

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN**

CASE NO: 5049/2011

In the matter of:

**ROELOF STEPHANUS VILJOEN (SNR) N.O.
ROELOF STEPHANUS VILJOEN (JNR) N.O.
WILLEM WERNER VILJOEN N.O.**

1st Applicant
2nd Applicant
3rd Applicant

and

**DEMETRIUS VAN WYK N.O.
DEMETRIUS VAN WYK**

1st Respondent
2nd Respondent

J U D G M E N T: 20 APRIL 2011

WEINKOVE, AJ

[1] I have considered the papers in this matter and the heads of argument filed by the parties. I have indicated to Counsel what I propose to do in this matter and they have agreed to consult with the Registrar being the 19th October 2011:

I accordingly order that this matter is referred to trial and for the hearing of oral evidence on a date to be fixed by the Registrar;

- i) the court will then decide the issues canvassed in this papers including whether the respondent has been guilty of unreasonably obstructing applicant's use of the servitude road
- ii) whether the applicant has been guilty of unreasonable use of the servitude road;

- iii) whether the servitude should be cancelled as contended by the respondent;
- iv) whether any of the interim orders should be cancelled or modified;
- v) whether encroaching pine trees, fences or plants should be removed by the persons who planted or erected them;
- vi) whether the costs of maintaining the servitude road should be borne by one or both of the parties, and if the latter in what proportions;
- vii) whether there should be any restriction in respect of the size or weight of vehicles using the servitude road.

[2] I direct that the affidavits are to stand as pleadings and that the parties are directed to comply with the provisions of the rules of Court in relation to the trial action including the provision of Rule 21, 35 and 36.

[3] In order to cater for the position for the servitude road pending the determination by this court in the trial action, I direct as follows:

- a. All persons shall observe a speed limit of 20 km/h when using the road;
- b. Respondent shall fill in and recompact all the cuttings that he brought on the road to act as speed controls and shall not make new cuttings;
- c. All overhanging branches are to be cut back by the parties upon whose property the trees are situated or have been planted;
- d. The gate to the servitude road shall be closed after each time it is used;
- e. Applicant shall not cause or allow the gate control codes to be changed without advising the respondent of the new codes;
- f. Applicant shall keep the road in good order and condition in terms of his tenders in the affidavits;
- g. Respondent shall not build any "speed bumps" on the road.

[4] Costs shall stand over.



Handwritten signature of AJ Weinkove, consisting of a large, stylized 'A' followed by 'J Weinkove' in cursive script.

WEINKOVE, AJ