



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

Date: 5 April 2022

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

Brits v Kommandantsdrift CC and Others (143/2021) [2022] ZASCA 41 (5 April 2022)

The Supreme Court of Appeal (SCA) today dismissed an appeal with costs, and further, remitted the matter to the Western Cape Division of the High Court, Cape Town (the high court) for the determination of the remainder of the issues. The appeal was against the decision of the high court, whereby Parker J held that two sale and purchase contracts in respect of land were void *ab initio*, due to a common error on the part of all the contracting parties, relating to a material term.

Aggrieved by this decision, the appellant, Mr Johannes Brits (Brits), launched an application for leave to appeal, which was refused by the high court. The appeal was with the leave of the SCA. During 1993, Mr Meyer le Roux Snr subdivided the original farm Onder Zandrift no: 119, which resulted in the separated and disputed land referred to in the proceedings as ‘the wedge’. Meyer Snr then transferred the wedge to his oldest son Michael and his wife. This piece of land – the wedge – was then consolidated with another piece of land, which created the farm known as Oude Zandrift 446 (farm 446). In 1997, Michael and his wife transferred farm 446 to the first respondent, Kommandantsdrift CC, a close corporation (the CC), which had Meyer le Roux Jnr as its sole member. In 2000, the CC sold farm 446 to Nico le Roux, the second respondent, who is Meyer Jnr’s brother. Thereafter, in 2008, Nico then sold farm 446 to Brits, which was then registered in the name of the appellant, and remains so registered to date.

In 2015, both the CC and Nico instituted two separate actions in the Western Cape Division of the High Court, Cape Town laying claim to the wedge, wherein both effectively sought a declaration that the respective sales of farm 446 (the 2000 contract concluded between the CC and Nico, and the 2008 contract concluded between Nico and Brits) were void. By agreement between the parties both the cases were consolidated with the action in the high court which formed the subject of the appeal. In response to the CC’s claims for the re-transfer of farm 446 to it, the appellant raised a special plea of prescription. Additionally, he denied that the two contracts of sale were void.

The SCA found that the parties had agreed that the issues that were to be determined by the high court were indeed the issues as recorded in the high court's judgment. Namely, whether the transfers of the property from the CC to Nico through to Brits were void; and concomitantly whether the CC was entitled to claim that the deeds office registries be amended in order to reflect the CC as the true and correct owner of the wedge; as well as any plea of prescription first to be decided separately; and that all other issues stood over for later determination.

The SCA held that, in the circumstances, Brits did not make out a case for the prescription he had relied upon. All that Brits pleaded was that the actual or constructive knowledge occurred more than three years prior to the service of summons. Thus, the inception date was not pleaded.

The SCA held further that it was common cause that at the time that both contracts of sale (the 2000 and 2008 contracts) were signed, all the parties to the contracts were under the common error that the wedge was not part of farm 446, but rather part of the CC's farm. This common mistake was fundamental to the material terms of the agreement as to the identity of what was being sold and bought, and thus rendered the contracts void.

The SCA held, however, that it could not adjudicate on the transfer issue, as the SCA found that the high court had, regrettably, failed to deal with the issue as to whether the CC was entitled to claim that the deeds office registries be amended in order to reflect the CC as the true and correct owner of the wedge. The result of the high court's judgment was that even though the two contracts of sale had been found to be void, the land remained registered in the name of the appellant. Accordingly, the SCA held that the matter had to be remitted to the high court to decide this issue.

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