

SOUTH AFRICA / JUDGMENT

Trizapax (Pty) Ltd v Graf and Another (60265/19) [2020] ZAGPPHC 408 (4 August 2020) [2020] ZAGPPHC 408

COURT

North Gauteng High Court, Pretoria

BEFORE

Fabricius

CASE / FILE NUMBER

60265/19

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: 60265/19

IN

THE MATTER BETWEEN:

TRIZAPAX

(PTY) LTD

Applicant

AND

GERD

LUDWIG GRAF

First Respondent

CATHARINA

MAGDALENA GRAF

Second Respondent

JUDGMENT

FABRICIUS J

- [1] On 20 August 2019 I issued an interim order to the effect that Respondents restore Applicant's undisturbed possession to a certain property, to allow Applicant and the general public free access over a servitude road registered in favour of the public, to cease blocking such access and to restore a electricity cable.
- [2] This is the return day of such interim order. The case was decided on the affidavits and written heads of argument due to the present lock-down situation. All relevant facts and legal arguments are before me.
- [3] First Respondent is the owner of portion [...] of the farm Hartbeesfontein. Respondents reside on this property and also operate a lodge. The Second Respondent is the owner of portion 34, which is vacant land.
- [4] Applicant is the owner of 2 farms (part of the Dinokeng Game Reserve), . Portion [...] of the farm Hartbeesfontein and the remaining extent of portion 10 of such farm. These are so-called "inland properties" as they do not have direct access to the main roads in the said Reserve.
- [5] The title deed of portion 51 indicates that the property is subject to a variety of conditions including condition 3 which provides a servitude of right of way in favour of the general public. This servitude had been in existence for some 30 years prior 1999, when First Respondent purchased portion 51.
- [6] Applicant alleges that Respondents built a bushveld lodge literally on the servitude road. It is applicant's case that Respondents interfered with applicant's right of way on a fairly regular basis, and a number of confrontations have occurred. In their opinion also, applicant requires permission before it can affect repairs to such road. They also offered Applicant access to is property by means of a different road, forgetting that the servitude does not attach to them nor, neither is it inherent to any specific portion of land. It is for the public use whether much frequented or not.
- [7] Applicant submitted that it had satisfied all the requirements for a final interdict which I do not intend to debate again. They are well-known.
- [8] Respondents oppose the final relief. They say that Applicant causes a "nuisance" to them and their game lodge and guests. That is no defence, and if true, would enable Respondents to obtain the necessary relief in separate proceedings in a different forum. As far as the electrical cable is concerned, separate proceedings are apparently pending in another court.

- [9] They also require that Applicant makes arrangements before it repairs the road for instance, so as to avoid disturbing the guests of the lodge. Such demand or proposal is also not a defence to the right of way created by the mentioned servitude. Rights of ownership in this context cannot affect the registered right of way. Respondents can address the issue of “nuisance” in separate proceedings based on its own cause of action if the facts support it.
- [10] To which extent applicant is entitled to repair the road when this becomes necessary can only be relevant in these proceedings if such repair consists of removing an obstruction that hinders the right of way. If Applicant’s actions venture beyond that, it is open to Respondents to approach the appropriate authorities. Factual disputes of this nature go beyond the relief sought in respect of the right of way.
- [11] Applicants cannot be obligated to use an alternative road. Respondents clearly misunderstand the nature of a servitude of right of way. As I have said, rights of ownership are not relevant in these proceedings and the parties themselves should sensibly settle their disputes.
- [12] Accordingly, I am satisfied that applicant is entitled to relief.

[13] The following order is made:

13.1 Prayers 1.1, 1.2 and 1.4 of the interim order of 20/8/2019 are made final.

H FABRICIUS

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE OF HEARING: NO ORAL HEARING

DATE OF JUDGMENT: 4 AUGUST 2020

FOR THE APPLICANT: ADV J VORSTER

INSTRUCTED BY: STEYN ATTORNEYS

FOR THE RESPONDENT: ADV Z SCHOEMAN

INSTRUCTED BY: MACINTOSH CROSS & FARQUHARSON ATTORNEYS

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Prepared on 10 October 2026 · Esheria