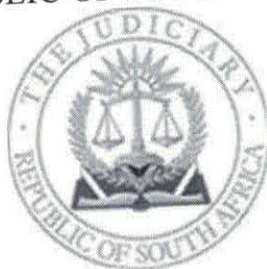



REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 31228/2021

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
16/09/2021	
	

In the matter between:

**ROSSOUW MEAT PROPERTY INVESTMENTS
(PTY) LTD (2019/130471/07)**

APPLICANT

and

**FRIQUR 142 BK
(2009/185287/23)**

First Respondent

THE REGISTRAR OF DEES

Second Respondent

**THE PROPOSED PURCHER OF
THE PROPERTY KNOWN AS THE
FARM KROKODILDRIFT 446 JQ**

Third Respondent

JUDGMENT

MBONGWE J:

INTRODUCTION

- [1] This application was brought on urgent basis in terms of the Rule 6(12) of the Uniform Rules of Court. The applicant is a lessee of a small portion of a farm owned by the first respondent since 2012 and operates a butchery thereon. The lease is for a period of 10 years with an option for extension for a further period of five years. In terms of the lease agreement, the applicant is granted a right of first refusal in the event that the lessor decides to sell the farm. During 2019 the property of the first respondent was sold on auction to the third respondent, subject to the lease. The applicant had been present at the auction and was therefore aware of the events taking place. Subsequent to the auction the third respondent and/or its representative had visited the property for inspection. The financiers of the third respondent had also visited the property for the purpose of evaluation. The applicant was aware of these visitations. There had been a period of silence subsequent to the auction and the applicant was in the dark with regards to progress. As the holder of the right of first refusal, the applicant had an interest in the sale of the property.
- [2] During the month of June, 2021 the applicant communicated with the first respondent's attorneys/conveyors enquiring whether there had been any developments in the sale of the property. There was an exchange of correspondence between the applicant and the attorneys of the first respondent particularly from the 10 to the 24 June 2021. It was in this period that the applicant requested and was provided with a copy of the conditions of sale of the property. The applicant alleges that it had acquired more details of the transaction in the copy of the conditions of sale, particular, the name of the purchaser as well as the purchase price of the property. It was upon knowing the purchase price that the applicant had

decided to exercise the right of first refusal lent to it in terms of clause 30 of the lease agreement. The applicant communicated its intention to exercise its right and, to that end, intended to buy the property. The applicant was left uncertain as to whether it had the co-operation of the other parties, namely, the first and second respondents with regard to its election to buy the property. This uncertainty led to the applicant demanding an undertaking from the first respondent's attorney that the property shall not be transferred into the name of the third respondent as the applicant intended purchasing it or, as it were, to step in the shoes of the first respondent. The applicant also alleges to have been informed that the transfer of the property was in progress.

- [3] Concerned by the state of secrecy and uncertainty, the applicant launched this application in June 2021 to interdict the transfer of the property. The application was served on the first respondent on the 24 June 2021 and, on the same day, the applicant received a letter also dated 24 June 2021. In the letter the applicant was advised that there was at that stage nothing ongoing on the sale of the property and an undertaking by the first respondent's attorney was given that the applicant will be informed should instructions to proceed with the transfer of the registration of the property to the third respondent be received.

HEARING

URGENCY

- [4] The matter came before me on the 7 July 2021. The very first issue of contention was whether the matter was urgent. In opposing the application, the first and second respondents contended, inter alia, that the matter was not urgent and prayed for the dismissal of the application with costs.

I concluded, however, that it was not unreasonable for the applicant to conceive the uncertainty as non-exclusive of an imminent threat to of its right. The information that the transfer of the property was on course, confirmed in the answering affidavit of the third respondent, could only be perceived as an indication of the close proximity of the threat. I found, therefore, that the applicant was justified to bring this application on urgent basis, notwithstanding the written undertaking the applicant had received from the first respondent a day after the launch of this application.

MERITS

POINT(S) IN LIMINE RAISED

- [5] The third respondent raised points *in limine* on the basis whereof it challenged the validity of the very right the applicant was relying on to seek the interdict. To be more precise, the third respondent challenged the lawfulness and validity of the lease agreement from which the applicant derived the right of first refusal in the sale of the property. The challenge was premised on the misconception that the lease, being for a period of ten years and extendable for a further five years, required the written consent of the Minister of Agriculture for the lease agreement to be lawful and valid. The lease agreement in this case was concluded in 2012 for a period of 10 years extendable for a further 5 years. The third respondent contended that the absence of ministerial written consent rendered the agreement void *ab initio* and that the applicant's right purportedly deriving therefrom invalid and no-existent. Based on this submission the third respondent sought the dismissal of this application with costs.
- [6] The diametrically opposed contentions of both the third respondent and the applicant were premised on the assumption that the zoning of the land as either agricultural land or otherwise determined whether ministerial

consent was required for compliance with the provisions of section 3 of the Act.

THE LAW

- [7] The question whether the consent of the minister was required and the purpose such consent served was enunciated in *Adlem and Another v Arlow* 2013 (3) SA 1 SCA para 12 as follows: “.....what is sought to be controlled is not both the subdivision and also the use of agricultural land, but the subdivision and, in connection therewith, the use of such land. The Act does not confer on the minister the power to control the use of agricultural land absent a contemplated subdivision, whether in the literal sense as envisaged in s3(a) and s3(i) or in the extended sense as envisaged s3(d) (a lease for 10 years or longer) and 3(e)(ii) (a right for 10 years or longer).” It follows, therefore, that the minister’s consent serves to control only the subdivision of agricultural land. Where there is no intended subdivision of agricultural land, the minister does not have any control over the sale of such land. It follows, therefore, that the validity of the lease agreement in the present matter remains unaffected.
- [8] The provisions of clause 30 of the lease agreement, granting the applicant the right of first refusal in the event of the sale of the first respondent’s property, must be interpreted within the context of the provisions of section 3. These provisions do not limit the exercise of the right afforded to the applicant to the purchase of the portion of property leased to it, as contended for by the third respondent. Clause 30 has to be read with the consideration of the prohibition of the subdivision of agricultural land without the consent of the minister in mind. I consequently find that the applicant is entitled to exercise its right of first refusal in respect of or over

the first respondent's entire property described in the title deed and the conditions of sale relating to the property concerned in this case.

COSTS


[9] It is trite that costs follow the outcome of the proceedings. There are, however, circumstances in this case that prohibit the granting of an unqualified order for costs. I noted the third respondent's no-participation in the proposed standing down of the matter to the next day at the instance of the first respondent that was agreed to by the applicant. There were also lengthy arguments emanating from the third respondent's challenge of the validity of the lease agreement and the applicant's right deriving from it. The first respondent played no role in those arguments. The inconvenience that arose affected the first and second respondents equally and so should the costs of the proceedings.

ORDER

[10] Resulting from the findings in this judgment the following order is made:

1. The application for the condonation of non-compliance with the rules prayed for in prayer 1 of the notice of motion is grated.
2. The application is found to have been justifiably urgent.
3. The points *in limine* raised by the third respondent are dismissed with costs.
4. The first respondent is interdicted and prohibited from registering the transfer of the property described in the name of the third respondent or anyone else.

5. The applicant is to take reasonable steps to give effect to its election to step in the shoes of the third respondent in the purchase of the property within three months from the date of this order.
6. Each of the first and third respondents is to pay 50% the costs of this application, including the costs consequent upon the employment of two counsel.


 M. MBONGWE J
 JUDGE OF THE HIGH COURT
 GAUTENG DIVISION PRETORIA

APPEARANCES

<u>Heard on:</u>	7 July 2021
<u>For the Applicants:</u>	Adv- F.W. Botes SC With him: Adv. D.E. de Kock
<u>Instructed by:</u>	Langenhoven Pistorius & Modihapula c/o Coetzee & Partners, ARCADIA
<u>For the Respondent:</u>	Adv J C Klopper
<u>Instructed by:</u>	Olivier Cronje & Stiglingh c/o DBM Attorneys, CENTURION
<u>For the Third Respondent:</u>	N. J. Esterhuisen
<u>Instructed by:</u>	Du Plessis Van der Westhuizen Inc c/o Savage Jooste, Menlo Park, PRETORIA

JUDGMENT ELECTRONICALLY TRANSMITTED ON 5 AUGUST 2021