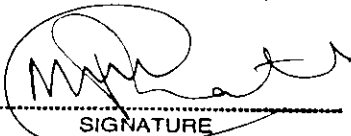


NORTH GAUTENG HIGH COURT, PRETORIA  
REPUBLIC OF SOUTH AFRICA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: <del>YES</del> /NO.	
(2) OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO.	
(3) REVISED.	
30/11/2012. DATE	 SIGNATURE

Case No: 33657/2010

Date heard: 19/11/2012

Date of judgment: 30/11/12

In the matter between:

SIKANDER AMOD HASSAM NO

1<sup>st</sup> Plaintiff

MUNEERA HASSAM NO

2<sup>nd</sup> Plaintiff

MAHOMED RAFIK OSMAN SIDDIE AKOO NO

3<sup>rd</sup> Plaintiff

ABDOOL KADER MOOSA NO

4<sup>th</sup> Plaintiff

FAYYAZ MOOSA NO

5<sup>th</sup> Plaintiff

ASIF MOOSA NO

6<sup>th</sup> Plaintiff

And

SHAUKAT ALLI MOOSA

1<sup>st</sup> Defendant

OSMAN ABDUL LATIFF DADA

2<sup>nd</sup> Defendant

RANAVA INVESTMENTS (PTY) LTD

3<sup>rd</sup> Defendant

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JUDGMENT

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PHATUDI J:

[1] The plaintiffs instituted this action in their capacities as trustees of Sikander Amod Hassam Family Trust IT5929/1982 PMB (Sikander Trust) and Abdool Kader Moosa Family Trust IT5933/1982 PMG (Moosa Family Trust).<sup>1</sup>

[2] At the commencement of trial, the plaintiffs' counsel<sup>2</sup> submits in his opening address that the first, second and third plaintiffs, being the trustees of Sikander Trust and the first defendant have settled their disputes. This resulted in the first, second and third plaintiffs withdrawing their claim in this action. He further places on record that he represents the fourth, fifth, sixth and seventh plaintiffs, who are trustees of Moosa Family Trust and who are pursuing their claim in this action.

[3] The first defendant's counsel<sup>3</sup> applies that the special plea on jurisdiction be heard and determined first. He only holds instruction thereto. He applies that the issue be separated in terms of Rule 33(4) of the Uniform Rules of this court. I ordered separation of the jurisdiction issue from the main application as envisaged in terms of

<sup>1</sup> Page 8 and 9 Pleadings bundle – Particulars of claim.

<sup>2</sup> Adv NZ Cassim SC assisted by Adv D Ramdhani.

<sup>3</sup> Adv A Politis, duly assisted by Ms Moodley.

Rule 33(4). I further ordered that the main application stands to be postponed *sine die* should the special plea be dismissed.

[4] I expressed my concern in the manner in which these proceedings are conducted. It appears to me that the parties did not hold a proper pre-trial conference. The plaintiffs' counsel kept on asking the defendants questions that ought to have been dealt with at the pre trial conference. I even challenged the parties to address me thereto. The plaintiffs' counsel informs me that the defence team present before court is not the ones with whom they held the pre-trial.

[5] Mahomed Rafik Osman Sidd Akoo (Mr Akoo), the third plaintiff, who withdrew the action against the defendant, testifies that the third defendant's auditors are SAB & T whose offices are in Polokwane. He testifies that the first defendant is a nominee shareholder of both Sikander Trust and Moosa Family Trust.

[6] Abdool Kader Moosa (Mr Moosa) testifies that he is the fourth plaintiff. The fifth, sixth and seventh plaintiffs are his sons. He states that the Moosa Family Trust is register in Pietermaritzburg. He

concedes under cross-examination that the prayer sought by the plaintiff does not deal with the transfer of the immovable property owned by the third defendant. He further concedes that the 1<sup>st</sup> defendant lives and resides in Pietermaritzburg.

[7] The first defendants counsel submits that this court has no jurisdiction to hear this action because the first defendant resides in Pietermaritzburg. He further submits that the share agreement was concluded by the parties in Pietermaritzburg. He submits that the third defendant has been added to the proceedings only as an interested party. No real relief is sought against the third defendant save to record the true state of affairs in its share register should the outcome of this case favour the plaintiffs.

[8] He further submits that the claim as sought can be granted by the Kwa Zulu Natal High Court. The order can be enforced on the third respondent irrespective of its jurisdictional location. He states that the transfer of shares be equated with transfer of movables. He states that a share certificate has a *sitis* of where it is found. He states further that the first defendant, as the nominee shareholder, is

regarded as the holder of shares and an agent for the Moosa Family Trust. He submits that the first defendant resides in Pietermaritzburg and holds shares in Pietermaritzburg. He lastly submits that the plaintiff failed to prove the location of the shares and thus failed to prove jurisdiction. None of the witnesses who testified led evidence on the location of the shares. This court cannot assume on the location of the shares.

[9] In rebuttal, plaintiff counsel concedes to a number of submissions made on behalf of the defendant but for section 115 of the Companies Act, Act 61 of 1973, which provides that the 'court may rectify the share register of the company if the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company...'

[10] He submits that notwithstanding non production of the share register, it is assumed that it exist and must be presumed to be in Polokwane, probably in possession of the auditors SAB & T.

[11] He further submits that this court has jurisdiction and refers me to **Els v Weideman and Others 2011 (2) SA 126 SCA** where he

submits the court held that 'the court a quo's finding that it lacked jurisdiction was wrong'

[12] In my evaluation of the evidence tendered and submissions made, I first considered Els case, where the South Gauteng High Court (SGHC) granted Els an interdict prohibiting Huisgenoot and You magazines (edited by Ms Weideman) from publishing an article identifying Els (a singer and well-known personality in South African entertaining world) as a sex abuser. Els instituted contempt of court proceedings in Western Cape High Court (WCC). The application in WCC was dismissed on the ground that the WCC lacked jurisdiction to entertain an application in relation to the alleged contempt. The SCA held that the court a quo's finding that it lacked jurisdiction in respect of the contempt issue was wrong.

[13] In this case, the applicants do not seek enforcement of any court order. The applicants seek '[a] declaratory order that the Abdool Kader Moosa Family Trust IT5933/82 PMB is the owner of one share of the issued share capital and 10% of the loan account registered in the name of the first defendant and the third defendant. 5. That the first defendant be directed to transfer one share and 10% of the loan account which is registered in his

name in the third defendant into the name of Abdool Kader Moosa Family Trust.

6. The third defendant is directed to record the true state of affairs in terms of paragraph 4 and 5 above'.<sup>4</sup> It is clear that the principle set out in Els case is not applicable in this case.

[14] It is common cause that the provisions of section 19(1) (a) of the Supreme Court Act, Act 59 of 1959 do not favour the plaintiffs. Section 19(1)(b), provides that '[a] provincial or local division shall also have jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such provincial or local division has jurisdiction of any other provincial or local division...'

[15] Plaintiff's counsel relies on **Mossgas (PTY) Ltd v Eskom and Another 1995 (3) SA 156 (W)** in his submission that section 19(1) (b) extends the jurisdiction of the court in regard to persons outside the ordinary jurisdiction. He further submits that once the High Court has jurisdiction in an action or proceeding, the sub section can be invoked to join in that cause a defendant not resident within the area of jurisdiction of that court.

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<sup>4</sup> Particulars of Claim page 15 – prayers 4, 5 and 6.

[16] Contrary thereto, the defendant's counsel submits that it could never have been in the contemplation of the legislator to empower a court to have jurisdiction in terms of section 19(1)(b) over a main defendant who is not resident within its jurisdiction by virtue of the consequential joinder of parties against whom no real relief is sought.

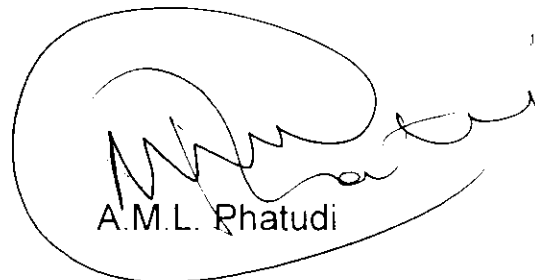
[17] I am persuaded to accept that in this case, the main party (first defendant) against whom the substantial portion of the relief is sought, is not residing within the jurisdiction of this court. This court, in my view, cannot find jurisdiction by virtue of the third defendant against whom no relief is sought. All that is sought against the third defendant is 'to record the true state of affairs' as the court with jurisdiction may order. There is no evidence led of the location of the shares. I am reluctant to presume that the shares are in possession of the auditors in Polokwane. I am further reluctant to assume that the share register exist. This brings me to the conclusion that the special plea stands to be upheld.



[18] It is trite that costs follow the event. The first defendant succeeds with his special plea and is entitled to his costs. There are no submissions in relation to costs of two counsel.

I, in the result, make the following order:

1. The special plea is upheld.
2. This matter is struck off the roll for lack of jurisdiction with costs.

A handwritten signature in black ink, appearing to be 'A.M.L. Phatudi', is written over a large, faint circular stamp or watermark.

Judge of the High Court

On behalf of the plaintiffs:

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Adv. N.Z. Cassim SC

Adv. D Ramdhani

On Behalf of the Defendants:

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Brooklyn  
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Adv. A Politis

Ms Moodley