THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Case No: 578/2007

NICO BOTHA **Appellant**

and

ESMERELDA ANDRADE **1ST Respondent**

JOSE ANDRADE **2ND Respondent**

PALTIMCO CC **3RD Respondent**

VICTON BRICK & BLOCK MANUFACTURING CC **4TH Respondent**

Neutral citation: *Botha v Andrade* (578/2007) [2008] ZASCA 120 (26 September 2008)

Coram: CAMERON, MTHIYANE, LEWIS JJA, BORUCHOWITZ and KGOMO AJJA

Heard: 9 SEPTEMBER 2008
Delivered: 26 SEPTEMBER 2008

Summary: **Magistrates' courts' jurisdiction to grant an interdict under s 30(1) of the Magistrates' Courts Act 32 of 1944 ('the Act') is limited by s 29(1)(g) of the Act which sets a monetary limit on the value of the matter in dispute.**

ORDER

On appeal from: High Court, Eastern Cape (Goosen AJ and Pickering J sitting as a court of appeal)

1 The appeal succeeds with costs and the orders granted by the magistrate are reinstated. The order of the court a quo is set aside and replaced with an order that the appeal is dismissed with costs.

JUDGMENT

MTHIYANE JA (CAMERON, LEWIS JJA, BORUCHOWITZ and KGOMO AJJA concurring):

[1] This appeal is concerned with the extent to which the jurisdiction of the magistrates' court to grant an interdict under 30(1) of the Magistrates' Court Act 32 of 1944 ('the Act') is limited by s 29(1)(g) of the Act, which sets a monetary limit on the value of the subject in dispute.

[2] The appellant, an owner of a small farm in Twee Rivieren in the district of Joubertina, obtained a prohibitory interdict in the magistrates' court restraining the first two respondents, owners of a neighbouring farm and two close corporations which they control and which conduct industrial operations on it, from committing certain unlawful activities associated with the conduct of a sawmill business and a brick making business on their property. The appellant's complaint was in relation to an alleged nuisance and the usage of the farm contrary to the municipal zoning of the property under the town planning scheme.

[3] The appellant purchased the farm intending that he and his fiancé would retire there to conduct a small farming operation. The farm was chosen not only because of its location in a peaceful and tranquil area but also because it had rights to water drawn from a water furrow that traverses it and that of the individual respondents' property (which I shall refer to as the respondents' farm).

[4] Shortly after taking occupation the appellant's dream of a peaceful retirement was dissipated (according to his affidavits) when he and his fiancé found themselves afflicted by constant noise from a sawmill operating on the respondents' farm. The noise came from industrial wood saws that were operated from early in the morning until 9pm on weekdays and even on Saturdays and Sundays. In addition, heavy vehicles delivering and moving logs also added their share of constant noise disturbance. Sawdust and wood waste from the sawmill operation were being stockpiled on the respondents' farm resulting in dust pollution onto the appellant's farm, thus creating a potential fire hazard.

[5] The appellant's further complaint related to the respondents' failure to maintain the water furrow resulting in the pollution of the water which the appellant draws from the furrow.

[6] The appellant's pleas for assistance to the Koukamma Municipality yielded no meaningful response. The local authority advised him that the first respondent had applied for the rezoning of the property in order to operate the sawmill business and that the application had been conditionally approved. The approval was subject to conditions that included (i) the erection of a 2.4m fence; (ii) the limitation of industrial activity on the western side of the property; and (iii) the submission of an

environmental and health assessment report to the local authority. None of these conditions were complied with, yet the unlawful activities continued unabated. The appellant consequently applied for a prohibitory interdict in the magistrates' court.

[7] In their opposition the respondents raised two points in limine. First, they pleaded non-joinder of the parties who have a substantial interest in the matter such as the municipality and employees of the sawmill business and the brick-making business. Second, they challenged the jurisdiction of the magistrates' court to determine the matter. Only the latter issue is relevant to the present appeal. The respondents contended that the magistrate had no jurisdiction to grant the interdict in that the value of the matter in dispute was in excess of the R100 000 jurisdictional limit of the magistrates' court. The respondents contended that section 29(1)(g) of the Act, which sets the jurisdictional limit at R100 000, was applicable and adduced evidence which established that the sawmill business generated a net annual profit of more than R180 000, and that the brick-making business had a monthly turnover of approximately R100 000.

[8] The points in limine were dismissed by the magistrate at Joubertina who held that s 29(1)(g) was not applicable to an application for an interdict under s 30(1) of the Act because s 29(1)(g) referred to 'actions' and not 'applications'. Consequently, the magistrate concluded that he had jurisdiction in the matter and granted the application for a prohibitory interdict in the appellant's favour.

[9] The respondents appealed successfully to the Eastern Cape High Court. The court held that s 29(1)(g) was applicable to an application for

an interdict under s 30. The court held that since the value of the matter in dispute was in excess of R100 000, the plea of lack of jurisdiction was sound and ought properly to have been upheld by the magistrate. The order granting the interdict was set aside and replaced with an order dismissing the application with costs.

[10] The appellant now appeals to this court with the leave of the court a quo. The central issue for decision is the inter-relation between the magistrate's jurisdiction to grant an interdict under s 30(1) and s 29(1)(g) of the Act. The respondents were not represented in argument before us.

[11] It is convenient to quote the relevant sections at the outset. Section 30 of the Act provides as follows:

'30 Arrests and Interdicts

(1) Subject to the limits of jurisdiction prescribed by this Act, the court may grant against persons and things orders for arrest *tanquam suspectus de fuga*, attachments, interdicts and *mandamenten van spolie*.' (Emphasis added)

[12] Section 29(1)(g) provides as follows:

'29 Jurisdiction in respect of causes of action

(1) Subject to the provisions of this Act and the National Credit Act, 2005, the court in respect of causes of action, 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*.' [ie R100 000] (Emphasis added)

[13] The wording of the two sections is clear and unambiguous and the ordinary meaning of the words ought to be given effect. On a proper reading of s 30(1) of the Act it is clear, I think, that the magistrate's

power to grant the interdict is circumscribed. The section provides that a magistrate may grant certain orders including interdicts, subject to the limits of jurisdiction prescribed by the Act. The search for the 'limits' referred to in s 30(1) leads one inevitably to ss 28 and 29 of the Act and the conclusion is, to my mind, unavoidable that the qualification 'subject to the limits of jurisdiction prescribed' by the Act is a reference to s 29 (relating to the limits of jurisdiction in respect of matters referred to in the section). (See *Mans v Marais*;[1] *Sellars NO v Grobler NO*;[2] *Badenhorst v Theophanous*.[3]) We are not concerned in this case with s 28 of the Act which relates to jurisdiction in relation to persons.

[14] The approach adopted by Goosen AJ in the court below, where he discusses the interrelationship between ss 28, 29 and 30, cannot be faulted. The magistrate's conclusion that s 29 was inapplicable to the grant of an interdict under s 30(1) because s 29(1)(g) refers to 'actions', is clearly incorrect. It seems to me that the two sections (30 and 29) complement each other and where the limit of the magistrate's jurisdiction are required to be determined in interdict proceedings, in so far as the value of the matter in dispute is concerned, the two sections ought to be read together. Section 29 speaks to the value of the matter in dispute and s 30 limits the jurisdiction of the magistrate's court to the limit set out in s 29, which at the present moment by regulation is fixed at R100 000. In my view, this accords with the limitation placed on the magistrates' courts' jurisdiction as a creature of statute. To follow the approach adopted by the magistrate, which in effect places no jurisdictional limit at all on interdict orders granted in that court, cannot be correct, and would result in the magistrates' court exercising parallel

[1] 1932 CPD 352 at 357.
[2] 1961 (3) SA 583 (T) at 585A-H.
[3] 1988 (1) SA 793 (C) at 797A.

jurisdiction with the high court, a consequence which could never have been contemplated by the legislature.

[15] To hold, as the magistrate did in this case, that s 29 of the Act is not applicable to interdict orders granted under s 30 because s 29 refers to 'actions' displays a lack of appreciation of the interplay between the two sections (ie 29 and 30). In *Mans v Marais* the interplay between the two sections and how they complement each other was neatly illustrated by Gardiner JP, where he rejected a contention similar to the approach adopted by the magistrate to the effect that s 29 applied only to actions. The learned judge said (at 357):

'It is contended that as this section refers throughout to actions, one of the limits upon the magistrate's jurisdiction is that he can try only actions, or matters connected with actions. But is seems to me a fair construction to apply is to say that the "limits" provided by sec. 29 are limits of amount. Actions are not limits, but are the things to which the limits are to be applied. By sec. 29 the limits are applied as actions; by sec. 30 they are applied to arrests, attachments, interdicts and *mandamenten van spolie*. A writ of spoliation cannot be granted by a magistrate's court where the value of property seized exceeds £200; that is the limit by which the magistrate's jurisdiction is confined, whether he is hearing an application for a spoliation order, or is trying an action.'

It follows that s 29(1)(g) is applicable to interdicts granted by the magistrate under s 30, and the section operates to set the jurisdictional limit of the value of the subject matter in dispute and other specific matters referred to in s 29.

[16] The central question this case raises, however, is how to determine 'the value of the matter in dispute'. The issue in dispute between the parties is the alleged nuisance emanating from the respondents' unlawful activities. The abatement of the nuisance is capable of quantification and

so the jurisdictional limits of the magistrates' court can be determined without difficulty. Although the court below correctly identified the issue as being the 'alleged nuisance', it attached value to the businesses rather than the subject matter in dispute, which was the abatement of the unlawful activities. In this regard the court erred. It is that conduct or the cost of the abatement of the unlawful activities to which value had to be attached and not the businesses per se. If the cost of abating the nuisance was in excess of R100 000 the magistrate would clearly have had no jurisdiction in the matter. The respondents simply provided evidence of the yearly profit and monthly turnover of their businesses, which the high court accepted as conclusive in relation to the jurisdictional limits. That was in my view wrong. The question was not, what was the turnover and profit of the businesses creating the offending nuisance? It was, what would be the cost to the respondents of complying with the conditions attached to the provisional municipal permission, so as to abate the nuisance? On this they led no evidence at all.

[17] The difficulties that might arise if the value of the subject matter in dispute is misallocated, as happened in the present matter, are illustrated by Williamson J in *Le Roux v Le Roux*.[4] The learned judge gives an example of a dispute in relation to a domestic helper's room in a block of flats. The judge points out that it would be illogical in those circumstances, and it might lead to absurd results, to determine jurisdiction by reference to the value of the entire block of flats when the dispute relates only to one room. By parity of reasoning the matter in dispute in the present case relates to that component of the case which bears on the unlawful activities giving rise to the nuisance and not the lawful conduct of the business. As already indicated, the abatement of the

[4] 1980 (2) SA 632 (C) at 635A.

nuisance was capable of quantification and (as I shall now show) it was incumbent upon the respondents to prove the cost of abating the nuisance.

[18] The onus was on the respondents to prove that the matter fell beyond the jurisdiction of the magistrates' court. The substantive plea challenging the jurisdiction (*exceptio fori declinatoria*) was raised by the respondents and they accordingly bore the onus of proving the facts upon which their plea was based (*Munsamy v Govender*[5]). What the respondents were required to do in order to abate the nuisance was to erect a 2.4m wall, to limit industrial activity on the western side of the property and to cause an environmental and health assessment report to be compiled and submitted to the local authority. No evidence was placed before the magistrate as to what these steps would cost. Had the respondents proved that it would have cost them more than the jurisdictional limit of R100 000 they might have been able to create a jurisdictional obstacle for the appellant. They failed to do this.

[19] It follows that the appeal must succeed with costs and the order granted by the magistrate reinstated. The order of the court a quo is set aside and replaced with an order that the appeal is dismissed with costs.

KK MTHIYANE
JUDGE OF APPEAL

[5] 1950 (2) SA 622 (N) at 624.

Appearances:

For Appellant:	P E Jooste
	Instructed by: Nel Mentz Inc Humansdorp Honey Attorneys Bloemfontein
For Respondents:	No Appearance
	Landman Steyn & Ellis Humansdorp Lovius Block Bloemfontein