



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Deon Nel v Petrus Jacobus de Beer & Another (406/21) [2022] ZASCA 145 (26 October 2022)

Today the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Pretoria (high court). The SCA set aside the order of the high court and replaced it with one that ordered the plaintiff to submit a duly signed agreement to the defendants in respect of Portions 6 and 11 of the farm Swart Rust (the farm), failing which, the Sheriff was authorised and ordered to sign the agreement on behalf of the defendants.

This appeal revolved around a dispute about the validity and enforceability of a right of pre-emption contained in a lease agreement. In terms of the agreement, five farms were to be leased from the respondents for a period of three years. The plaintiff sought to buy the property, but the parties decided to include a right of pre-emption in the agreement in favour of the plaintiff instead. However, while the agreement was extant, the respondents concluded a sale agreement with the Fanie Trust (the Fanie Trust agreement) in terms of portions 6 and 11 of the farm. The respondents did not offer the plaintiff the opportunity to exercise his right of pre-emption. Rather, after the farms were sold to the Fanie Trust, the respondents entered into another lease agreement with the plaintiff in respect of the same five farms for another three years, also with the right of pre-emption. The plaintiff was unaware that the farms had been sold, and when he became aware of this, informed the respondents that he intends to exercise his right of pre-emption and provided them with a signed standard draft agreement. The respondent did not sign the agreement. They also did not indicate that they were unsatisfied with any particular term in the agreement, or that the draft agreement was

considered to be a counter offer. This prompted the plaintiff to launch an application seeking an order declaring that his right of pre-emption was properly exercised over the properties sold to the Fanie Trust.

The SCA had to determine whether the pre-emptive clause was triggered as only two of the five farms were sold and whether the right was properly exercised. No evidence was tendered indicating that the parties required the farms to be sold as a unit. This Court found that had this been the case, the respondents would have been at liberty to undermine the plaintiff's right of pre-emption by selling the farms piece-by-piece, rendering the plaintiff's rights nugatory. This Court confirmed that where a right of pre-emption was granted in respect of a property or separate properties and the grantor of the right sells a portion of the property or one of the properties, the right of pre-emption would have been triggered, unless a contrary intention emanated from the agreement between the parties. The moment when the right of pre-emption was exercised after the contract was concluded with the third party, an independent contract and not a substitutionary one came into existence between the grantor and grantee. This, subsequently, did not affect the validity of the contract between the grantor and the third party.

In the result, the SCA upheld the appeal and aside the order of the high court and replaced it with one ordering the plaintiff to submit a duly signed agreement to the defendants in respect of Portions 6 and 11 of the farm Swart Rust (the farm), failing which, the Sherriff was authorised and ordered to sign the agreement on behalf of the defendants.

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