

IN THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

CASE NO: A459/2014

23/6/2015.

DELETE	WHICHEVER	IS	NOT
APPLICABLE			
(1)	REPORTABLE:	YES /NO	
(2)	OF INTEREST	TO	OTHER
	JUDGES:	YES /NO	
(3)	REVISED		
DATE:		18 June 2015	
SIGNATURE:		[Signature] ansen	

In the matter between:

**ETINDZIWENI COMMUNAL PROPERTY
ASSOCIATION**

Appellant

and

CARFARM CLOSE CORPORATION

Respondent

JUDGMENT

JANSEN J

- [1] This is an appeal against the judgment and order of Molefe J dated 3 December 2013.

[2] The crisp issue which has to be decided is whether the court *a quo* correctly held that there had been proper service of the respondent's summons in the action on the appellant.

[3] It is common cause that the appellant is a communal property association (CPA) and that it is registered as such in terms of the Communal Property Association Act, 28 of 1996 (the Act). It is also common cause that the appellant is the registered owner of portion 6 of the farm Sunnymead 600 JT in the district of Barberton (Portion 6). Portion 6 and Portion 0 were purchased for the appellant by the Commission on Restitution of Land Rights pursuant to a successful claim which it lodged in terms of the Restitution of Land Rights Act, 22 of 1994.

[4] Section 7 of the Act sets out the procedure for the adoption of a constitution by a community¹. Section 8 of the Act deals with the registration of communal property associations. Section 8(1) provides that the Director-General² shall consider an application for registration of a communal property association together with, *inter alia*, the constitution adopted by the association. In order to qualify for registration as a CPA in terms of the Act, the community has to comply with the requirements of s 8(2) of the Act. One of the requirements is that prescribed in s 8(2)(d) of the Act, which is that "*the constitution adopted by it deals with the matters referred to in the Schedule*". The Schedule to the Act lists 22 matters which have to be addressed in a CPA's constitution. The first is its name. The second one is the address of the association.

¹ A community is defined in s 1 to mean a group of persons which wishes to have its rights to or in particular property determined by shared rules under a written constitution and which wishes or is required to form an association as contemplated in s 2 of the Act.

² Who is defined in s 1 of the Act as the Director-General of Rural Development and Land Reform.

[5] Section 8(3)(a) of the Act provides that, if the Director-General is satisfied that the association qualifies for registration, he or she shall refer the application, constitution and his or her written consent to the Registration Officer³, who shall register the association in the prescribed manner, allocate a registration number, and issue a certificate of registration. The appellant's registration certificate is annexed to its founding affidavit. Section 8(3)(b) provides that the Registration Officer shall keep a register of, *inter alia*, registered associations. In terms of s 8(3)(c), the Registration Officer shall, on request and on payment of the prescribed fee, provide members of the public with information contained in the register and with a copy of the constitution of any registered association. A member of the public will therefore be able to obtain, in this way, the address of a CPA which has been registered in terms of the Act.

[6] The appellant stated in paragraph 2.1 of its founding affidavit that its "*registered office*" was Portion 6. This was not disputed by the respondent. The reference by the appellant to Portion 6 being its registered office is obviously a reference to the address mentioned in the constitution which it adopted for purposes of qualifying for registration as a CPA in terms of the Act. No other provision exists for a CPA to have an address which is registered.

[7] Section 8(6)(a) of the Act provides that, upon the registration of an association, it shall be established as a juristic person with the capacity to sue and be sued. The

³ Who is defined in s 1 of the Act as an officer of the department of Rural Development and Land Reform appointed by the Director-General as Registration Officer.

submission on behalf of the appellant in the court below and before us was that the summons should have been served in accordance with Rule 4(1)(a)(v). The rule provides as follows:

“4(1)(a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (aA) any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners:

.....

(v) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or principal place of business within the court’s jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law.”

[8] The appellant is a juristic person, i.e. a corporation.⁴ The evidence shows that it does not carry on business. It therefore does not have a principal place of business where a process of court may be served. But it does have an address which is reflected in its constitution and which therefore forms part of its registration documents in terms of the Act. There is, in my view, no difference in principle between a registered address and a registered office to which the rule refers.

[9] It follows that the summons in question should have been served at Portion 6 in the manner provided for in Rule 4(1)(a)(v). But that is not what happened. What the sheriff’s return of service reflects is that he served the summons on Mr. John Zulu,

⁴ The Afrikaans text of Rule 4(1)(a)(v) refers to a “regspersoon”

chairman of the Etindziweni Communal Property Association at his residence, being 119 Long Homes, Emjindini, Barberton. The return further reflects that several attempts were made to serve the summons at Sunnymead farm, but that the sheriff could not find anyone to serve the summons on.

[10] The appellant's founding affidavit was deposed to by Mr. John Zulu. He states in paragraph 18 thereof that the summons was served on him personally on 29 December 2011 and that he took a copy thereof to the Regional Office of the Commission on Restitution of Land Rights, and in particular to a Mr. Mathedimusa who informed him that he should not worry as they would deal with the matter. He again approached the Commission's offices in June 2012 and was informed that they were dealing with the matter. He only became aware that default judgment had been granted against the appellant when a writ of execution was served on him, again at his private residence, on 15 November 2012. The sheriff attached his personal movable assets, but the writ was set aside by the court *a quo*.

[11] It was correctly pointed out by the court *a quo* that the purpose of Rule 4 is to provide a mechanism by which relative certainty can be obtained that the process in question has come to the attention of the defendant. If this purpose was achieved, the court found, there has been proper service even if service was not effected in terms of the rules. The court then found that the service upon the appellant's chairperson was sufficient to reach the appellant's attention. In our respectful view, the court erred in this regard. In terms of the Act, the affairs of a CPA are managed by a committee elected by

the members of the CPA. See in this regard the definition of ‘*committee*’ in s 1 of the Act, ss 9(1)(e)(i) and (vi) of the Act, and item 13 of the Schedule to the Act. There is no indication that Mr. Zulu ever brought the existence of the summons to the attention of the applicant’s management committee. It appears that he simply handed the summons over to the Commission and left it to them to deal with the matter.

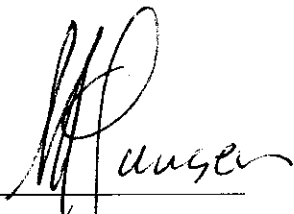
[12] For the above reasons, I conclude that the service of the summons on the appellant was irregular and that the judgment which was granted was accordingly erroneously sought and granted. In the result, I propose that the following order be made:

(1) The appeal is upheld with costs, including the costs of the appellant’s application for leave to appeal to the court *a quo* and to the Supreme Court of Appeal.

(2) The order in paragraph [30] (a) of the court *a quo* is set aside and is replaced with the following order:

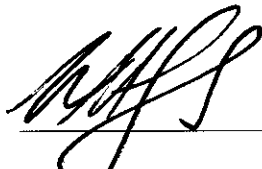
(i) The default judgment granted against the applicant on 2 October 2012 under case no. 65590/11 is rescinded.

(ii) The respondent is ordered to pay the costs of the application.



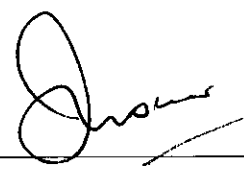
M M JANSEN
JUDGE OF THE HIGH COURT

I agree



W HUGHES
JUDGE OF THE HIGH COURT

I agree, and it is so ordered



J W LOUW
JUDGE OF THE HIGH COURT

Appellant's counsel: Adv. D.T. Skosana SC

Instructed by S. Ngomane Inc.

Respondent's counsel: Adv. J. de Beer

Instructed by Hough & Bremner Inc.