

SOUTH AFRICA / JUDGMENT

Roux and Another v Magnolia Ridge Properties 197 (Pty) Ltd and Another (EL556/2012, ECD 1256/2012) [2015] ZAECELLC 6 (14 May 2015)

[2015] ZAECELLC 6

COURT

Eastern Cape High Court, East London Local Court

BEFORE

P.W. Tshiki

CASE / FILE NUMBER

EL556/2012, ECD 1256/2012

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE LOCAL DIVISION, EAST LONDON

Case

no: EL556/2012

ECD

1256/2012

DATE:

14 MAY 2015

In

the matter between:

KEVIN

GLYNN ROUX and

ELIZABETH

JOHANNA VAN

NIEROP.....Plaintiff/Respondent

Vs

MAGNOLIA

RIDGE PROPERTIES 197 (PTY)

LTD.....Defendant/Applicant

ZAMBLI

216 (PTY)

LTD.....Third

Party

Date

heard: 13.4.2015

Date

delivered: 14.5.2015

JUDGMENT

ON APPLICATION FOR LEAVE TO APPEAL

TSHIKI J:

- [1] On the 3rd February 2015, as a Court of first instance, I delivered my judgment in this matter and made an order in the following terms:

“[34.1] Judgment is hereby granted in favour of the plaintiff for the payment of:

[34.1.1] A sum of R1 000 000.00 (one million rand) plus Value Added Tax together with interest thereon calculated at the legal rate per annum from the 11th May 2012 (that being the date of transfer of defendant’s property to Zambli and receipt by Zambli of the purchase price of R52 000 000.00) to date of payment.

[34.1.2] Defendant is ordered to pay plaintiff’s costs of suit together with interest thereon calculated at the legal rate of interest per annum from allocatur to date of payment such costs to include the preparation of the heads of argument by plaintiff’s counsel.”

- [2] In my evaluation of the evidence led at the trial, I came to the conclusion that it was Roux’s introduction of Zambli to the property of Magnolia that resulted in the effective sale of the property by Magnolia to Zambli. I based my judgment on not only the viva voce evidence by the witnesses, but on also the probabilities of the case as well. See in this regard, inter alia, paragraphs [15] to [18] of the judgment.

- [3] In the present proceedings applicant has submitted that a few errors made by the Court on the evidence referred to by the applicant could have the effect of the appeal Court finding in favour of the applicant. I do not agree. The conspectus of the evidence part of which should not be evaluated in isolation from the rest of the evidence, shows that the respondents’ case herein was proved on a balance of probabilities. In my view, the insignificant errors on the judgment as pointed out by the applicant referring to incorrect reference to the evidence cannot, in my view, turn to a balance of probability in favour of the defendant/applicant.

- [4] Consequently, in my view, there are no reasonable prospects that another Court could find in favour of the applicant/defendant.

- [5] Therefore, the application for leave to appeal is hereby dismissed with costs.

P.W. TSHIKI

JUDGE OF THE HIGH COURT

Counsel for the applicant/defendant : Adv S Cole

Instructed by : Cooper Conroy Bell & Richards Inc

EAST LONDON

Counsel for the plaintiff/respondent : Adv D De La Harpe

Instructed by : Bax Kaplan Inc

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