

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 2024-040826

REPORTABLE: NO OF INTEREST TO OTHER JUDGES: NO REVISED: NO 05 JUNE 2026 DATE	 SIGNATURE
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In the matter between:

IZELDA SCHEEPERS

Applicant

and

ORGANIC CORAL INVESTMENTS 1 (PTY) LTD

First Respondent

YOLANDI NAUDE

Second Respondent

PAULUS PETRUS NAUDE

Third Respondent

JUDGMENT

FRANCIS-SUBBIAH J:

[1] This is an opposed application for the removal of a boundary fence on a farmland. The issue in dispute is whether the boundary fence has been placed at the

correct coordinates as depicted on the registered Surveyor General Plan. The title deed differs with the physical land boundaries.

[2] The applicant is the registered owner of portion 354 and relies on the surveyor general plan for the boundary demarcation. She submits that the fence of the second and third respondents encroaches on her property. The second and the third respondents are the registered owners of Portion 355 of the Farm Grootvlei 272, Registration Division JR, Gauteng.

[3] According to the Deed of Transfer Portion 355 should be 5.0176 hectares in extent. The registration took place on 12 December 2014. It is evident that the subdivision diagram on Annexure G for Portion 355 and Annexure H for Portion 354 indicate the identical co-ordinates of Beacon B, as 73 883,46.

[4] The second and third respondents explain how it came about that they purchased the property in August 2014. Together with the first respondent, Director-van Sittert, they drove around the property, and the boundaries were indicated to them. They accept this as their real agreement.

[5] The deed of transfer indicates that the second and third respondents own 5.0176 hectares, however they realised in 2021 that they received less square metres than they had agreed upon. They made attempts to discuss the issue with van Sittert, which he simply ignored. They further submit that a similar problem also arose at another plot they purchased from him (Plot 248), which transfer deed alleges that they hold 8.5649 hectares whereas in truth they hold 7 hectares.

[6] The second and third respondents made further attempts to amicably settle the dispute with the first respondent, but to no avail. Subsequently, the first respondent fully aware of the existing factual dispute, in 2022, and failing to settle this dispute with the second and third respondent, sold Portion 354 to the applicant.

[7] The second and third respondents contend that when the applicant purchased the property, she knew fully well of the existence of a dispute.

[8] Interesting to note is that the offer to purchase records the registered extent of the property as 5.1926 hectares, whereas the cadastral extent is reflected as 4.916 hectares, resulting in a difference of 0.2766 hectares (2,766 square metres). It was explained that the registered extent refers to the extent recorded in the title deed and Deeds Registry, while the cadastral extent refers to the extent reflected on the approved cadastral survey records. A discrepancy between these extents may arise from historical survey data, amendments to survey records, or other factors affecting the description of the property. Cadastral survey is the technical and legal process a qualified surveyor undertakes to define property lines and establish official land coordinates.

[9] In response to the second and third respondents' submission that in 2014 they went with the van Sittert, and the property beacons were identified. It was argued on behalf of the applicant that van Sittert could not have shown them the beacons as per the surveyor general plan before their sale in 2014 because the photos of the beacons were taken only in 2017. And the fence was erected in 2017.

[10] The applicant relying on Surveyor General plans submits that the property of the second and third respondents encroaches on her property. However, she fails to provide any surveyor affidavit, expert reports, confirmatory affidavit from the surveyor generals' office nor any beacon verification reports.

[11] The effect of the order that the applicant seeks to enforce is the agreement between herself and the first respondent which would have the effect of increasing the extent of her property by approximately .42 hectares and reducing the extent of the respondents' property by the same size. The second and third respondents were never parties to the offer to purchase signed between the applicant and first respondent and never agreed to the moving of the fence without the true boundaries being verified.

[12] The agreement between the first respondent and the second and third respondents in 2014 (historical occupation of the land), predates the agreement between the applicant and first respondent by 8 years. The true cadastral boundaries are not established, the location of the beacons not verified and if any encroachment exists whether the requested relocation is accurate.

[13] The third respondent, in his answering affidavit submits that he has instructed a Land Surveyor to examine the SG chart, beacons and claims made by the applicant and to reconcile with what they have in their possession and to compile a report.

[14] In the absence of such expert evidence, the court may be unable to properly determine the disputed facts relating to the precise location of the boundary lines. It is incumbent that a court should proceed with caution when parties disagree on material facts and the supporting evidence reveals unresolved issues require clarification. When it is fitting to refer a matter to evidence was considered in ***Shoprite Holdings***

Ltd v Oblowitz and others [2006] 3 ALL SA 491 (C) at 501, Davis J explained the test as follows:

“On the basis of the Wallach test, it would appear that the critical question in this regard is: Is there material which could be placed before the Court which could inform an evaluation of these contentions, the resolution of which is critical to the determination of the main application?”

[15] Rule 6(5)(g) of the Uniform Rules further provides when it is appropriate to refer a matter to evidence as follows:

‘Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.’

[16] From the above factors considered in the present matter, it points to the fact that expertise is required for the objective and authoritative assessment for the conclusive determination of the dispute.

[17] The proceedings were instituted in circumstances where a clear factual dispute existed over boundary lines. A practical and appropriate mechanism for resolving the

factual dispute would be the appointment of a qualified land surveyor to conduct a survey of the property and prepare a comprehensive surveyor's report. Applicant's representative submitted that such an appointment will be appropriate.

[18] Such report should identify and establish the correct boundary lines, explain the methodology employed in determining those boundaries, and reference the relevant title deeds, survey records, diagrams, cadastral information, and physical markers relied upon. Given the technical nature of boundary determination, a qualified land surveyor possesses the necessary expertise to provide an objective and authoritative assessment that will assist the parties in resolving the disputed boundary lines.

[19] Only when this is done can the court fulfil its role as the impartial arbiter of the dispute and ensure justice is properly served. The parties in any event remain at liberty to approach the court with expert reports for the leading of oral evidence if the dispute remains unresolved.

[20] As a result, the court orders as follows:

20.1 The parties are ordered to obtain the services of a qualified land surveyor whose report will confirm the correct boundaries of the abovementioned portions 354 and 355.

20.2 The applicant and first respondent are ordered to pay the costs of the land surveyor in equal shares.

20.3 The parties may approach the court on the same papers, as supplemented to lead oral evidence in the event the dispute remains unresolved.

20.4 Costs are in the cause.



R. FRANCIS-SUBBIAH

Judge of the Gauteng High court: Pretoria

Appearances

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Hearing: 26 May 2026

Judgment: 05 June 2026