

SOUTH AFRICA / JUDGMENT

Reiners and Others Die Pinkster Protestante Kerk and Another (A774/2016, 83902/2014) [2018] ZAGPPHC 354 (9 May 2018)

[2018] ZAGPPHC 354**COURT**

North Gauteng High Court, Pretoria

BEFORE

H.J Fabricius, S. Potterill, D.S. Molefe

CASE / FILE NUMBER

A774/2016, 83902/2014

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Source record**IN THE HIGH COURT OF****SOUTH AFRICA****(GAUTENG DIVISION, PRETORIA)****(1)****NOT REPORTABLE****(2)****OF INTEREST TO OTHER JUDGES****(3)****REVISED.****Case Number: A774/2016****83902/2014****9/5/2018****In****the matter between:**

JACOBUS
PETRUS REINERS
1ST APPELLANT
1ST RESPONDENT (COURT A QUO)
MOLLIE
SUSANNA ELIZABETH REINERS
2ND APPELLANT
2ND RESPONDENT (COURT A QUO)
JEDIDJA
COMMUNITY CENTRE (NPC)
(PTY)
LTD
3RD APPELLANT
3RD RESPONDENT (COURT A QUO)

And
DIE
PINKSTER PROTESTANTE KERK
1ST RESPONDENT
APPLICANT (COURT A QUO)
THE
REGISTRAR OF DEEDS
2ND RESPONDENT

JUDGMENT

Fabricius J,

1.

This is an appeal against an order in favour of the Applicant a quo, made by Mavundla J on 22 July 2016, leave to appeal having been granted by the Supreme Court of Appeal.

The parties will be referred to as they were in the proceedings a quo. Applicant sought an order in motion proceedings that the purported alienation and registration of Erf 261 Riversdale, Meyerton, in the names of First, Second and Third Respondents, be set aside, as well as the purported alienation and registration of Erf 275, in that same area.

2.

It was alleged in the Founding Affidavit that the Applicant was a Voluntary Association functioning as a non-profit organization for the purposes of a Christian Church as set out in its Constitution, which was annexed. The First Respondent was an adult pastor, previously employed by the Applicant, and the Second Respondent is his wife.

3.

The "PURPOSE OF THE APPLICATION", was said to be the following: "The purpose of this application is to have the Applicant's

immovable properties known as Erf 261 and Erf 275 Riversdale, Meyerton, situated in the jurisdictional area of the Midvaal Local

Council, Gauteng, transferred back to the Applicant, in light of the fact that the said properties were unlawfully transferred by the First and Second Respondents to themselves, where after Erf 261 Riversdale was transferred to the Third Respondent, without the consent and knowledge of the lawful owner thereof, being the Applicant ".

4.

At the very least therefore, Applicant had to show that it had been the owner of the particular erven. A Court would have had to make a finding in that regard.

5.

It was then alleged, with reference to a particular title deed, that at all relevant times these erven were the registered property of the Applicant, and were held by it as its exclusive property, since 1977.

6.

Allegations were also made relating to the employment history of the Respondents, but this is not of particular relevance. Applicant sought final relief in motion proceedings and therefore, the so-called Plascon-Evans test had to be applied.

See: Plascon-Evans Ltd v Van Riebeeck Paints (Pty) Ltd 1084 (3) SA 623 (A) at 634 to 635.

The rule in this context is that such matters have to be decided on the version of the Respondents, unless it is patently false.

7.

It was further alleged in the Founding Affidavit that the relevant transfers to the particular Respondents were done without the

authorization, consent and knowledge of the Applicant, or any of its executive officials. As I have said, with reference to the general rule prescribed by the Plascon-Evans case, which applies when final relief in motion proceedings is sought, unless a Court can find that the version alleged by the particular Respondents is “so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers”, an application must be decided on the basis of a Respondent's version.

See: National Scrap Metal (Cape Town) v Murray and Roberts 2012 (5) SA 300 (SCA) at par. 21 and 22.

8.

Respondents set out the whole history of the relevant properties including all transfers and subdivisions. Certificates of registered title were annexed, confirming such, and it was said that Applicant was at no stage involved in any subdivision and consolidation of any of the properties. First Respondent was a pastor of the Riversdale congregation, which was dissolved in January 2013, at which time it was no longer a member of the Applicant. The following facts appear to be common cause between the parties, or are

of such a nature that they cannot be seriously disputed:

1. The Applicant and the Riversdale congregation were two separate voluntary associations with separate juristic personalities;
2. The relevant immovable properties were always owned by the Riversdale congregation;

3. At a meeting held on 18 January 2013, a decision was taken by the congregation to dissolve the voluntary association;
4. The Riversdale congregation did not have a written Constitution, and never registered as a non-profit organization.

9.

There is a dispute between the parties whether or not the Riversdale congregation was, at the time of its dissolution, a member of the Applicant. Because it was Applicant's case, in the Founding Affidavit, that it, and not the Riversdale congregation, was the owner of the immovable properties, it did not deal specifically in the Founding Affidavit with the alleged membership of the Riversdale congregation. It did not mention that the Riversdale congregation was a separate juristic entity. According to a title deed of 1977 annexed by Respondents, the Applicant was at no stage the registered owner of the particular erven. Respondent alleges that a portion of Erf 261 was transferred to him by the congregation, because it was financially unable to provide him with a pension for his service as a pastor between the period of 1993 to 2013.

10.

Before-all these allegations are considered further, I need to point out an important consideration: the Court a quo granted the relief sought, and it is clear, from par. 13 of the judgment, that It did so on the following basis: "In my view the alleged donation related to the alienation of land and was not in compliance with the provisions of the aforesaid mentioned s. 28 and therefore invalid. Further, in light of the provisions of the applicant's constitution as pointed out herein above, the respondent could not have had the authority to alienate the property which belongs to the congregation, be it the branch he was the pastor of or the main body being the applicant. I therefore find the transfer of the property into the first respondent's name was null and void, and that the subsequent alienation thereof was equally invalid".

11.

It is clear that the Applicant did not attempt in its Founding Affidavit to make out any case at all based on the provisions of

- s. 2 of the Alienation of land Act 68 of 1981. The Respondents were therefore not called upon to deal with this issue in the Answering Affidavit. Section 28 of this Act reads that: "Any alienation which does not comply with the provisions of s. 2 (1) shall in all respects be valid ab initio if the alienee had performed in full in terms of the deed of alienation or contract and the land in question has been transferred to the alienee". The relevance of this section is certainly not clear in the present context. It is my view that where the Applicant did not establish a cause of action based on the provisions of the Alienation of Land Act, the Court a quo was not entitled to grant the relief based on any of the provisions of this Act. It is clear that motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on

common cause facts. Furthermore, a Court is not entitled to go beyond the pleaded issues before it.

See: National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009 (2) SA 277 (SCA) at par. 20 and further. It is not open to a Court to raise issues not pleaded by the parties, or traversed in affidavits.

See: Fisher and Another v Ramahlele and Others 2014 (4) SA 614 SCA at par. 14.

In application proceedings, the Notice of Motion and affidavits define the issues between the parties and the affidavits embody evidence. The Constitutional Court also clearly stated that the purpose of Pleadings is to define the issues for the other party

and the Court. It is for the Court to adjudicate upon the pleaded

disputes and issues and those disputes alone (I underline). It is clear that it is not permissible for a Court to have recourse to issues falling outside the pleadings when deciding a case.

See: Molusi and Others v Voges N.O. a11d Others 2016 (3) SA 370 (CC) at par. 27 to 28.

12.

The basis upon which the Court a quo decided this application, did not emanate from the pleadings, and was not an issue between the parties that was ventilated in the affidavits. The issue was one of ownership, and that was the issue that the Court had to decide. I therefore agree with Appellant's Counsel that the appeal can be decided on this basis alone. Ex abundanti cautella, I may also add that it is clear from the Respondent's Answering Affidavit (which allegations I must accept), that the Applicant and the Riversdale congregation were two separate voluntary associations with separate juristic personalities, and that the relevant immovable properties were always owned by the Riversdale congregaiotn. This congregation was also never a member of the Applicant and it was never bound by the terms and conditions of Applicant's own Constitution.

13.

Having regard to the fact that the Court a quo decided this application on an issue not raised in the pleadings, which it was not entitled to do, as I have said, the order cannot stand.

14.

The following order is therefore made:

1. The appeal is upheld with costs;
2. The order of the Court a quo is set aside, and substituted with the following order: "The application is dismissed with costs".

JUDGE H.J FABRICIUS

JUDGE OF THE HIGH COURT GAUTENG DIVISION PRETORIA

I Agree

JUDGE S. POTTERILL

JUDGE OF THE HIGH COURT GAUTENG DIVISION PRETORIA

JUDGE D.S. MOLEFE

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Prepared on 10 October 2026 · Esheria