

SOUTH AFRICA / JUDGMENT

Boxerdale Holdings (Pty) Ltd and Others v Wulffers (3543/2019) [2020] ZAECPEHC 36 (29 September 2020) [2020] ZAECPEHC 36

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

V Naidu

CASE / FILE NUMBER

3543/2019

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IN THE HIGH COURT OF

SOUTH AFRICA

(EASTERN

CAPE LOCAL DIVISION, PORT ELIZABETH)

CASE

NUMBER: 3543/2019

DATE

HEARD: 27/08/2020

DATE

DELIVERED: 29/09/2020

In

the matter between:

BOXERDALE
HOLDINGS (PTY) LTD
FIRST
APPLICANT
HENRY
ANTHONY KLITSIE
SECOND APPLICANT
ANTON
HEINRICH GENADE
THIRD
APPLICANT
and
MARTINA
CHRISTINA CATHERINA WULFFERS
RESPONDENT

JUDGMENT

NAIDU AJ:-

INTRODUCTION:

[1] The Applicants have approached the Court for the following relief:

“PART A

1. That this matter be heard on an urgent basis, in accordance with the provisions of Uniform Rule 6(12), and that the non-compliance with the ordinary time limits provided for in the Rules of Court be condoned and abridged accordingly;
2. That, a rule nisi do issue returnable on 28th January 2020, calling on the Respondent to show cause why, pending the final determination of the relief sought in Part B of the Notice of Motion, the following interim order should not be made:
 - 2.1 That the Respondent be ordered and directed to remove, forthwith, certain fencing and boom (“the installations”) erected on the Wulffers’ property, such installations being depicted on the sketch plan “NOM5” hereto and on photographs “NOM6-NOM8 hereto; and
 - 2.2 That the Respondent be and is hereby interdicted and restrained from erecting further fences or booms on the Wulffers’ property which would have the effect of interfering with the First, Second and Third Applicant’s access to the South South Eastern portion of the Klitsie property.
 - 2.3 That the costs of Part A relief be reserved for determination at the hearing of Part B Application.
3. That paragraphs 2.1 and 2.2 operate as an interim interdict pendente lite;
4. That the hearing of Part B of this application be postponed to a date and time to be arranged in conjunction with the parties and the Registrar.

PART B

1. That a servitude of right of way be registered over the immovable property owned by the Respondent in favour of the First, Second and Third Applicants as depicted on the sketch map as the line x-y.
2. That the Respondent pay the costs of the Application, including the reserved costs of Part A relief, on an Attorney and Client scale.
3. Further/Alternative relief.”

- [2] It is trite that on the 17th December 2019, the Applicant obtained relief in terms of Part A of the Notice of Motion with a rule nisi issued for the 28th January 2020, which rule was subsequently further extended to the 10th March 2020, the 11th June 2020 and finally to the 27th August 2020 when the matter was presented before me for a final

determination.

- [3] The Applicant seeks a confirmation of the rule nisi and further for declaratory relief to wit that the route of the registered servitude of right of way over the immovable property owned by the Respondent in favour of the First, Second and Third Applicant be registered as depicted on the sketch map marked annexure "NOM10" and indicated as X-Y.
- [4] The Respondent has opposed the relief being sought.

BACKGROUND

- [5] The First Applicant is the owner of portion 159 of the Farm Goed Geloof in the Registration District Humansdorp, Province of the Eastern Cape held under Title Deed T3077/2019.
- [6] The Second Applicant is the owner of the remainder of Portion 133 of the Farm Goed Geloof 745 in the Registration Division, Humansdorp, Province of the Eastern Cape held under Title Deed T46204/2015 CTN which is a partition of Portion 133 of the aforesaid Farm. The partition was registered on the 19th August 2015.
- [7] The Third Applicant is Heinrich Anton Genade, the owner of portion 51 of the Farm Goed Geloof 745 in the Registration Division Humansdorp, Province of the Eastern Cape held under Title Deed T73910/2007 CTN.
- [8] The Respondent is the owner of Portion 233 of the Farm Goed Geloof in the Registration Division Humansdorp, Province of the Eastern Cape held under Title Deed T46203/2005 CTN which is a partition of Portion 133 of the aforesaid Farm. The partition was registered on the 19th August 2015. It is not disputed that prior to the subdivision of Portion 133 of the Farm Goed Geloof 745, that such portion was jointly owned by the Klitsie family and Wulffers family in equal shares.
- [9] It is not disputed that a general servitude of road is registered over the Respondent's property which was registered in terms of a "Reciprocal Praedial Road Servitude", on the 20th August 1993. The servitude is cited as follows:

"Property Two shall be subject to a General Servitude of Road Six (6) meters wide, from Property One to Property Three, the route of which is to be agreed upon by the Registered Owners, in favor of Properties Three to Thirteen, subject to the terms and conditions more fully set out in paragraph 9."

- [10] It is further common cause that during the year 2019, the Respondent caused certain fences and boom gates to be erected and installed on her property which the Applicants allege infringed upon their rights of access to the northern and southern properties.

THE APPLICANTS CASE

- [11] The Applicants submit that a general servitude of road, six meters wide is registered over the Respondent's servient property as confirmed in the title deed and accordingly the Applicants are entitled to the use thereof.

- [12] However, the Applicants argue that the registered servitude route of right of way over the Respondent's property cannot be utilized as such servitudinal route traverses environmentally sensitive wetlands.

- [13] The Applicants argued further that since the acquisition of the properties in the 1960's that there had been an informal

agreement at the time, between the then owners of the properties being Mr Wulffers Senior and Mr Klitsie Senior to utilize an alternate route that did not infringe upon the sensitive wetland area. It is submitted that such route or path has been in existence

since then. Both Wulffers Senior and Klitsie Senior are deceased.

- [14] It is common cause that the informal route enters the Respondent's property from the West, splits into a Y junction which veers into a Northern and Southern Route which traverses the Second Applicant's and Respondent's properties. A diagram of the properties is set out hereunder:

- [15] The Second Applicant seeks no relief against the Respondent in respect of the Northern Route other than the removal of the various installations erected by the Respondent. It is the Southern Route as marked X-Y on the Applicants annexure "NOM10"

which forms the central issue of contention between the parties.

- [16] The Applicants submit that it is not disputed that a praedial servitude is registered over the Respondent's property. The Respondent does not deny this right but contends that the location of the Southern Route infringes on her right as a property owner.

- [17] The Applicants and specifically the First and Third Applicants submit that they together with the Second Applicant wish to erect a jetty on the registered river access point as a launch site but it would be pointless to attempt same if they cannot traverse the Southern Route. The Respondent avers that the proposed launch site is situated on land belonging to one Eugene Potgieter and Terry Ranger not party to the present proceedings.

THE RESPONDENT'S CASE

- [18] The Respondent does not deny that the Second Applicant has a right of way across her property to reach his house, which is situated on the Northern Route. She argues at best regarding this Northern Route that he has an unregistered personal right. She further submits that the First Applicant through one Pieter Van Vuuren and the Third Applicant have failed to establish a right in traversing her property in respect of both the Northern and Southern Routes.
- [19] The Respondent argues in respect of the Applicants reliance on the servitude registered in 1993, that same is unenforceable as it was a pre-requisite of such registered servitude that the general servitude of road route had to be consented to by all the owners as set out in the 'Reciprocal Praedial Road Servitude' Deed. No consent or agreement was obtained, hence, that no reliance can be made on such right of servitude. At most the Second Respondent would have an unregistered personal right with regard to the Northern Route over her property to gain access to his home.
- [20] The Respondent submits that had the Second Applicant approached her for consent to register a servitude of way over her property in respect of the Southern Route that she would have granted same. It was accordingly unnecessary for the Second Applicant to have approached the Court for such relief.
- [21] The Respondent argues that the erection by her of fences and boom gates on her property is out of necessity and security concern and that she has every right to do so as a property owner. Consequently the interdictory relief sought by the Applicants in respect Part A of the application infringes on her rights as a property owner. The Respondent argued that she had in the past made arrangements with the Second Applicant where a lock and gate system was utilized granting the Second Applicant access to traverse on her property. The Applicants confirm such arrangements and confirm that each Applicant possessed their own key to gain access.
- [22] Respondent argues further that she has always objected to the path dissecting her property in the manner it does and prefers that it be positioned closer to the wetland. The Respondent avers that the Second Applicant has failed to make out a case that the route she proposes is more onerous than the route marked X-Y.

THE DETERMINABLE ISSUE:

- [23] Whether the Applicants has satisfied the requirements for a final interdict;
- [24] Further whether the Applicants have made out a case for the declaratory relief sought in terms of a servitude of right of way.

AD DECLARATORY RELIEF

THE LEGAL PRINCIPLES APPLICABLE:

[25] It is trite that once a condition or a servitude is registered either notarial or as a condition of title in the title deed by the Registrar of Deeds, it bestows a real right to the person in whose favour it is registered. Further, it is trite that a real right is absolute in the sense that it prevails against the whole world.

[26] Silberberg and Schoeman in the Law of Property, 5th Edition on page 51 state the following:

“The holder of a servitude such as a right of way in relation to a piece of land is entitled to enforce such servitude, being a limited real right, not only against the original grantor but also, for the duration of the right, against all successors in title and creditors, irrespective of whether they had actual knowledge of the existence of the servitude.”

ISSUE OF THE FIRST AND THIRD APPLICANTS RIGHT OF WAY OVER THE RESPONDENT’S PROPERTY:

[27] The First and Third Applicants claim of right of way over the Respondent’s property is based on the registered right of servitude registered over the various properties in terms of the ‘Reciprocal Praedial Road Servitude’, registered against the title deeds of the various properties on the 20th August 1993.

[28] It is quite apparent from the title deed that the route of the general servitude of road, measuring 6 meters wide was to be agreed upon by the various owners cited in such deed. There has been to date no such agreement.

[29] The Applicants have relied further on an informal agreement between the erstwhile owner of the properties dating back to 1968 to try and enforce a right of way. It is quite apparent that the ‘Reciprocal Praedial Road Servitude’ registered in 1993, is in material conflict with the so called informal agreement as regards the exact route to be traversed over

the property. The Applicants reliance on the informal agreement in this regard cannot be sustained as the registered servitude

superceded the alleged informal agreement. This presents a problem for the Applicants as the registered servitude of road, is determinate upon an agreement being reached by all the respective property owners as to the route over the properties. It is apposite

that all concerned parties to date have failed to reach accord on the route.

[30] It is further submitted by the Respondent that even if the First and Third Applicants had managed to successfully inveigle me to conclude that a servitude of way existed in their favour that it was undisputed that as the First and Third Applicants had failed to utilize the route for their intended purpose, which was allegedly for access to the river and/or to launch a boat that the utilitas in respect of same had lapsed or it can be construed that same had indeed been abandoned as the First and Third Respondents had failed to exercise such perceived right of access. Having determined that the First and Third Applicants have failed to establish a right of servitude over the Respondent’s property I do not deem it necessary to make a determination on the issue of utilitas.

ISSUE OF IMPLIED SERVITUDE IN RESPECT OF THE SECOND APPLICANT'S RIGHT OF WAY OF THE RESPONDENT'S PROPERTY:

[31] The creation of a right of way servitude by implied consent can be traced to van Leeuwen's Commentaries.[1] In *Ridden v Quinn* 1909 E.D.S. 373 at 378, the learned Judge President quoted from a passage in van Leeuwen's Commentaries which reads as follows:

"If a piece of land is divided into two or more portions, the back portion will retain its right of outlet over the front portion, even although nothing was said about this at the time for the partition of the land cannot impose a servitude upon the neighbours...." [2]

[32] In essence, the van Leeuwen principle is to the effect that when a land-locked tenement (blocked land) is created by the sub-division of land, a servitude of right of way is established by implied consent, in favour of any sub-division that remains without access to the public road, over any sub-divisions with access. The van Leeuwen principle was followed in a number of decisions such as *Wilhelm Norton* 1935 EDL 143 at 169 and *Beukes v Crous en 'n Ander* 1975

(4) SA 215 (NC) 220A-H. In *Van Rensburg v Coetzee* 1979

(4) SA 655 (AD) at 675 B-C, the then Appellate Division of the Supreme Court confirmed that the van Leeuwen principle forms part of South African Law.

[33] The court concluded in *Van Rensburg v Coetzee*, supra, at 673D – 674B, that the van Leeuwen principle would only apply to create a right of way based on implied consent in sub-division

cases where such an implied consent ruling makes sense, notably because the sub-dividing previous owner still owns a portion over

which access is possible for those portions that are land-locked. Jansen JA made this comment in light of the cautionary note sounded by Kennedy R in *Matthews v Road Board for the District of Richmond and Others* 1967

(3) SA 244 (N) at 247 F-H where the court stated as follows:

"Secondly, it would seem to me, with respect to the decision in Riddin's case, supra, that what van Leeuwen there had to say is but of small practical value in a country like South Africa, where vast tracts of land, as we know, exist for farming purposes, it would be impractical, from the distance point of view alone, if any such an owner sub-divided his land, to compel the owner of the sub-division to use the right of way enjoyed by the seller, and none other, when a closer and more reasonable means of access is available by the grant of a way of necessity over a neighbour's property."

[34] The van Leeuwen principle is a method of establishing a right of way to gain access to the public road in sub-division cases and must be distinguished from the right of way of necessity. The van Leeuwen principle rests on implied consent whereas the normal right of way of necessity derives from the operation of law and has to be confirmed by court order, if

necessary (Van Rensburg v Coetzee, supra). The significant difference in the creation of a right of way by necessity and a right of way by implied consent is that the former can be established over any servient tenement that gives the required access to the public road and such access is simply based on necessity (see, Van Rhyn, NNO v Fleurbaix Farm (Pty) Ltd 2013

- (5) SA 521(WCC)), whereas the right of way by implied consent is restricted to a sub-division that is cut off from access to a public road whilst other portions still have access to the public road and all the sub-divisions still belong to the original sub-dividing owner (for a useful summary of the cases and a simplified exposition of the principles underlying the right of way by implied consent see, AJ Van Der Walt, The Law of Servitudes (2016), pages 341-343, and 354-355).

[35] In *Aventura V Jackson NO & Others* 2007 (5) SA 497 (SCA) at 499/500 para [8].

the Supreme Court of Appeal stated:

“A Court may grant a right of way over the property of a non-consenting owner (subject to the payment of appropriate compensation), but only where it is shown that the right of way is necessary to provide access to a public road (See: for example, Van Rensburg v Coetzee[3]) (and the authorities collected in that judgment) ... What is meant by “necessity” is that the right of way must be the only reasonable sufficient means of gaining access to the land-locked property and not merely a convenient means of doing so “Troutman NO v Poole[4]...”

- [36] The Respondent does not deny that an implied servitude of way comes into existence upon the sub-division of a property.
- [37] It is common cause that on the 19th August 2015, the Second Applicant and Respondents properties was sub-divided into the remainder of portion 133 of the Farm Goed Geloof 745 and Portion 233 of the Farm Goed Geloof, respectively.
- [38] It is further common cause that the Second Respondent's property is landlocked and that that this necessitates him having to traverse the Respondents property in order to obtain access to his property.
- [39] The only issue in dispute between the Second Applicant and the Respondent would be the actual route traversed. The Second Applicant has inveigled me to declare the route marked X-Y on the diagram to be declared a right of servitude of way.
- [40] It is trite that the route over which a servitude of way may be exercised may be defined by the terms of the servitude or it may be undefined. If it is undefined, the owner of the dominant land may choose a particular route, having due regard to the convenient use of the servient land. If he or she has chosen a route, he or she may not change it without the consent of the owner of the servient land. The owner of the servient land may, if the route chosen is particularly onerous to him or her require the owner of the dominant land to follow another equally convenient route.[5]

[41] The Applicants submit that the Respondent's proposed route of access over her property is untenable as the land slopes towards the wetland and substantial backfill towards the wetland would be necessary to make the demarcated route viable. The Applicant argues that the proposed route of the Respondent is mostly within ten meters of the existing route and the actual gain in moving the road is minimal.

[42] The Respondent has not provided any reasons as to why the present route is onerous and merely submits in retort that the Applicants

have failed to establish why her proposed route should not be accepted as being less onerous. As set out above, the owner of the

servient land may, if the route chosen is particularly onerous to him or her require the owner of the dominant land to follow another

equally convenient route.[6]Having regard to such principle it is evident that the Respondent herein has failed to establish the onerous nature of the present circumscribed route. In the absence of same the status quo must remain.

AD INTERDICTORY RELIEF:

Whether the boom gate and the erection of fences constitute an unlawful interference with the rights of the Applicants:

[43] A distinction must be drawn between the erection of fences and boom gates by the Respondent in respect of the Northern Route and those erected in respect of the Southern Route

[44]'In the case of *Allen v Colonial Government*, [7] Maasdorp J in discussing the question of obstructions to rights of way observed as follows:

"The bare fact that gates were placed across the road is in itself no denial of right, for Voet 8, 3, 4 says that a gate may be placed

across a servitude road provided it does not hinder the free passage of the dominant owner."

[45]The above passage was quoted with approval by Corbett J in *Stuttaford v Kruger* [8], who proceeded as follows:

"It does not seem to me, therefore, that the mere placing of a fence and gate across a right of way of this nature necessarily involves an interference with the rights of the servitude owner. Whether a gate may be placed across a right of way must, in my view, depend upon the facts of the case, including the intention of the parties who created the servitude...In my view a fence and a gate which permit proper unrestricted use of the right of way may not in proper circumstances amount to an interference with the servitude. The question is, how do the gate and fence erected in the present case measure up to the requirements of these principles."

[46] In the *Stuttaford* case, *supra*, the former owner of the servient property erected a fence and a gate across the right of way at the point where it joined the 'hard road'. This gate was apparently erected in order to prevent cattle straying from the servient farm onto the 'hard road', but it was not locked and, according to the applicant, did not hamper in any way the enjoyment of the right of way. After the respondent became the new owner of the servient property, however, he – without any prior consultation

with the applicant – caused a fence to be erected across this gate and a new gate to be erected in a different position. The respondent also caused this new gate to be locked and gave a key to the lock to the applicant. In this regard Corbett J held as follows (at 172 H – 173H):

“As far as the locking of the gate is concerned it seems to me that there is no doubt whatever that this is an obvious interference with the proper enjoyment by the applicant of his right of way ... I can easily visualise numerous persons other than the applicant who could have a perfectly legitimate right to enter the right of way from the hard road, or to enter the hard road from the right of way, and the gross inconvenience to such persons and to the applicant of the gate being locked is in my view manifest.”

[47] The Court accordingly granted an interdict ordering the owner of the servient property forthwith to remove the offending gate from the right of way.

[48] In a later case, *Penny and Another v Brentwood Gardens Body Corporate*, [9] the respondent erected a self-closing and self-locking gate across a servitude footpath. The respondent body corporate was adamant that it did not require the applicants' consent to do this. It contended that it was acting within its rights to protect life and property, in a situation that had become dangerous because of vagrants' using the access way, and that the locked gate was not in effect an obstruction for the applicants. [10] Van den Heever J rejected these contentions, stating – with reference to the respondent's defence that a key to the lock of the gate would be handed to the applicants – that, despite the applicants' possession of a key, 'there can to my mind be no doubt whatever that the erection of a locked gate is a diminution of applicant' rights', [11] (The 'applicants' rights' contemplated by Van den Heever J included the rights of other people authorised by the applicants to use the right of way.) The respondent was therefore interdicted from locking the gate in question.'

[49] I agree from the authorities referred to above, the question of whether or not a particular gate will unlawfully interfere with the reasonable use by the servitude holder of the servitude road in question depends on the facts of each individual case.

[50] The Second Applicant submits on behalf of himself and the First and Third Applicants that the erection and installation and fences by the Respondent on her property would deprive them of access to both the Northern and Southern Routes. In particular the First and Third Respondents would be deprived of access to the river as per the Northern Route, and the Second Applicant would be deprived of access to his home. The Respondent submits that there is a lock and key system in place in order for the Second Applicant to obtain access to both his home along the Northern route and along the Southern Route. This was not denied by the Second Applicant, and accordingly the argument that he is being deprived of access

to his home cannot be sustained.

[51] The Respondent avers that she has not denied the Second Applicant access to the properties, she has merely installed security

installations for her benefit. She argue that the Second Applicant is indolent in not wanting to lift the boom or open the gate. The Second Applicant does not deny that he is able to access his properties if he had to lift the boom or unlock the gate.

[52] The requirements for a final interdict may be set out as follows:

- 1) A clear right;
- 2) An injury actually committed or reasonably apprehended;
- 3) The absence of similar or adequate protection by any other remedy.[12]

[53] With regards to the first requirement above it is trite that the onus is on the Applicants to establish on a balance of probabilities the facts and evidence which prove a clear and definite right. Which right must be a legal right.[13] It is clear to me having regard to the conspectus of evidence presented, that the First and Third Applicants have failed to set out a satisfactory basis in law in claiming a clear right to traverse the Respondents property. Reliance on the 'Reciprocal Praedial Road Servitude", cannot be sustained as there clearly has been no agreement as to such right of way.

[54] The position of the Second Applicant is somewhat different. The effect of the subdivision of the remainder of portion 133 of the Farm Goed Geloof 745 being his property and Portion 233 of the Farm Goed Geloof, being the Respondent's property has resulted in his southernmost property being landlocked. The authorities as elucidated above regarding the consequence of a property being landlocked upon subdivision is quite clear. I am satisfied that the Second Applicant has a set out a clear right in this regard.

[55] In respect of the second requirement, it is evident that the Second Respondent has not been deprived of access to either his home on the Northern Route or to his property to the south. The Second Applicant and Respondent have been utilizing a lock and key system in respect of the installations. The Second Applicant merely opines the inconvenient nature of the installations to the exercise of access to his properties. It is common cause that in the present context the basic tenet of harm suffered or reasonably apprehended, would be the right of access. The Second Applicant has in my view failed to establish this requirement.

[56] Having regard to the third requirement in respect of confirming a final order for interdictory relief, in the absence of actual harm suffered or a reasonable apprehension of harm in the present context, it cannot be said that the Second Applicant has fulfilled this requirement.

COSTS:

[57] Having regard then to the issue of costs, the basic rules were stated as follows by the Constitutional Court in *Ferreira v Levin NO and Others* 1996(2) SA 621 (CC) at 624B-C, the court held:

‘The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical accuracy, depriving successful parties of their costs can depend on circumstances such as, for example, the conduct of parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of litigants and the nature of proceedings.’

[58] In this particular case, both the Applicants and the Respondent have been successful to a certain degree. After considering the peculiar and lamentable circumstances of this matter, I am of the view that sagacious consideration must be given regarding the award of costs.

[59] In the circumstances I make the following order:

- a) The rule nisi issued on the 17th December 2019 is hereby discharged;
- b) It is ordered that a route of registered servitude of right of way over Portion 233 of the Farm Goed Geloof in the Registration Division Humansdorp, Province of the Eastern Cape held under Title Deed T46203/2005 CTN which is a partition of Portion 133 of the aforesaid Farm, be registered in favour of the remainder of Portion 133 of the Farm Goed Geloof 745 in the Registration Division, Humansdorp, Province of the Eastern Cape held under Title Deed T46204/2015 CTN which is a partition of Portion 133 of the aforesaid Farm, as depicted on sketch map NOM10 and indicated as X-Y, and that such servitude of way is to measure not less than five (5) meters in width;
- c) Each party to pay their own costs.

V NAIDU

ACTING JUDGE OF THE HIGH COURT

Obo the Applicants: Adv Ellis

Instructed by Greyvensteins,

104 Park Drive, Port Elizabeth

Ref: Salome

Obo the Respondent: Adv P E Jooste

Instructed by Nel

Mentz Steyn Ellis c/o Jacques Du Preez. 96 Mangold

Street, Newton Park, Port Elizabeth

Ref: J Du Preez

- [1] Van Rensburg v Coetzee 1979(4) SA 655 at Page 658 F-G
- [2] 1909 E.D.S. 373
- [3] 1979
- (4) SA 655 (A).
- [4] 1951
- (3) SA 200(C) at 207 (D) – 208 (A)
- [5] CG Van der Merwe & MJ De Waal (up dated by CG Van der Merwe) ‘Servitudes’ in W Joubert (ed) LAWSA 2ed Vol 24 (2010) at 559
- [6] Rubidge v McCabe & Sons 1913 AD 433
- [7] (1907) 24 SC 1 at 8-9
- [8] 1967(2)SA 166 (C) at 172D-E
- [9] 1983(1) SA 487 (c)
- [10] At 490C-D
- [11] Penny and Another v Brentwood Gardens Body Corporate (supra) at 490H
- [12] Setlogelo v Setlogelo 1914 AD 221 at 227, National Chemsearch(SA) (Pty) Ltd v Borrowman 1979(3) SA 1092(T) at 1095D-E
- [13] Lipschitz v Watrus NO 1980 (1) SA662(T) at 673D

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