

SOUTH AFRICA / JUDGMENT

CZ Holdings Proprietary Limited v Revival Technologies and Academy (4218/2023)

[2024] ZALMPPHC 114 (11 September 2024)

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COURT

Limpopo High Court, Polokwane

BEFORE

N Gaisa

CASE / FILE NUMBER

4218/2023

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

LIMPOPO DIVISION,

POLOKWANE

1. REPORTABLE : YES/NO

2. OF INTREST TO THE

JUDGES: YES/NO

3. REVISED

11/9/2024

CASE NO:4218/2023

In the matter between:

CZ
HOLDINGS PROPRIETARY LIMITED
(Registration
Number: 2016/542223/07)
Applicant
And
REVIVAL
TECHNOLOGIES AND ACADEMY
PROFESSIONAL
LIMITED
(Registration
Number: 2013/040624/07)
Respondent

JUDGMENT

GAISA AJ

INTRODUCTION

- [1] This application brought by CZ Holdings Proprietary Limited ("the Applicant") against Revival Technologies and Academy Professional Limited ("the Respondent") concerns a servitude dispute over portions of the farm Zandriverspoort 851, Registration Division LS, Limpopo Province.
- [2] The Applicant seeks declaratory and interdictory relief regarding a registered servitude of right of way over the Respondent's property, Portion 30 of the farm Zandriverspoort 851. The Applicant owns the adjacent Portion 15 of the same farm.
- [3] The key issues for determination are:
- 3.1 whether the servitude in question is valid and enforceable;
- 3.2 whether the Applicant has established grounds for the declaratory and interdictory relief sought;
- 3.3 whether the Respondent's defense of prescription has merit.

BACKGROUND

- [4] The salient facts are largely common cause:
- 4.1. The servitude in question was registered in 1975 by Notarial Deed of Servitude K762/1975S in favour of the general public over various portions of the farm Zandriverspoort 851, including what is now the Respondent's Portion 30.
- 4.2. The Applicant purchased Portion 15 in February 2018, with transfer effected in September 2018. The Respondent acquired Portion 30 in November 2018.
- 4.3. The Applicant contends that the Respondent is interfering with its rights to use the servitude by erecting structures on it and denying access. The Respondent argues that the servitude has prescribed and is no longer enforceable.

LEGAL FRAMEWORK

- [5] The requirements for final interdictory relief are well-established:
- 5.1 A clear right;
- 5.2 An injury actually committed or reasonably apprehended; and
- 5.3 The absence of similar protection by any other ordinary remedy.

- [6] For declaratory relief under section 21(1)(c) of the Superior Courts Act 10 of 2013, the court must be satisfied that the applicant has an interest in an existing, future or contingent right or obligation, and that the case is a proper one for the exercise of the court's discretion.
- [7] Regarding prescription of servitudes, section 9 of the Prescription Act 68 of 1969 expressly excludes public servitudes from the operation of acquisitive prescription.

ANALYSIS

[8] Validity of the Servitude

8.1 It is common cause that a public servitude of right of way was validly registered in 1975 over inter alia the Respondent's property. This is evidenced by the Notarial Deed K762/1975S and the endorsements on the relevant title deeds.

8.2 The Respondent's argument that the servitude has prescribed is without merit. As a public servitude, it is expressly excluded from acquisitive prescription by section 9 of the Prescription Act. The passage of time alone cannot extinguish a public servitude of this nature.

8.3 I therefore find that the servitude remains valid and enforceable.

[9] Grounds for Relief

9.1 The Applicant has established a clear right arising from the registered servitude. As an adjacent landowner, it has a direct and substantial interest in the use and enjoyment of this public right of way.

9.2 There is prima facie evidence of interference with this right through the erection of structures on the servitude area and denial of access. This constitutes an injury actually committed.

9.3 Given the nature of the dispute over immovable property rights, interdictory relief is appropriate as there is no equally effective ordinary remedy available.

9.4 The requirements for both final interdictory and declaratory relief have therefore been met.

[10] Prescription Defence

10.1 As noted above, the Respondent's prescription argument is fatally flawed. Public servitudes are not subject to prescription under South African law. Even if they were the Respondent has not established the required 30-year period of uninterrupted adverse possession, having only acquired the property in 2018.

10.2 The prescription defence must therefore fail.

CONCLUSION

[11] The Applicant has made out a case for the relief sought. The servitude is valid and enforceable, and the Respondent's conduct unjustifiably interferes with the rights conferred by it.

ORDER

In the result, I make the following order:

1. It is declared that a valid public servitude of right of way exists over Portion 30 of the farm Zandrivierspoot 851, Registration Division LS, Limpopo Province, as described in Notarial Deed of Servitude K762/1975S.
2. The Respondent is interdicted from interfering with the Applicant's and the general public's right of access over the aforementioned servitude.
3. The Respondent is ordered to remove any structures or obstructions erected on the servitude area within 60 days of this order.
4. The Respondent is to pay the costs of this application on an attorney and client scale.

N GAISA

Acting Judge of the High Court

Limpopo Division, Polokwane

APPEARANCES

Applicant/Defendant: Instructed By: Email: For The Respondent: EMAIL: Mr Smit Kutullo Kgafane Attorneys info@kutullokafaneattorneys.co.za Mr A A Milanzi of A.A Milanzi Attorneys adammilanzi56@gmail.com DATE OF HEARING: DATE OF JUDGEMENT: 9 September 2024 11 September 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 11 SEPTEMBER 2024 at 17:00 PM.

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