

CARAVAN HOMES ON AGRICULTURAL LAND: IMPORTANT PREREQUISITES

Leppan N.O and Others v King (2471/2020) [2021] ZAECGHC 67 (20 July 2021)

Many people feel a little envious of others' semi-permanent caravan homes, situated on a far-off piece of farmland away from city life, in respect of which they have somehow managed to secure a long term entitlement to use. These agreements risk a declaration of invalidity, if there is no consent from the Minister. This is because of the provisions of the Subdivision of Agricultural Land Act which stretch beyond subdivision and apply to almost any grant of use of a portion of such land. The judgment illustrates the consequences of an agreement to use such a portion.

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

FACTS

The Yellow Sands Caravan Park (the 'Caravan Park') has been in operation for more than 40 years in Kwelera, north of East London. Since 24 January 2004, Mr King's chalet van has been stationed on camp site 47 in the park, in terms of an agreement with the Caravan Park owner. The agreement permitted Mr King to use the camp site exclusively in exchange for certain payments.

The land on which the camping site is situated is owned by the Yellow Sands Property Trust ("the Trust"). One of the trustees of the Trust is the sole member of, and operates the Caravan Park, with the permission of the Trust.

The camp site offering worked as follows. Camp sites were demarcated on the land to provide for different forms of accommodation. There were holiday visitors that booked, paid and utilised the accommodation, as well as a number of persons that either resided there permanently or consistently over holidays. Most of the latter persons owned the actual structures of the chalet vans or park/mobile homes ("the Owners"). They were permitted to park chalet vans on a semi-permanent basis on allocated camp sites. Though they were owners of these structures, they did not own the camp sites on which the structures were stationed. The camp sites formed part of the farm and therefore ownership of the camp sites belonged to the Trust.

The Caravan Park operation was an arrangement in place only between Yellow Sands and the Trust. The Owners had no relationship with the Trust, only with Yellow Sands, to which they paid their entrance fee, site fees and monthly consumption and related charges.

The Trust brought an application in court, requesting an order obliging Mr King to vacate camp site 47 and to remove the chalet van and related structures from the site within a stipulated period.

The basis for the request for the ejectment order was, amongst other things, the termination of the agreement after notice to that effect to Mr King.

By its own interjection, the Court raised the issue whether the Subdivision of Agricultural Land Act 70 of 1970 ('the Act') rendered the agreement between the parties illegal. The Act, in short, stipulates permission requirements for the subdivision and use of portions of agricultural land. Where the permission is absent, the legality of any agreement to use land in contravention of the Act stands to be questioned. The Trust never obtained prior ministerial permission to allow semi-permanent or temporary use of portions of the agricultural land for any period of time.

HELD

Was the Act contravened and the agreement accordingly void?

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- Section 3 of the Act contains a set of prohibitions in relation to the use of agricultural land. It provides:

“3 Prohibition of certain actions regarding agricultural land —

Subject to the provisions of section 2—

*(a) agricultural land shall **not be subdivided**;*

*(b) **no undivided share** in agricultural land ... **shall vest in any person**;*

*(c) **no part of any undivided share** in agricultural land **shall vest in any person**, if such part is not already held by any person;*

*(d) **no lease in respect of a portion** ... of which the period is 10 years or longer ... shall be entered into;*

*(e) (i) **no portion** ... whether surveyed or not, and whether there is any building thereon or not, **shall be sold or advertised for sale**...; and*

*(ii) **no right to such portion** shall be **sold or granted for a period of more than 10 years or advertised for sale or with a view to any such granting** ...*

(f) ...

(g) ...

unless the Minister has consented in writing.” (Our emphasis)

(A 'portion' of land as referred to in sections 3(d) and 3(e)(i) and 3(e)(ii) is a part of a property as registered in the Deeds Registry. What may not be used, sold or leased without ministerial permission, in terms of the Act, is a segment or a piece of land that forms part of agricultural land held under a title deed.)

- Our courts have advised that the essential purpose of the Act is to provide a mechanism by which the legislature, in the national interest, prevents the fragmentation of agricultural land into small uneconomic units. In order to achieve this purpose, the legislature curtailed the common law right of landowners to subdivide their agricultural property. It imposed the requirement of the Minister's written consent as a prerequisite for subdivision, quite evidently to permit the Minister to decline any proposed subdivision which would have the unwanted result of uneconomic fragmentation.
- In line with this purpose, the court in *Adlem v Arlow* explained that there is an 'expanded target zone' of the Act that strikes wider than the prohibition of subdivision and alienation of portions of agricultural land. Rather, the Act serves to prevent the use of uneconomic pieces of agricultural land which threatens the viability of such land as agricultural land.
- The Act strikes wide in its prohibition of the fragmentation of agricultural land into uneconomic 'portions'. Not only does the Act prohibit subdivision, sale and lease of portions of agricultural land without ministerial permission, but it also prohibits the use of such portions in a manner that jeopardises the viability of the land as agricultural land without permission. Such permission is a prerequisite to any of the acts referred to in section 3 of the Act.
- Agricultural land may, accordingly, only be demarcated into smaller sections or portions, made available and used as such, with express prior ministerial permission on application by the owner of the land. A failure to obtain ministerial permission contravenes the Act and constitutes an offence.

Type of agreement between the parties

- The agreement between the parties, captured in two documents (titled *New Applicants Questionnaire* and *Yellow Sands Caravan Park General Rules and Regulations*) allowed Mr King to have a park home or a chalet van on camp site 47 as a semi-permanent structure. This agreement came into being after approval of his

application to become a resident, and in exchange for the payment of an 'entrance' or 'park development fee' and the payment of what is referred to in the two documents as monthly 'rental' or a 'site fee'.

- The agreement was not one of lease. (A lease agreement must have as its core purpose the use and enjoyment of the property by the lessee, and it must be legally permissible. The property to be leased must be identified or identifiable, and the rental amount must be certain or determinable. It is not permitted for the parties to agree that the rental amount will be fixed by one of them alone in future, as that defies the essence of consensus about the essentialia of a lease contract. The present agreement requires Mr King to pay a monthly fee in an amount determined by the Caravan Park.) Rather, it is a *sui generis* (unique) agreement and it allows Mr King the use and enjoyment of the camp site upon: (i) becoming the owner of the chalet van that is stationed on the site; (ii) the acceptance of his application to become a member; and (iii) the payment of the prescribed entrance fee and monthly fees determined by the Caravan Park from time to time.
- There are similar agreements in place with other members of the public over the years, to allow exclusive semi-permanent use of a particular site or section of the Caravan Park for periods in excess of 10 years.
- As a result of the demarcation of camp sites and use of the land for purposes of running a caravan park, the land was not used or usable as agricultural land and there was no ministerial permission to use the land as indicated. Clearly these agreements, **in the absence of prior ministerial consent to use a portion of agricultural land for other purposes, was concluded in contravention of the Act.**

Consequence of invalidity

- The Act was enacted to prevent the fragmentation of agricultural land into uneconomic units unsuitable for agricultural purposes and 'furthermore, to prevent the use of uneconomic portions of agricultural land for any length of time'. The legislative prohibition is set out in peremptory language, and it is bolstered by a criminal sanction. A prohibition in such terms strongly indicates that the agreements made in contravention thereof are invalid.
- Every case must however be decided on its own merits. In this regard, Mr King argued that the *par delictum* rule finds application. This rule states – put generally – that a party should not obtain satisfaction from a court of law with where his own conduct is wrongful.
- Courts must discourage illegal transactions but a court may consider relaxing the rule to the extent required to prevent inequities between the parties, for example where one party would be unfairly advantaged over another, as a result of the declaration of invalidity. This does not entail giving effect to an illegal contract but, on the basis of unjustified enrichment, ensuring an equitable outcome for the parties to illegal contracts. In other words, a distinction must be drawn between the normal consequences of the nullity of the contract, such as the removal of the chalet van from the land, and the regulation of any unfair windfalls that may be the unforeseen consequences of the nullity of the contract.
- The Act was enacted to give statutory effect to public policy to prevent the physical or other fragmentation of agricultural land into uneconomic units without ministerial oversight and permission, upon threat of criminal sanction to those who conclude agreements in contravention of the Act. The illegality of the agreement as a result of the Trust's non-compliance with the Act opens the parties to criminal prosecution in accordance with section 11 of the Act. On the other hand, Mr King owned the chalet van currently situated on camp site 47. Injustice does not follow from declaring the agreement void. Mr King had enjoyed many years of use of the stand and retained ownership of the structure which he can erect elsewhere. Thus enforcing the nullity of the agreement will not result in injustice being suffered by Mr King.

CONCLUSION

The agreement was accordingly declared illegal and Mr King was ordered to remove the chalet van from the land.