. The SCA rejected the idea that it was an abuse of the process to choose to sue in the High Court when the Magistrates' Court also had jurisdiction. It held that such a choice could not be an abuse because the law gave a plaintiff or applicant exactly that right. A court could not, pursuant to its inherent jurisdiction, overturn that right. The inherent jurisdiction of a High Court to regulate and protect its process was available to address acts that exploited the process for improper purposes, but to exercise a right to choose a court of jurisdiction could not constitute such an abuse. s

34 of the Constitution was not infringed as it did not go further than to guarantee that there must be a court that could hear any claim about a right.

The Eastern Cape Court held that the National Credit Act 34 of 2005 (NCA), properly interpreted, excluded the jurisdiction of the High Court in all matters that were regulated by the NCA. However, it also held that in exceptional cases a High Court could hear such a matter. The SCA examined the provisions of the NCA and concluded that not only did the NCA not reserve jurisdiction to the Magistrates' Court but that there were several provisions that indicated plainly that the High Court has concurrent jurisdiction. The threshold to oust the jurisdiction of the High Court is high and there was no cogent reason to justify an inference that it had been ousted.

In the result, the SCA declared that:

1. The High Court must entertain matters within its territorial jurisdiction that fall within the jurisdiction of a Magistrates' Courts, if brought before it, because it has concurrent jurisdiction with the Magistrates' Court;
2. The High Court is obliged to entertain matters that fall within the jurisdiction of a Magistrates' Court because the High Court has concurrent jurisdiction;
3. The main seat of a Division of a High Court is obliged to entertain matters that fall within the jurisdiction of a local seat of that Division because the main seat has concurrent jurisdiction;
4. There is no obligation in law on financial institutions to consider the cost implications and access to justice of financially distressed people when a particular court of competent jurisdiction is chosen in which to institute proceedings;
5. There is no order as to costs.

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