



COURT JURISDICTION: THE DOCTRINE OF EFFECTIVENESS AND CLAIMS AGAINST A FOREIGN *PEREGRINUS* FOR CLAIMS SOUNDING IN MONEY

13 September 2024

Possibly the most important general principle underlying the jurisdiction of a court in the majority of cases, is the doctrine of effectiveness.

The doctrine of effectiveness is based on the idea that you should not waste a court's time by issuing summons in a particular court, if a court's judgment will not be effective. A judgment that can be enforced is an effective judgment. Usually judgments will be enforced by way of a writ of execution where the sheriff of the court will attach and sell the defendant's property to secure payment (partially or in full) of the judgment.

Where a plaintiff is seeking payment of money based on contract or delict, it will depend on whether the defendant is an *incola* or *peregrinus* of South Africa what grounds of jurisdiction will apply to the claim.

An *incola*, is a person (natural or juristic) *domiciled* or resident within the area of a specific court. A local *peregrinus* is a person *domiciled* or resident outside the jurisdictional area of a specific court but within the Republic of South Africa. A foreign *peregrinus* is a person *domiciled* or resident outside the Republic of South Africa as whole.

If the plaintiff claims a sum of money from an *incola* or a local *peregrinus*, the plaintiff can institute the matter where the defendant resides or the whole cause of action arose.

Where a defendant is a *peregrinus* of South Africa, neither the defendant nor any of its property may be in the country when a judgment is given and would thus render the judgment ineffective.

Where a defendant does not own property in South Africa summons will need to be served personally while he/she is still in South Africa, provided that there is an adequate connection between the suit and the area of jurisdiction of the particular of court.

Applications for attachment to found jurisdiction are used to create jurisdiction where no other ground of jurisdiction exists at all and is only available to an *incola* of a particular court. Application for attachment to confirm jurisdiction is used to strengthen or confirm jurisdiction which already exists. The court has jurisdiction over the cause of action but lacks jurisdiction over the person of the defendant who is a foreign *peregrinus*. The application for attachment to found or confirm jurisdiction must be brought before the summons is issued.

If a foreign *peregrinus* does not own property in SA and is no longer present in the country, the plaintiff will have to follow the foreign *peregrinus* to their home country and institute proceedings there.

How to decide whether jurisdiction must be found or confirmed in relation to a foreign *peregrinus*:

- Application to attach must only be made if the defendant is a *peregrinus* of South Africa i.e. neither a resident nor *domiciled* in this country nor has a place of business address (in case of a juristic person) and has not agreed to a specific court's jurisdiction.
- Where did the cause of action arise? An application for attachment to confirm jurisdiction (*ad confirmandam jurisdictionem*) may be brought in any court which exercises territorial jurisdiction over an area within which part of the cause of action arose.
- Where is the plaintiff domiciled and/or resident? An application for attachment to found jurisdiction (*ad fundandam jurisdictionem*) may be brought in the court which exercises territorial jurisdiction over the area within which the plaintiff is either *domiciled* or resides or has a place of business (in case of a juristic person).
- In order for the attachment to be carried out, the defendant's property must be somewhere within South Africa.

Application for attachment to found or confirm jurisdiction is to provide an asset which can be attached and sold if judgment is granted and thus gives effect to the doctrine of effectiveness.

Practical examples:

Danie is a South African *incola* residing in Pretoria and wants to institute action against Petru, a foreign national from Belgium, for R500 000 due to a cause of action based on a motor vehicle collision which occurred in Bloemfontein. Petru owns a holiday flat in Cape Town.

Scenario 1: If Danie wants to issue summons in Pretoria, application to attach Petru's flat to found jurisdiction can be made in Pretoria, as Danie is residing in Pretoria.

Scenario 2: If Danie wants to issue summons in Bloemfontein, application to attach Petru's flat to confirm jurisdiction must be made in Bloemfontein, as the cause of action arose within the Bloemfontein court's jurisdiction.

Scenario 3: If Petru does not own any property in South Africa but is present in the country, Danie must apply to the Gauteng Division to serve the summons on Petru while she is still in the country. Jurisdiction will be found based on adequate connection between suit and action, as a result of Danie residing in Pretoria.

Scenario 4: Danie can also apply to Bloemfontein to serve the summons on Petru while she is still in the country to found jurisdiction. Jurisdiction will be found based on adequate connection between suit and action, as result of the cause of action (the collision) arising in Bloemfontein.

Scenario 5: If Petru left and does not own any property in South Africa, Danie will have to issue summons against her in Belgium.

Danie will not be able to make application to found or confirm jurisdiction or issue summons in Cape Town, even though Petru owns property there, as there is no adequate connection between the court and the suit before it.

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