

ORAL RIGHT OF ACCESS TO PROPERTY GETS YOU NOWHERE

Roux and Others v Groenewald and Others (40691/2018) [2019] ZAGPPHC 273 (14 June 2019)

This judgment serves as a reminder that the Alienation of Land Act requires that the granting of an interest in land by one person to another must be recorded in a written agreement to be valid. Here X bought a portion of Y's property, having orally also negotiated for a right of access granting X a right of way over Y's property to the new portion. This was never recorded in the sale agreement of the property or separately. Was the oral agreement binding?

The Judgment can be viewed [here](#).

FACTS

Roux was the sole member of Veroux Property Development CC. Together with his business partner, Steenekamp, he sought to buy a portion of each of two properties adjacent to Steenekamp's property and to erect new and improved dwellings on these portions.

Roux entered into two separate sale agreements with the respective owners of two adjacent properties, Groenewald and Dercksen.

Before these sale agreements were signed and whilst negotiating with Groenewald in respect thereof, Roux and Groenewald orally agreed to a right of way over Groenewald's property. According to Roux, Groenewald agreed to a right of access (right of way) for both new dwellings through his property; and agreed to provide and sign all necessary documents for effecting the agreed upon right of way through his property to the property of Dercksen. Groenewald, on the other hand, explained that he had agreed to grant a right of way to Roux and Steenekamp as, had he not done so, the latter would have been unable to access the portion of the property that forms the basis of the sale agreement. This was contingent upon Roux complying with the terms of the sale agreement.

When the sale agreements were signed a few weeks later in March 2016, no mention was made of the right of way.

After a dispute arose between the parties, Roux approached the Court requesting, amongst other things, an order that the oral right of way servitude agreement be declared valid and in full force.

HELD

Is the oral right of way valid?

- Section 2 of the Alienation of Land Act 68 of 1981 (the Act) requires that, to be valid, the alienation of land must be contained in a deed of alienation duly signed by the parties or their agents acting on the written authority. In terms of section 1(b) of the Act, 'land' includes 'any interest in land', and 'alienate' which corresponds with 'alienation', in relation to land, means 'sell, exchange or donate'. It is established that a praedial servitude (such as a servitude right of way) constitutes an 'interest in land' as envisaged in the Act.
- The oral right of way contemplated in this matter constituted an interest in land (and was a real right) granting Roux rights over land belonging to Groenewald, for purposes of providing access to Roux for the erection of a second dwelling on the adjacent portion purchased (the land belonging to Dercksen).

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- This was an 'alienation ' of an 'interest in land' as contemplated in section 1(b) of the Act. To be valid and binding the agreement of a right of way had to be in writing in compliance with section 2(1) of the Act.

CONCLUSION

The agreement was therefore not valid and binding due to non-compliance with section 2(1) of the Act and the application failed.