

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO



IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE HIGH COURT, KIMBERLEY

CASE No: 2033/2011

Delivered: 05/07/2013

CHRISTINE ELAINE TROGER

1ST Applicant

ALISA KAYE COZZENS N.O

2ND Applicant

And

SYDNEY REGINALD HUNT

1ST Respondent

MARK HUGH HUNT

2ND Respondent

GEOFFREY EDWARD HUNT

3RD Respondent

THE MASTER OF THE NORTHERN CAPE HIGH COURT, KIMBERLEY

4TH Respondent

THE REGISTRAR OF DEEDS, KIMBERLEY

5TH Respondent

THE REGISTRAR OF DEEDS,

BLOEMFONTEIN

6TH Respondent

JUDGMENT ON LEAVE TO APPEAL

Mamosebo AJ,

Introduction

[1] This is an application for leave to appeal to the Supreme Court of Appeal ("SCA") against the order pertaining to this matter that was delivered on 22 February 2013. I issued an order for the application to be dismissed and the costs of the application, including costs of two counsel to be borne by the estate of the late Kathryn Elaine Hunt, failing which, by the applicants jointly and severally, the one paying the other to be absolved.

[2] The applicants have raised the following as grounds for leave to appeal to the Supreme Court of Appeal, alleging an error in fact and in law in the following respects, that the Court:

2.1.1 Failed to find that the undivided shares of agricultural property vest in the first and second respondents;

- 2.1.2 Failed to find that the vesting of the undivided shares of agricultural land in the first and second respondents renders such vesting subject to the provisions of s3 of the Subdivision of Agricultural Land Act, 70 of 1970;
- 2.1.3 As a result of such prohibition on the vesting of an undivided share in agricultural land and in terms of s3 of the Subdivision of Agricultural Land Act 70 of 1970, the terms of the *fide commissum* rendered *pro non scripto* and as such should be struck from the provisions of the will;
- 2.1.4 By finding that the current case is distinguishable from the matter of ***Geue and Another v Van Der Lith and Another***²⁰⁰⁴ (3) SA 333 (SCA) in that there was no question of sale of the agricultural land in the matter and the testator had specifically left this immovable property to his wife and upon her death the property was to devolve to his two sons in equal undivided shares and upon their death to Geoffrey Edward Hunt;

2.1.5 By accordingly dismissing the application with costs.

3. It is my view that all the above grounds have been adequately dealt with in the main judgment and it will serve no purpose to regurgitate the issues in this application. The entire judgment addresses all these aspects.
4. Despite the fact that the matter is conceded by both counsel as a *res nova* based on the correct interpretation of the Subdivision of Agricultural Land Act, 70 of 1970 ('The SAL Act'), more specifically s2 (b) thereof, my view is that the interpretation of this Act together with the analogy of the decided cases referred to has enabled me to contextualize the specific facts in this matter and arrive at this decision which I submit is correct.
5. Having considered the grounds of appeal and the submissions made, I am not persuaded that there are reasonable prospects that another Court would come to a different conclusion. The application for leave to appeal falls to be dismissed.

ORDER

13. **In the result the following order is made:**

- 1. The application for leave to appeal is dismissed with costs.**

Mamosebo, AJ

Northern Cape High Court, Kimberley

Appearances:

For the appellants: **Adv CEPuckrin SC**

Assisted by: J Hershensohn

Instructed by: Hugo, Mathewson & OosthuizenInc

For the Respondents: **Adv JP De Bruin SC**

Assisted by: AdvPJT De Wet

Instructed by: Haarhoffs Attorneys