

Key Considerations for Determining Territorial Jurisdiction in the High Court of South Africa

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INTRODUCTION

Jurisdiction is a critical aspect to any litigation process and determines which court is empowered to hear and adjudicate on a legal dispute. South African law recognises three primary forms of jurisdiction being (1) substantive jurisdiction which is determined by the kind of claim brought before the court, (2) monetary jurisdiction that considers the value of the claim, and (3) territorial jurisdiction which considers the territorial area within which a court may exercise its authority.

Territorial jurisdiction refers to the geographical connection between the court and the legal dispute before it. A court will only exercise its authority where a valid ground for jurisdiction exists within its territorial region. Before instituting proceedings in the High Court, it is essential to identify a recognised jurisdictional link between the matter and the geographical area of a particular court. While jurisdiction may relate to the type or value of a claim, this article focuses specifically on territorial jurisdiction.

RATIO JURISDICTIONIS

The concept of ratio jurisdictionis refers to the existence of a legally recognised link that justifies the court's authority over a legal dispute. The following links are commonly relied upon to establish a jurisdictional link, namely: -

1. The place where the cause of action arose.
2. The residence or registered address of the defendant.
3. The location of the immovable property involved in the dispute.

There must be a jurisdictional link between the dispute and the geographical boundaries of a division of the High Court.

THE PRINCIPLE OF CONVENIENCE

Where multiple jurisdictional links are present in a matter, a court may consider the principle of convenience. This principle recognises that a court may be motivated to assume jurisdiction if it is convenient for it to do so. In contractual matters, convenience often aligns with the place where the contract was concluded (where the cause of action arose), as this is where the essential facts giving rise to the claim have occurred.

CONSENT TO JURISDICTION

Parties may expressly agree to confer jurisdiction on a specific court. Such consent must be clear and unambiguous. Consent clauses are frequently incorporated into commercial agreements and may provide an additional basis for establishing jurisdiction where a suitable territorial link already exists.

IMMOVABLE PROPERTY THAT IS LOCATED OUTSIDE OF THE COURT'S AREA

Where proceedings relate to immovable property, the general rule is that such proceedings should be instituted in the jurisdiction of the court where the property is situated. However, section 42(2) of the Superior Courts Act provides flexibility by enabling a court to command a sheriff of another jurisdiction to attach and sell immovable property located outside its jurisdiction and further permits a court to declare the property as executable, provided that another recognized jurisdictional link exists.

MULTIPLE JURISDICTIONAL POINTS IN CONTRACTUAL MATTERS

A contractual cause of action may occur in more than one territorial area of a specific court, including where the contract was concluded, where performance in terms of the contract is required, or where a contractual breach took place. Where more than one jurisdictional link exists, the plaintiff may select a particular court, often guided by convenience and efficiency.¹

THE PLACE OF CONTRACTUAL CONCLUSION

When a contract is concluded in two jurisdictions, the ordinary contractual principle is that the contract is concluded in terms of where acceptance took place. When signing a written bipartite contract, the first party to sign makes an offer and the other by his or her signature accepts.²

In the case of *Reid v Jeffreys Bay Property Holdings (Pty) Ltd* 1976 (3) SA 134 (C), the seller averred that the cause of action arose wholly within the district of Cape Town magistrates' court. The purchaser signed the agreement in Durban and delivered the agreement to Cape Town for it to be signed by the seller's agent for acceptance and signature. The seller signed the contract in Cape Town. The court had concluded that the Cape Town magistrate's court had jurisdiction. The matter was taken on appeal and the court agreed with the court *a quo* and indicated that the contract had been concluded in Cape Town, the cause of action had therefore arisen wholly within Cape Town's Magisterial District.³

In *Kergeulen Sealing and Whaling Co Ltd v Commissioner for Inland Revenue* 1939 AD 487, the court conveyed that a written contract is concluded in the country where 'the signature of the last necessary party is affixed'⁴. The place where a contract is concluded is significant in determining jurisdiction.

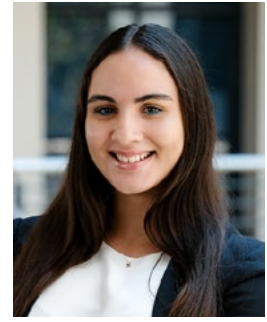
CONCLUSION

To determine whether a division of the High Court has jurisdiction, there must be a recognised link, which may arise from the defendant's residence, the place where the cause of action arose, or the place where the immovable property is situated. When a contract is concluded within the territorial area of a certain court, this creates a jurisdictional link to that court as the cause of action occurred in that area. Where multiple jurisdictional links exist, the plaintiff may choose the court that is most convenient in the circumstances.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis and you should consult an attorney before taking any action contemplated herein.



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¹Theophilopoulos C, van Heerden CM, Boraine A & Rowan A Fundamental Principles of Civil Procedure 4 ed (LexisNexis 2020), consulted at pp 57, 75, 75–76 and 95–96.

²RH Christie & GB Bradfield *Christie's Law of Contract in South Africa* 8 ed (LexisNexis 2022) at 138.

³*Reid v Jeffreys Bay Property Holdings (Pty) Ltd* 1976 (3) SA 134 (C).

⁴*Kergeulen Sealing and Whaling Co Ltd v Commissioner for Inland Revenue* 1939 AD 487 at 503–4.