IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case no: 2581/2021

In the matter between:

HERMANUS JOHANNES VAUGHN VICTOR	First Applicant
MARIA MAGRIETHA CATHERINA VICTOR	Second Applicant

and

RICHARD KEAY POLLOCK N.O.	First Respondent
MOHAMMED YASEEN KHAMISSA N.O.	Second Respondent
LINDIWE FLORENCE KAABA N.O.	Third Respondent
THE SHERIFF, WEPENER	Fourth Respondent
THE SHERIFF, PRETORIA EAST	Fifth Respondent
THE MASTER OF THE HIGH COURT, BLOEMFONTEIN	Sixth Respondent
VAUGHN VICTOR	Seventh Respondent

JUDGMENT BY: REINDERS, J

HEARD ON: 4 NOVEMBER 2021

DELIVERED ON: 9 FEBRUARY 2022

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[1] On 17 July 2020 the applicants brought this application on an urgent basis before my sister Van Zyl J for *inter alia* the following relief:

> "2. That execution of the Court order under case number 11/2019 and the writs of execution issued on 14 July 2020 in respect of the taxed bill of costs in the Magistrate's Court for the district of Wepener be stayed, pending the finalisation of the application under case number 1238/2020;
>
> 3. Alternatively, that the writs of execution issued on 14 July 2020 under case number 11/2019 be set aside;
>
> 4. That the Fourth and Fifth Respondents be ordered to immediately return and restore possession to the Applicants all movable assets that were attached and removed by the Respondents in terms of the above writs of execution; ..."

[2] The application was opposed by the first, second and third respondents (hereafter the respondents). Having found that the applicants failed to make out a proper case for urgency, the matter was removed from the role with subsequent cost orders.

[3] At the commencement of the proceedings before me, there was a dispute between the parties as to whether one of the points raised *in limine* by the respondents, to wit this court's jurisdiction to hear the application, had already been decided by Van Zyl J. Suffice to say that in my view this issue still needed to be adjudicated by me and I ordered counsel to proceed only in this respect.

[4] The background to the application was summarised by Van Zyl J in her judgment on urgency, and I take the liberty of quoting it verbatim:

> "On 8 November 2019 the Magistrate of the Magistrate's Court for the district of Wepener, pursuant to an application in terms of section 69(1) and (2) of the Insolvency Act, 24 of 1936, granted an order under case number 11/2019 in

favour of the respondents against the applicants and the seventh respondent. The Magistrate also granted costs in favour of the respondents. (In the said application the present respondents were the applicants and the applicants and the seventh respondent were the three respondents.)

On 11 March 2020 the applicants filed an application in this court (High Court) under case number 1238/2020 to review and set aside the order granted under case number 11/2019 in the Magistrate's Court, Wepener.

On 26 May 2020 the respondents filed a notice of taxation pursuant to the said order of costs in favour of the respondents against the applicants.

Taxation of the costs account occurred on 26 June 2020. The taxing master communicated her ruling regarding costs to the parties on 2 July 2020.

On 14 July 2020 a warrant for execution against property was issued against the applicants (and the seventh respondent) based on the taxed allocations in the total amount of R519 310.86.

According to the applicants the taxation process was highly irregular and constitutes a nullity; alternatively, stands to be set aside."

[5] The applicants proceeded with an application in terms of Rule 35 of the Magistrate's Court Rules to review the said taxation, but same was dismissed on 4 June 2021. The applicants hereupon instituted Rule 35(3) proceedings and a stated case is currently *sub judice*. Likewise, the application under case number 1238/2020 to review and set aside the order granted under case number 11/2019, is still pending.

[6] Mr Janse van Rensburg, appearing for the applicants herein, persisted that this court has inherent jurisdiction to hear the matter. He submitted that in fact my sister Van Zyl had already assumed jurisdiction in the matter as she, according

to the argument, made two rulings. The rulings made by her on 22 July 2020 read as follows:

"1. The applicants' application regarding the authority of the deponent to third respondents' answering affidavit, is dismissed, costs to stand over.

2. The applicants' application to strike out certain paragraphs of the first to third respondents' answering affidavit, is dismissed, costs to stand over."

[7] Mr Kloek for the respondents approached the argument as to jurisdiction on a completely different footing. He referred me to the founding papers and submitted that I should assess the jurisdiction to hear the matter in the light of the pleadings. Reliance was placed on the decision of In ***Gcaba v Minister for Security and Others*** 2010 (1) SA 238 CC at para [75] (with reference to ***Chirwa v Transnet Limited and Others*** 2008 (4) SA 367 (CC))

> "Jurisdiction is determined on the basis of the pleadings, as Langa CJ held in Chirwa, and not the substantive merits of the case...**In the event of the Court's jurisdiction being challenged at the outset (*in limine*), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence.** While the pleadings – including, in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the Court to say that the fact asserted by the Applicant would also sustain another claim, cognisable only in another court..."(own emphasis)

See also: ***My Vote Counts MPC v Speaker of the National Assembly*** 2016 (1) SA 132 CC

[8] Mr Kloek invited my attention thereto that simply no allegations are to be found in the founding papers averring that this court has jurisdiction to hear the matter. He pointed out that in the opposing papers respondents relied thereon that a High Court is not obliged to entertain matters falling within the jurisdiction of a Magistrate's Court and that no reasons are to be found in the founding papers as to why the applicants did not approach the appropriate Magistrate's Court where the issues are pending.

[9] It is common cause that sec 62 of the Magistrate's Court Act, 32 of 1944 (as amended) provides for the granting, staying and setting aside of a warrant. It reads as follow:

> "**62 Power to grant or set aside a warrant**
>
> *(1) Any court which has jurisdiction to try an action shall have jurisdiction to issue against any party thereto any form of process in execution of its judgement in such action.*
>
> *(2) A court (in this subsection called a second court), other than the court which gave judgement in an action, shall have jurisdiction on good cause shown to stay any warrant of execution or arrest issued by another court against a party who is subject to the jurisdiction of the second court.*
>
> *(3) Any court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by itself, including an order under section seventy-two."*

[10] My attention was drawn by Mr Kloek to the replying affidavit where the applicants state, ostensibly in an attempt to convince me to assume jurisdiction, the following:

> "It is abundantly clear that the Magistrate's Court, Wepener, and more specifically the Presiding Magistrate, Magistrate Moos, was implicated

in the conduct that the Applicants complain about regarding the irregular taxation of the bill of costs.

I am advised that it would serve absolutely no purpose to approach the Magistrate's Court, Wepener, with an application in terms of Rule 35 of the Magistrate Rules in respect of the conduct of its own Magistrate."

[11] The quoted paragraph is in my view of no assistance to the applicants since it does not have a bearing upon sec 62 for the relief that the applicants can seek in the Magistrate's Court but are now seeking from this court. On careful scrutiny of the applicants' papers I could not find any specific allegations as to why this court has jurisdiction to entertain the matter. Most definitely Van Zyl J did not make such a finding nor is such a ruling contained in any of the orders that she made. The orders to which I was referred to simply constituted procedural rulings and do not support the contentions as to jurisdiction as I was urged to find by applicants' counsel.

[12] The only reason why this court could have jurisdiction is not relied upon explicitly by the applicant in its papers. In this respect I refer thereto that the matter emanates from the Magistrate's Court in Wepener which is a Magistrate's Court falling within the jurisdiction of this court.

[13] The inherent jurisdiction of a High Court to hear matters before it, has been enshrined in sec 173 of the Constitution. In **Oosthuizen v Road Accident Fund** 2011 (6) SA 31 (SCA) by mouth of Bosielo JA, it was held that sec 173 does not give the High Court carte blanche to meddle in the affairs of inferior courts [at para 18]. Moreover, a High Court may only act in respect of matters over which it already has jurisdiction and not stray beyond the compass of sec 173.

[14] Applying the above principles I should remind myself that I do not have carte blanche to meddle or interfere in the affairs of inferior courts which happens to be in the jurisdiction of this court in the absence of facts and circumstances

entitling me to do so and which an applicant must prove. Obviously in my view a High Court will exercise its inherent jurisdiction when justice requires it to do so.

[15] Although applicants stated in the last paragraph of the founding affidavit that they "will suffer a grave injustice if the first to third respondents are allowed to execute prematurely on the court order through the writs of execution, which court order is the subject of a review application, and which causa is clearly in dispute", I have not been convinced that I should assume jurisdiction in view thereof that the relief sought by the applicants can be obtained on good cause shown at the forum where the writs had been issued. Indeed, no reasons are put forward in the founding papers (nor the replying affidavit for that matter) as to why the applicants did not or could not approach the appropriate Magistrate's Court.

[16] The respondents quite correctly in my view disputed in the circumstances that I have jurisdiction or should assume jurisdiction to hear the matter. It follows that the application due to the lack of this court's jurisdiction, stands to be struck from the roll.

[17] Wherefore I make the following order:

The application is struck from the roll with costs.

C. REINDERS, J

On behalf of the Applicants	Adv F G Jansen van Rensburg Instructed by: Willers Attorneys BLOEMFONTEIN
On behalf of the First, Second and Third Respondents:	Adv J W Kloek Instructed by: Jooste Pieters Inc c/o MDP Attorneys BLOEMFONTEIN