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**IN THE HIGH COURT OF SOUTH AFRICA,
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 12285/2013

In the matter between:

**RICARDO RENATO LODETTI
JESAMAINE ELOISE JOOSTE**

**FIRST APPLICANT
SECOND APPLICANT**

And

**KRISTIYAN IVANOV RAYKOV
SHARON RAYKOV**

**FIRST RESPONDENT
SECOND RESPONDENT**

ORDER

Order granted in terms of paragraphs 1, 2, 3, 4, 7 and 8 of the Notice of Motion, and set out as follows:

‘(1) the respondents are ordered to do all things necessary to remove the wall obstructing the road servitude situated between the parties’ premises at 2.... D.... Road, A..... and 25 S..... C....., A..... (“The servitude”) within ten (10) days of the granting of this Order.

(2) In the event of the Respondents (or either of them) failing to comply with the Order in paragraph 1 above, the Sheriff of the above

Honourable Court is authorised forthwith to do all things necessary to give effect to the order in paragraph 1 above.

(3) The respondents are ordered to deliver two remote controls (“the remote controls”) to the electronic gate obstructing the servitude (“the gate”) within ten (10) days of the granting of this order.

(4) In the event of the respondents (or either of them) failing to comply with the order in paragraph 3 above, the Sheriff of the above Honourable Court is authorised forthwith do all things necessary to give effect to the order in paragraph 3 above.

(5) The respondents are interdicted and restrained from erecting or causing any further obstructions to the servitude.

(6) The respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved.’

JUDGMENT

SISHI J

Introduction

[1] This is an application for an order compelling the respondents to remove a gate and a wall that they have erected or caused to be erected, which obstructs a registered servitude in favour of the applicants' immovable property over the respondents' immovable property together with ancillary relief.

[2] The applicants are co-owners of an immovable property situated at 2..... D..... Street, A..... ("The Applicants' property").

[3] The respondents are co-owners of an immovable property situated at 2..... S..... C..... A..... ("The Respondents' property") which is next door to the applicants' property.

[4] There is a roadway that runs through the applicants' property and alongside the respondents' property leading to the main road, which is a registered servitude in favour of the applicants' property over the respondents' property ("the servitude").

[5] The servitude is registered over both the applicants' property and the respondents' property as well as in a Notarial Deed of Servitude.

[6] Despite the existence of the servitude, the respondents have erected or caused to be erected a gate ("the gate") at the one end of the servitude and

a wall (“the wall”) at the other end thereby obstructing the servitude without any lawful right to do so.

[7] The respondents refuse to remove the gate and/or the wall despite numerous requests by the applicants, and accordingly the applicants require the assistance of this Court in that regard and seek an order compelling them to do so.

The issues

[8] Whether a servitude of right of way has been established by the applicant.

[9] Whether the wall and the gate constitute an unlawful interference with the right of the applicants.

[10] Whether supervening lack of *utilitas* terminates the servitude.

[11] Whether the applicants had abandoned the servitude.

[12] Whether the applicants have satisfied the requirements for the granting of a final interdict.

Factual background

[13] The applicants purchased the said immovable property during the year 2005. The immovable property has two entrances on opposite sides, one off D..... street (“the D..... entrance”) and one off S..... C..... (“The S..... entrance”).

[14] Photographs depicting the D..... entrance are annexed to the founding affidavit and marked “C” and “D” respectively.

[15] Photographs of the Sherwood entrance are annexed to the founding affidavit and marked “E”.

[16] The D..... entrance consists of an extremely steep and long driveway which is very difficult to use as evidenced in photographs “C” and “D”. Although the respondents concede that this entrance is steep, they denied that it is extremely steep.

[17] The Sherwood entrance on the other hand is a flat and convenient road way and, a registered road servitude running along the respondents’ property and leading to the immovable property (“the servitude”) as evidenced by annexure “E”.

[18] As it is clear from annexure “E”, the servitude is a roadway that runs pass the properties in this photograph and into the immovable property.

[19] Paragraph “C” on page 4 of the applicants’ title deed evidences the registration of the servitude in favour of the immovable property over the applicants’ property as does paragraph “D” on page 4 of the respondents’ title deed.

[20] Paragraph “C” on page 4 of the applicants’ title deed provides:

‘With the benefit of the road servitude, 2 metres wide running parallel to and along the entire Northern Western boundary of the remainder of Lot 2...., A..... Township, commencing from the boundary, lettered “GC” and terminating at the boundary letter “FE” and diagram “E – 2485/1968 over remainder of lot 2..... of A..... Township as created in Notarial Deed of Servitude No.K.....”.’

[21] Paragraph “D” on page 4 of the respondents’ title deed provides:

‘Subject to road servitude, 2 metres wide running parallel to and along the entire North Western boundary of the said, the remainder of Lot 2..... A....., commencing from the boundary lettered “GC” and terminating on the boundary lettered “FE” on diagram SGD No. 2.....”.’

[22] It is also clear that the servitude was created in Notarial deed of servitude No.K..... and a copy of the deed of servitude is annexed to the founding affidavit as “F”.

[23] It has been submitted, correctly in my view, that it is clear from these documents that the respondents’ properties are accordingly subject to a servitude in favour of the immovable property.

[24] The respondents have in fact conceded the existence of such servitude.

[25] The applicants have contended that they decided to purchase the immovable property based on entirely the servitude as they would then not have to use the steep D..... entrance as they could use the Sherwood entrance. However, as soon as they moved into the immovable property, the respondents took issue with them using the servitude.

[26] The respondents told them to stop using the servitude and to stay off their property. They frequently argued with the second respondent on the basis that the road is a registered servitude which they were entitled to use and in fact needed to use.

[27] According to the applicants, this created a very unpleasant living environment for them and after a long period of arguing with the respondents they began using the servitude less frequently.

[28] This was an undesirable situation for the applicants because as already stated, D..... entrance is an extremely steep and long driveway which is difficult to use. However, according to the applicants, this seemed to be the better option at the time than constantly arguing with the respondents.

[29] The applicants were adamant that at no stage did they abandon their right to the servitude which in any event is the private servitude nor, did they create such an impression.

[30] The respondent on the other hand alleged that there was a complete inactivity by the applicants over a period of quite a few years, the applicants certainly created an impression that they had abandoned any right they might have had to the servitude and accepted that they would use the other entrance.

[31] Shortly thereafter, the respondents erected or caused to be erected an electric gate at the Sherwood entrance, thereby completely blocking the servitude. The gate can be seen from photograph "E" to the founding affidavit which bears number 25, and being marked "the gate" which was not always there, but was erected or caused to be erected by the respondents as stated above.

[32] The applicants immediately took issue with the gate and requested the respondents to either remove the gate or give both the applicants a remote control so that they can also have access to the servitude.

[33] The respondents refused and merely stated that they would open the gate to allow them access through the servitude when they needed to use it.

[34] The applicants advised the respondents that this was unacceptable as they had a right to the servitude and they were not entitled to block their access to it. At some stage, they instructed their former attorneys to deal with the issue.

[35] According to the applicants, there were some correspondence between their attorneys at the time but, they could not afford to litigate on a full scale at that stage and unfortunately, they were unable to get the respondents to give them the remote control to the gate or remove the gate completely.

[36] The wall has entirely blocked off the properties access to the servitude and the respondents advised the applicants that they would not be removing the wall despite the existence of the servitude.

[37] The applicants, in October 2012 moved to another property and during December of that year, they went on holiday in Australia and during this time the respondents took it upon themselves, without the consent of the applicants to erect a wall at the other end of the servitude.

[38] There is now a gate at the road side of Sherwood entrance of the servitude and a wall where the servitude ended.

[39] The applicants are now selling the property and they have a difficulty in selling, the house has been on the market since January 2013, they alleged that the Estate Agent advised them that the majority of the prospective purchasers are not interested because the servitude is blocked.

[40] The applicants' complaints as referred to above have led to the institution of this application.

The nature of the servitude

[41] A servitude may be defined as

'a limited real right that imposes a burden on movable or immovable property by restricting the rights, powers or liberties of its owner in favour of another person (in the case of a personal servitude) or the owner of another immovable property (in the case of a praedial servitude)'.¹

[42] A praedial servitude is defines as

'a limited real right which a person in the capacity as owner of one tenement (*praedium dominans*) holds over another tenement (*praedium serviens*). The servitude is incidental to and passes with the ownership of the dominant land to which it is inseparably attached and burdens the servient land irrespective of identity of the owner'.²

¹ CG Van der Merwe & MJ De Waal (up dated by CG Van der Merwe) 'Servitudes' in W Joubert (ed) *LAWSA* 2ed Vol 24 (2010) 540; Silberberg & Schoeman *The Law of Property*, 5ed, (2006) 321-324.

² CG Van der Merwe & MJ De Waal (up dated by CG Van der Merwe) 'Servitudes' in W Joubert (ed) *LAWSA* 2ed Vol 24 (2010) 545; Silberberg & Schoeman *The Law of Property*, 4ed, (year) 298; Williers *Principles of South African Law* 9ed, (2007) 593.

[43] Thus, it can be stated that the servitude is inseparably attached to the dominant land, passes with ownership on the dominant land and burdens the servient land irrespective of the identity of the owner.³

Disputes of fact

[44] In the heads of argument, the respondents contend that there are material disputes of fact in relation to the feasibility of utilising the alternate entrance; whether the applicant were even aware of the servitude at the time they purchased the property; whether for the 7 years preceding the institution of this application the applicants have made use of the alternate entrance rather than the servitude entrance, and whether the applicants or their attorney received the letter from the respondents attorneys dated 21st May 2007.

[45] The applicants have, on the other hand, submitted that there are no material disputes of facts raised in this matter.

[46] Even if one accepts for a moment that the disputes of fact are as referred to by the respondents above, such factual disputes must, in accordance with the *Plascon-Evans* rule⁴ be resolved on the facts alleged by the respondents.

[47] It is also settled law that ordinary motion proceedings cannot be used to resolve factual disputes or factual issues because they are not designed to determine probabilities.⁵

[48] There are certain issues of facts on the affidavits filed, however, the important relevant facts are for the most part common cause and consequently such issues as do exist, do not, in my view, preclude the Court from coming to a firm conclusion on the matter.

³ Silberberg & Schoeman *The Law of Property*, 5ed, (2006) 298-310; Van der Merwe *Sakereg* (1989) B467-505.

⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E – 635C

⁵ See *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA); 2009 (1) SACR 361; 2009 (4) BCLR 393; 2008 (1) All SA 197 para 26.

Whether a servitude of right of way has been established by the applicants

[49] The establishment of the servitude as set forth in the deeds of title referred to above was hardly contested by Mr Skinner for the respondents. The respondents have in the papers also conceded the existence of the servitude in their relevant properties.

[50] In my view, a servitude of right of way has been clearly established by the applicants.

Whether the wall and the gate constitute an unlawful interference with the rights of the applicants

[51] In *Roeloffze NO and another v Bothma NO and others*⁶, a number of cases dealing with the unlawful interference with the rights of the servitude holder were discussed and analysed, these include the following:⁷

‘In the case of *Allen v Colonial Government*⁸ Maasdorp J in discussing the question of obstructions to rights of way observed as follows:

“The bare fact that gates were placed across the road is in itself no denial of right, for Voet 8, 3, 4 says that a gate may be placed across a servitude road provided it does not hinder the free passage of the dominant owner.”

The above passage was quoted with approval by Corbett J in *Stuttaford v Kruger*,⁹ who proceeded as follows:

“It does not seem to me, therefore, that the mere placing of a fence and gate across a right of way of this nature necessarily involves an interference with the rights of the servitude owner. Whether a gate may be placed across a right of way must, in my view, depend upon the facts of the case, including the intention of the parties who created the servitude...In my view a fence and a gate which permit proper unrestricted use of the right of way may not in proper circumstances amount to an interference with the servitude. The question is, how do the gate and fence erected in the present case measure up to the requirements of these principles.”¹⁰

⁶ 2007 (2) SA 257 (C).

⁷ *Roeloffze NO and another v Bothma NO and others* 2007 (2) SA 257 (C) para 8.

⁸ (1907) 24 SC 1 at 8-9.

⁹ 1967 (2) SA 166 (C) at 172D-E. (In his judgment Corbett J erroneously attributed the above *dictum* to Kotze J.)

¹⁰ At 172 E-G. See also *Neuman and Another v Lavery* 1932 NPD 329 at 334;

In the *Stuttaford* case, *supra*, the former owner of the servient property erected a fence and a gate across the right of way at the point where it joined the 'hard road'. This gate was apparently erected in order to prevent cattle straying from the servient farm onto the 'hard road', but it was not locked and, according to the applicant, did not hamper in any way the enjoyment of the right of way. After the respondent became the new owner of the servient property, however, he – without any prior consultation with the applicant – caused a fence to be erected across this gate and a new gate to be erected in a different position. The respondent also caused this new gate to be locked and gave a key to the lock to the applicant. In this regard Corbett J held as follows (at 172 H – 173H):

“As far as the locking of the gate is concerned it seems to me that there is no doubt whatever that this is an obvious interference with the proper enjoyment by the applicant of his right of way ... I can easily visualise numerous persons other than the applicant who could have a perfectly legitimate right to enter the right of way from the hard road, or to enter the hard road from the right of way, and the gross inconvenience to such persons and to the applicant of the gate being locked is in my view manifest.”

The Court accordingly granted an interdict ordering the owner of the servient property forthwith to remove the offending gate from the right of way.

In a later case, *Penny and Another v Brentwood Gardens Body Corporate*,¹¹ the respondent erected a self-closing and self-locking gate across a servitude footpath. The respondent body corporate was adamant that it did not require the applicants' consent to do this. It contended that it was acting within its rights to protect life and property, in a situation that had become dangerous because of vagrants' using the access way, and that the locked gate was not in effect an obstruction for the applicants.¹² Van den Heever J rejected these contentions, stating – with reference to the respondent's defence that a key to the lock of the gate would be handed to the applicants – that, despite the applicants' possession of a key, 'there can to my mind be no doubt whatever that the erection of a locked gate is a diminution of applicant' rights'¹³ (The 'applicants' rights' contemplated by Van den Heever J included the rights of other people authorised by the applicants to use the right of way.) The respondent was therefore interdicted from locking the gate in question.'

¹¹ 1983 (1) SA 487 (C).

¹² At 490 C-D

¹³ At 490 H.

[52] I agree with Griesel J in *Roeloffze's* case, *supra*, that from the authorities referred to above, the question of whether or not a particular gate will unlawfully interfere with the reasonable use by the servitude holder of the servitude road in question depends on the facts of each individual case.

[53] The roadway that runs through the applicants' property and alongside the respondents' property leading to the main road is a registered servitude in favour of the applicants' property over the respondents' property ("the servitude").

[54] The servitude is registered over both the applicants' property and the respondents' property as well as in a Notarial Deed of Servitude. Despite the existence of the servitude, the respondents have erected or caused to be erected a gate at one end of the servitude and a wall at the other end thereby obstructing the servitude without any lawful right to do so according to the applicants.

[55] It is not in dispute that the applicants have made numerous requests to the respondents to remove the gate and the wall but have refused to do so.

[56] The applicants have alleged that they decided to purchase the immovable property based on inter alia, the servitude as they would not have to use the steep Dingwall entrance as they could use the Sherwood entrance. This has been denied by the respondents in the answering affidavit, and they relied on the hearsay evidence of their attorneys who they alleged had discussed the matter with the Estate Agent who sold the property to the applicants as well as the managing agent of such firm.

[57] According to the respondents, they both have indicated that they were unaware of the existence of the servitude at the time of the sale. This is hearsay evidence as it is unconfirmed by the confirmatory affidavit of these persons. It can therefore not be correct that the applicants were not aware of the existence of the servitude as the servitude is registered over both the

applicants' property and the respondents' property as well as in a Notarial Deed of Servitude.

[58] The following facts are furthermore not in dispute between the parties, that as soon as the applicants moved into the property, the respondents took issue with them using the servitude. The respondents told them to stop using the servitude and stay off their property. Initially, they argued with the second respondent on a frequent basis that the roadway was a registered servitude which they were entitled to use and in fact needed to use. This created a very unpleasant living environment for the applicants and after a long period of arguing with respondents they began using the servitude less frequently.

[59] According to the common cause facts referred to above, it is the conduct of the respondents that caused the applicants to use the servitude less frequently.

[60] It can therefore not be correct to suggest that the applicants failed to utilise the servitude from the time that the gate was constructed in about 2005 until 2012.

[61] In any event, the applicants would not have brought this application if the servitude was of no use or benefit to them or that they had abandoned the servitude.

[62] It is clear from the affidavits and the correspondence attached thereto that at some stage, before the gate and the wall were erected, there had been some negotiations and discussions between the parties with the view of settling the differences in regard to this right of way, that these discussions and negotiations were not fruitful. Eventually the applicants launched this present application in which they asked for an order, requiring the respondent to forthwith remove the gate and the wall from the right of way.

[63] Although there is an alternative entrance to the applicants' property, it has been clearly stated that this entrance is steep and this fact has also been conceded to by the respondents.

[64] Considering all the above, I accordingly hold that the wall and the gate do constitute an unlawful interference with enjoyment of rights of the applicants.

Utilitas/Utility

[65] In *De Kock v Hanel and others*,¹⁴ the applicant applied for a declaratory order that a servitude of right of way recorded in the title deeds of property owned by first and second respondents, did not confer any rights of servitude over his property. In the alternative, the applicant sought an order declaring that the servitude over applicant's property does not allow access from first respondent's property over applicant's property into a road known as Tamarick Slain Constantia. In *De Kock's* case, the Court was faced with the argument that once the utility for which the servitude clearly no longer exist, the servitude itself ceases to exist.

[66] The Court in this case examined the authorities dealing with the grounds for extinction of a servitude and concluded that the authorities appear to be unanimous. For example, Wille's *Principles of South African Law* 8ed at 326 – 327, sets out the grounds for extinction of a praedial servitudes as a destruction of both the dominant and servient tenement, merger, or *confusio*, abandonment of the servitude by the owner of the dominant tenement and non-exercise by holder of the servitude for an uninterrupted period of 30 years. A similar analysis is provided by authors of the *Law of South Africa* volume 24, 617 – 621¹⁵ where the authors canvas the issue of *utilitas* as a prerequisite for a servitude, namely that a praedial servitude must offer some permanent advantage or benefit to the owner of the dominant land owner and must not merely serve his personal pleasure or caprice. In the *Law of South*

¹⁴ 1999 (1) SA 994 (C).

¹⁵ See footnote 1.

Africa volume 24, 617 – 621, this is known as the requirement of the *utilitas* or utility.

[67] The Court stated that it is possible as Counsel for the applicant urged that by implication, there is a continuing requirement of *utilitas*; that is, if the requirement does not continue the servitude terminates, as its use has ended. The Court concluded that none of the authorities provided such a ground but the Court proceeded on the assumption that there is merit in the proposition.

[68] There is clearly no authority whether supervening lack of *utilitas* terminates the servitude.

[69] The Court in *De Kock's* case, concluded that in the light of the discussion by the authorities and given that the dominant tenement holder claims the existence of utility, the Court considered that it was justified to conclude that there was utility when there is a reasonable claim for such utility by the dominant tenement holder.¹⁶

[70] The applicants in this matter have mentioned both in the founding affidavit and the replying affidavit that they were unable to utilise the servitude due to the respondents unlawfully erecting the gate and the wall and that they did not have funds to litigate.

[71] The fact that the applicants and the respondents were involved in litigation is a clear indication that at no stage did the applicants abandon their rights to the servitude nor is prescription applicable to them.

[72] In the instant matter, there is a reasonable claim for *utilitas* by the applicants being the dominant tenement holders, but the respondents are unlawfully obstructing the servitude.

¹⁶ At 999 I-J.

[73] In the circumstances, I cannot find that the servitude has not been utilised nor can I find that supervening lack of *utilitas* terminated the servitude.

Abandonment

[74] A private servitude may be lost by abandonment. But, strict proof of the intention to abandon it will be required, although it may be inferred from the conduct of the owner of the dominant tenement, provided that such conduct is consistent only with an intention to abandon the servitude. Thus, a failure to object to the erection of a fence or the closure of a road would amount to an abandonment of a servitude over the land which has been fenced in or the road which has been closed only if the owner of the dominant tenement would have acquiesced in such actions on the part of the servient owner for some very considerable time.

[75] In *Joles Eiendom (Pty) Ltd v Kruger and another*,¹⁷ the Court held that the abandonment of a servitude like waiver of a right, is not lightly presumed and must be clearly proved by the party relying on such abandonment or waiver. The Court found that there were no grounds for expunging the servitude.

[76] In this case the Court concluded that there were no grounds for expunging the servitude. The applicants have pointed out, correctly in my view, that the aforementioned case referred to by the respondents is not only distinguishable as the owner of the dominant tenement in that case erected the wall but in any event it was still held that no such abandonment took place.

[77] The aforementioned case of *Joles Eiendom (Pty) Ltd v Kruger and another*¹⁸ was reversed on appeal in *Kruger v Joles Eiendom (Pty) Ltd and another*.¹⁹ The Court found that the trial Judge was justified in holding that the

¹⁷ 2007 (5) SA 222 (C) para 22.

¹⁸ *supra*

¹⁹ 2009 (3) SA 5 (SCA).

plaintiff had discharged the onus of establishing that he had acquired ownership of the extended passage by prescription.

[78] In the present matter, the evidence on the affidavits, does not establish abandonment or waiver of the servitude on the part of the applicants.

[79] Abandonment of a servitude may be expressed or implied. An express abandonment may be effected unilaterally or by agreement. An implied abandonment is presumed when the dominant owner acquiesced in acts repugnant to the servitude on the servient land. Knowledge of the dominant owner and in action for a sufficient length of time is apparently essential.²⁰

[80] To be enforceable against third parties, abandonment must be published by cancellation of the registration of the servitude.²¹ As a general rule, a servitude which has been duly registered against the title deed of a property cannot be deleted or varied without the consent of the owner of the dominant tenement.

[81] In the circumstances, it follows that there are no grounds for expunging the servitude in this matter.

Whether the applicants have satisfied the requirements for the grant of a final interdict.

[82] In order to obtain a final interdict the applicants have to show:

[82.1] A clear right;

[82.2] An injury actually committed or reasonably apprehended;

[82.3] That there is no other satisfactory remedy available to the applicants.

²⁰ *King v Finegan* 1953(3) SA 412 (C).

²¹ *Hawkins v Munick* 1930 (1) Menzi 465 at 466; See also *Ex parte Halse* 1912 CPD 1042; *Ex parte Smink* 1952 (1) A148 (SWA) and the Deeds Registry Act 47 of 1937 at section 68 (2).

Clear Right

[83] It is common cause that the servitude is registered in favour of the applicants' immovable property and against or over the respondents' immovable property as according to the title deeds of the properties and the notarial deed mentioned earlier in this judgment.

[84] The servitude still exists on both title deeds and has never been removed. There is no doubt that the applicants have established a clear right to the servitude.

An injury actually committed or reasonably apprehended

[85] The respondents have erected or caused to be erected both the gate and the wall thereby blocking off the servitude and the respondents have refused to remove both the gate and the wall. This has caused unlawful interference with the exercise of the applicants' rights. The applicants also have a difficulty in selling the said immovable property.

[86] In my view, the second requirement that an injury actually committed or reasonably apprehended has been satisfied.

Alternative remedy

[87] It is clear from the papers that the respondents have refused time and again to remove the gate and the wall and have in fact advised the applicants to instruct attorneys to deal with the issue as they would not voluntarily remove the gate and the wall.

[88] In the result, I am satisfied that the applicants have satisfied the third requirement for a final interdict.

[89] In the circumstances, the applicants have satisfied the requirements for the granting of a final interdict.

Costs

[90] Counsel for the applicant has moved for an order as prayed for in the notice of motion which includes an order as to costs.

[91] Counsel for the respondents has moved for the dismissal of the application with costs.

[92] It is trite that the question of costs is a matter within the discretion of the court.

[93] In the circumstances of this case, there is no reason why the costs should not follow the result.

[94] In my view, the applicants have succeeded in establishing an entitlement for the prayers set out in the Notice of Motion.

Order

[95] In the result, I grant an order in terms of paragraphs 1, 2, 3, 4, 7 and 8 of the Notice of Motion, set out as follows:

‘(1) The respondents are ordered to do all things necessary to remove the wall obstructing the road servitude situated between the parties’ premises at 2..... D..... Road, A..... and 2... S..... C....., A..... (“the servitude”) within ten (10) days of the granting of this Order.

(2) In the event of the Respondents (or either of them) failing to comply with the Order in paragraph 1 above, the Sheriff of the above Honourable Court is authorised forthwith to do all things necessary to give effect to the order in paragraph 1 above.

(3) The respondents are ordered to deliver two remote controls (“the remote controls”) to the electronic gate obstructing the servitude (“the gate”) within ten (10) days of the granting of this order.

(4) In the event of the respondents (or either of them) failing to comply with the order in paragraph 3 above, the Sheriff of the above Honourable Court is authorised forthwith do all things necessary to give effect to the order in paragraph 3 above.

(5) The respondents are interdicted and restrained from erecting or causing any further obstructions to the servitude.

(6) The respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved.'

SISHI J

REPRESENTATION

Date of Judgment : 15 May 2015

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