23/10/70

G.P.-S.33967—1968-69—1,000.

123/70

J. 219.

In the Supreme Court of South Africa.
In die Hooggeregshof van Suid-Afrika.

(Appellate Provincial Division.)
(Provinsiale Afdeling.)

Appeal in Civil Case.
Appèl in Siviele Saak.

WENDYWOOD DEVELOPMENT (PTY) LIMITED .... *Appellant,*

versus

R.F. RIEGER AND E.H.W. RIEGER .... *Respondent*

Appellant's Attorney / *Prokureur vir Appellant* Israel S & S

Respondent's Attorney / *Prokureur vir Respondent* Webber & Son

Appellant's Advocate / *Advokaat vir Appellant* ~~Israel~~, ~~Saeketein~~ ~~& Simon~~ E. Morris S.C. H. Nestadt

Respondent's Advocate / *Advokaat vir Respondent* J. W. Smalberger, S.C. C. I. Howie

Set down for hearing on / *Op die rol geplaas vir verhoor op* 26 – 2 – 1971

2. 3. 4. 6. 7.

CORAM: VAN BLERK, HOLMES, JANSEN, JJA, DIEMONT ET MULLER AJJA

APPELLANT: 9.45 AM – 12.04 PM

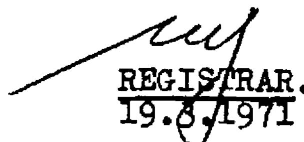
RESPONDENT: 12.04 PM – 12.45 PM }
2.15 PM – 3.21 PM }

APPELLANT: 3.21 PM – 4.52 PM (in reply)

(E.C.D.) RESPONDENT: 4.52 PM – 4.56 PM (in reply)

C.A.V.

Diemont A.J.A.:- APPEAL DISMISSED WITH COSTS.



REGISTRAR.
19.8.1971

	Bills Taxed.—Kosterekenings Getakseer.		
	Date. Datum.	Amount. Bedrag.	Initials. Paraaf.
Writ issued / Lasbrief uitgereik			
Date and initials / Datum en paraaf			

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

WENDYWOOD DEVELOPMENT (PROPRIETARY) LIMITED ... APPELLANT

AND

ROBERT FREDERICK RIEGER

AND

EDWARD HERMAN WILLIAM RIEGER .... RESPONDENTS

Coram: Van Blerk, Holmes, Jansen, JJ.A., Diemont et Miller, A.JJ.A.

Heard: 26th February, 1971

Delivered: 19th March, 1971

JUDGMENT

DIEMONT, A.J.A. :-

This appeal arises out of an application for an interdict which was sought as a matter of urgency by the appellant company in the Court of first instance. In the founding affidavit, made by one Melamed, an attorney and a director of appellant company, it was alleged that the parties

had .... /2

had in January, 1969, entered into an agreement of sale of certain immovable property described in the first annexure to this affidavit. Melamed stated that this annexure was a copy of the particulars of claim which formed part of a combined summons that appellant intended issuing against respondents, and he asked leave to incorporate in his affidavit the averments contained in this document.

It was pleaded in the annexure that the respondents were farmers each owning an undivided half share in a farm known as Riegerton, some 250 morgen in extent, situate in the Division of East London. It was further stated that on the 22nd January, 1969, a written offer to purchase the farm was made to the respondents by an estate agent, one Francois Marais. A copy of this offer was annexed to the particulars of claim (annexure A). The offer was made in a somewhat unusual form in that it was conveyed in a letter addressed by Marais to himself. In the opening paragraph of the letter Marais informed himself that the offer was being made "on behalf of a client" to purchase the property on certain conditions.

These .... /3

These conditions were set out and the letter was signed "F. Marais, Q.Q.". The words:-

> "F. Marais,
> Marais' Real Estate,
> on behalf of a client".

were added after the signature.

This offer, it was alleged, was accepted by respondents on the 24th January, 1969, in a second letter, a copy of which was annexed to the particulars of claim (annexure B), which read as follows:-

> "The Manager,
> Marais' Real Estate,
> 66 Cambridge Street,
> EAST LONDON.
>
> Dear Sir,
>
> We the undersigned, as the owners of the farm Riegerton at Gonubie Park, hereby accept the conditional offer of R200,000-00 NETT GROSS for the entire farm property in extent of approximately 528 Acres.
>
> We undertake to transfer the Property into the name of a Company at the lowest price allowable, and to sell the entire shareholding and the loan accounts to your clients at the above figure.
>
> All costs incurred in registration of the Company and Transfer charges shall be paid by your clients. Your clients will pay the Agency Commission to your firm in accordance with the tariff of the Institute of Estate Agents and Auctioneers on R200,000-00.

The Purchaser shall be liable for a Pro-rata share of all prepaid Deposits, Rates, Taxes and Insurance from date of transfer.

Transfer shall be given and taken 90 days from date of confirmation of the sale.

Possession of the property shall be given not later than 24 months from date of sale, but the purchasers will be allowed access to the property for preliminary investigation and preparation of plans. The sellers reserve the right to vacate the farm at any time prior to the above date.

The acceptance of the offer to purchase is irrevocable and binding on us, our Assigns and Executors until and subject to the conditions regarding need and desirability for Township development as imposed and desired by the Provincial Administration have been proved and accepted by the Authorities concerned, as also the special requirements relating to water, light and waste disposal. We agree to accept the cash deposit on transfer of R75,000 and to give a Bond of R125,000 at 7% fixed for 2 years.

The Purchasers to have the right to repay such Bond in part or as a whole on giving Three Months' notice. We undertake to sign all necessary documents in order to give effect to the Sale and transfer within Thirty days of confirmation of the sale.

Yours faithfully,

ON BEHALF OF THE PURCHASERS:

WITNESSES

1. (sgd) E. LEACH. 1. (sgd) E.H. RIEGER

2. (sgd) F. MARAIS. 2. (sgd) R.F. RIEGER

SELLERS:"

It was alleged further in the annexure to

Melamed's affidavit that in making this offer Marais was acting in his capacity as a subagent for a company, Corlett Drive Estates Limited, and that a mandate was given to Marais by this company in its capacity as agent for the appellant company, Wendywood Development (Proprietary) Limited. The acceptance of the offer was subject to the conditions set out in the letter of the 24th January, 1969, both of which were subsequently waived in a letter dated the 22nd February, 1969, (annexure C) which was in the following terms:-

"Messrs. Rieger Bros.,
Riegerton,
GONUBIE.

Dear Sirs,

Re: FARM RIEGERTON - GONUBIE
APPROXIMATELY 528 ACRES

This serves to advise you that the offer on the above Property accepted by you on the 24th January, 1969, is now confirmed.

The conditions attached to the offer have now been fulfilled. The farm is thus sold.

Will you advise me who your Attorneys are to enable me to instruct them to prepare the Deed of Sale and Transfer Documents.

Your .... /6

Your valued business in highly appreciated.

Yours faithfully,

F. MARAIS
MARAIS' REAL ESTATE.

ON BEHALF OF THE PURCHASERS
MESSRS. CORLETT DRIVE ESTATES"

Melamed stated that it had come to the notice of appellant that the respondents were about to pass transfer of the property to a third party and that their attorneys had refused to give an undertaking that transfer would be stayed pending an application to Court. He claimed that the property had increased considerably in value, that the appellant feared that it would suffer damage if it failed to obtain transfer of the property and that the matter was now one of great urgency. The appellant accordingly asked the Court to grant an order, in the form of a rule *nisi*, calling on the respondents to show cause why they should not be interdicted and restrained from transferring the property pending the determination of the action to be instituted by appellant against respondents.

In a supporting affidavit Marais informed

the Court that he carried on business as an estate agent in East London under the style of Marais' Real Estate. He alleged that on the 17th October, 1968, the respondents had given his firm the sole selling rights of the farm in question until the 30th January, 1969, and that acting on behalf of Corlett Drive Estates Limited, he had on the 22nd January, 1969, submitted a written offer to Marais' Real Estate acting as the duly authorised agent of the respondents. This offer to purchase the farm for R200,000-00 was accepted by the respondents on the 24th January, 1969.

In response to the rule *nisi* granted by the Court on the 31st July, 1969, the respondents filed an opposing affidavit in which they admitted that they had given a mandate to Marais' Real Estate to find a purchaser for their farm, Riegerton, but denied that it was a sole selling right. They claimed that when the papers were served on them they became aware for the first time of the existence of the letter of the 22nd January, 1969, and that when they signed the letter of the 24th January, 1969, they did so on Marais' assurance that this

document would not be binding on them and that their signatures were required merely to enable Marais to open negotiations with a prospective purchaser. They admitted that the name of Corlett Drive Estates Limited was mentioned as the prospective purchaser, and they drew attention to the fact that there was no allegation that Marais was authorised in writing to act on behalf of Corlett Drive Estates Limited, nor was there any proof of such written authorization. Furthermore there was neither proof nor any allegation that Corlett Drive Estates Limited was authorized in writing to act on behalf of the appellant. The respondents accordingly challenged the statement that a valid contract of sale had been entered into by the parties and having made certain submissions which I shall refer to in due course, asked the Court to dismiss the rule nisi.

Replying affidavits were filed in which the appellant alleged, inter alia, that both Marais' Real Estate and Corlett Drive Estates Limited had on 17th January, 1969, acquired the necessary written authority to purchase the farm for R200,000-00.

On the extended return day of the rule nisi the confirmation of the order was opposed on several grounds, but in discharging the rule the Court found it necessary to consider only one of the grounds, namely whether the contract was null and void for the reason that it failed to comply with the provisions of section 30 of Act No. 5 of 1884 (Cape). On appeal the Full Bench of the Eastern Cape Division also confined its reasoning to a consideration of the meaning and application of the provisions of this section, and dismissed the appeal.

Section 30 of Act No. 5 of 1884 provides as follows:-

> "Every private sale or sale made otherwise than by auction, in regard to which the purchaser shall not profess to purchase for himself, in his individual capacity, shall be wholly null and void, unless, at the time of the making and completion thereof, the name of the principal for whom the purchase is made shall be disclosed, and inserted in the note or memorandum, in writing, if any, which may be made in regard to such sale".

The Court a quo found that there had been a failure to comply with section 30 which was fatal to appellant's case. The offer contained in the letter of the 22nd January,

1969, was not equivocal; its meaning was plain. An offer was made on behalf of a client to purchase the farm but no clue was given as to the identity of that client. The letter of acceptance was equally straightforward; the offer to sell to a client was accepted on the terms offered. The name of the principal for whom the purchase was made was nowhere disclosed, nor even so much as hinted at, in either of these documents. In short the Court held that there had been no attempt to comply with the requirements of section 30 of the Cape Transfer Duty Act of 1884.

Counsel for the appellant contended, both in the Court _a quo_ and in this Court, that the section must be taken to have been impliedly repealed. In developing this contention a two-fold attack was made on the section. It was claimed in the first place that it was entirely inconsistent with and repugnant to section 1 of the General Law Amendment Act (No. 68 of 1957), and that any attempt to modify the wording of section 30 so as to give it a

meaning consistent with the 1957 legislation must fail. In the second place it was contended that in any event section 30 served no useful purpose and had ceased to have an effective existence after 1957, if not earlier, when the Tranfer Duty Act, No. 40 of 1949, was put in the statute book.

At the time when the alleged agreement of sale was entered into between the parties in January, 1969, the provisions of section 1 (1) of Act No. 68 of 1957 were as follows:-

> "No contract of sale or cession in respect of land or any interest in land (other than a lease, mynpacht or mining claim or stand) shall be of any force or effect if concluded after the commencement of this section unless it is reduced to writing and signed by the parties thereto or by their agents acting on their written authority".

Counsel pointed out that until this section became operative on the 1st January, 1958, contracts for the sale of land could be validly concluded in the Cape Province either orally or in writing. Once section 1 (1) came into force, however, the requirement relating to oral agreements in section 30 of the Cape Act became inoperative. It would not be enough to

"disclose" the name of the principal for whom the purchase was made; his name would have to be both disclosed and inserted in the written contract. Moreover, the words "if any" would become redundant and the words "note or memorandum" would have to be used in the limited sense of referring to a written agreement. Finally the words "which may be made", would have to be altered to "which must be made". Counsel maintained that these attempts to meet the several shortcomings in the wording of the section in order to give it a meaning consistent with the 1957 Act resulted in a mutilation of the section, a mutilation so gross that the failure to repeal the section must be attributed to a legislative oversight.

That section 30 must be modified to give it efficacy can hardly be gainsaid. Indeed Mr. Smalberger, who appeared for the respondents conceded that some modification was necessary, but I am not persuaded that the modification need be so extensive as to make it impossible to reconcile the sections. It is necessary to bear in mind a well known principle of statutory construction, namely that statutes

must be read together and the later one must not be so construed as to repeal the provisions of the earlier one, unless the later statute expressly alters the provisions of the earlier one or such alteration is a necessary inference from the terms of the later statute. *Kent*, N.O. v. *South African Railways & Another*, 1946 A.D. 398 p.405. I can draw no such inference in this case particularly when regard is had to the purpose and background of the legislation.

Section 30 of the 1884 Act was no innovation; it was preceded by Cape Act No. 15 of 1855. The preamble to the earlier Act contains the key to this legislation and reads as follows:-

> "And whereas also it is requisite to prevent persons from pretending to purchase as agents when in fact they are not the agents of the principals, by which device the public revenue is frequently defrauded, fair purchasers placed at a disadvantage, and heedless persons led into making untrue declarations.......".

Section 8 of the 1855 Act provided in words almost identical to the words used in section 30 of the 1884 Act that failure to name the principal rendered the sale null and void. In the

case of Steenkamp v. Kruger, 7 Buch. Supreme Court Cases, 1877, p.45 at p.47, the Court gave consideration to the scope and purpose of this section. The Chief Justice, Sir, J.H. de Villiers, as he then was, is reported as stating:-

> "The policy of the Act is clearly to prevent sales of this kind, in order that the revenue shall not be defrauded of transfer dues. If such sales were allowed, it would be easy for speculators to buy land and not disclose their principals at the time of purchase; then to find a purchaser at a profit, to have transfer made from the original seller to the purchaser instead of transfer duty being paid by the speculator as the intermediate purchaser; so the law, to prevent frauds of this kind, says it does not recognize such sales at all; it considers a sale where the purchaser does not profess to purchase for himself, and does not disclose the purchaser, as a fraud upon the revenue, and as therefore null and void".

In the case of Gounder v. Saunders & Others 1935 N.P.D. 219, the Natal Court came to the same conclusion in considering the meaning and object of an identical provision contained in the Natal Act (section 7 of Act No. 7 of 1903). Similar legislation, no doubt adopted with the purpose of placing a curb on the dishonesty of land speculators, is to be found in the statute books of the Transvaal and the Orange Free State. I

refer ...... /15

refer to section 28 of Transvaal Proclamation No. 8 of 1902 and section 47 of the Orange Free State Act No. 12 of 1906.

It is important to recognize that there is a fundamental distinction between the purpose and effect of section 30 of the 1884 Cape Act (and the corresponding sections in the other provincial statutes) and the purpose and effect of section 1 of Act No. 68 of 1957. The former section is aimed, as I have pointed out, at discouraging a fraud on the revenue where there are successive land transactions, whereas the latter section serves a very different purpose. Section 1 of the 1957 Act is designed to ensure that in such important transactions as the sales of landed property the possibility of dispute or disagreement should be reduced to a minimum. In order to achieve this the Legislature requires that the contract be in writing and that agents who sign the contracts for their principals be authorised in writing to sign. I can find no inconsistency or repugnancy between the two enactments.

I am fortified in this conclusion when I

have regard to the fact that both provisions existed side by side in the same act in the Transvaal for more than half a century (See sections 28 and 30 of Transvaal Proclamation No. 8 of 1902). Nor does any repugnancy or inconsistency seem to have manifested itself in regard to the two sections in the Free State Ordinance (sections 47 and 49 of Act No. 12 of 1906). Counsel did not suggest that since the enactment of Act No. 68 of 1957, the two sections in the earlier legislation, sections 28 and 47 of the Transvaal and Free State Acts respectively, had been revoked by the Union statute.

Counsel drew attention to the fact however, that section 30 of the Cape Act might be distinguished from its counterpart in the Transvaal and Free State statutes on the ground that the former Act dealt with both oral and written contracts whereas the latter dealt only with written contracts. It is true, as I have pointed out, that the exclusion of oral contracts renders it necessary to modify the provisions of section 30, but it does not follow as a necessary implication that the latter section cannot be reconciled with section 1

of the 1957 Act. The need for both sections remains. If it were to be held that section 30 was now so altered as to be unworkable, an anomulous situation would arise, for the result would then be that purchasers of land in the Transvaal and Orange Free State would be bound to disclose the names of their principals whereas purchasers of land in the Cape could keep silent. Moreover such a construction would in some degree defeat the purpose of the 1957 legislation which was "to introduce uniformity throughout the Union" (see Sugden v. Beaconhurst Davies (Pty) Limited 1963 (2) S.A. 174 (E) at 186).

It was also argued, albeit somewhat faint-heartedly, that sedtion 30 of Act No. 5 of 1884 had no effective existence after 1949. In support of this argument reliance was placed on section 16 of Act No. 40 of 1949 which provides that:-

> "(1) Where property is sold to a person acting for some other person, the person so acting shall disclose to the seller or his agent the name and address of the principal for whom he acts -
>
> (i) ....

(ii) if the sale is otherwise than by auction, immediately upon conclusion of the agreement of sale.

(2) Any person who fails to comply with the provisions of sub-section (1) shall, for the purpose of the payment of the duty payable in respect of the acquisition of the property in question, be presumed, unless the contrary is proved, to have acquired the property for himself".

I am not persuaded that section 30 has become in any way redundant or obsolete since 1949. Both sections are designed to protect the fiscus, each in a slightly different manner, and both sections can, it seems to me, stand side by side. Section 30 of the Cape Act deals with the case where the purchaser discloses that he has a principal but does not name him, whereas section 16 of the Union Act deals with the case where there has been no disclosure of a principal whatsoever. No doubt section 16 could have been so framed as to provide for both situations, but the Legislature did not choose to adopt this course. On the contrary it made express provision for the retention in the schedule of repealed laws not only of section 30 of the Cape Act but also of the corresponding sections in the Natal, Transvaal and Free State Acts. That being so there is obviously no room for .... /19

for the suggestion that the Legislature was not aware of the section or that it overlooked the section.

I have accordingly come to the conclusion that there is no substance in the submission that section 30 of Act No. 5 of 1884 must be looked on as a legislative anachronism which has lost all purpose and must be deemed to have been repealed. In my view the section is still of full force and effect.

Counsel for the appellant, Mr. Morris, sought to persuade the Court that in any event, even if it were held that section 30 was unrepealed and therefore applicable to the facts of this case, there were good grounds for stating that the purchaser had complied with its provisions. This argument was based on the submission that an agent who bought land was not required to name his principal until the time of "the making and completion" of the contract. In this case the parties entered into a contractual relationship on the 24th January, 1969, but no sale resulted until the 22nd February, 1969. It was on the latter date that the

respondents received a letter advising them that the sale was now confirmed and that the conditions attached to the offer had been fulfilled. The letter was signed by the agent, Marais, "on behalf of the purchaser, Messrs. Corlett Drive Estates", consequently it must be accepted that the name of the principal had been disclosed and inserted in a document which formed part of the written contract. Counsel stressed that full effect must be given to the words "the making and completion" of the contract; if the contract was made in January it was not completed until February. The disclosure and insertion of the name of the principal in the agreement therefore, took place timeously, and the requirements of section 30 had been complied with.

I am not persuaded that this contention is well founded in law or that it is in accord with the facts. Melamed stated in paragraph 3 of the founding affidavit that the parties entered into an agreement of sale in January, 1969, and it was also alleged in the particulars of claim annexed to this affidavit that the offer was made on the 22nd January,

1969, and accepted on the 24th January, 1969. It was nowhere suggested in any of the affidavits that the agreement was not concluded until the 22nd February, 1969, and indeed the letter of the 22nd February, 1969, on which so much reliance is now placed was never produced by the appellant; it came to light quite fortuitously as an annexure to respondents' affidavit. Nor was it suggested in the replying affidavits that the sale was not concluded until late in February, some three weeks after Marais' mandate had expired. On the contrary Marais reiterated the statement that "the sale had to respondents knowledge been concluded" on the 24th January, 1969. It was not until the validity of the sale was challenged in argument on the ground that section 30 had not been complied with, that for the first time this solution to appellant's difficulties was put forward. But the solution, though ingenious, is not a good one. Too great an emphasis is laid on the words "making and completion". I do not think it can be disputed that the Cape Transfer Duty Act is not a model of draftmanship; it is an Act which has been the subject of criticism.

The wording is somewhat pedantic and much of the terminology is foreign to our legal thinking. I refer to an article in the S.A. Law Journal in which it was said that:-

> "The most fruitful source of confusion and uncertainty in the Cape Transfer Duty Act is the abundance of English Law terms brought into it, terms which in many cases conflict with the principles of Roman-Dutch Law, and the practice of the Deeds Offices founded thereon".

("Loopholes in the Cape Transfer Duty Act", S.A. Law Journal, 1946, p.186 at p.191). Not only is the terminology confusing but the language is loose and at times tautologous. This is particularly noticeable in regard to the words used to describe the making of a contract of sale. Thus section 6 refers to the case where a contract of sale is "entered into", section 7 refers to the case where a contract of sale is "first entered into", section 19 (5) speaks of a "purchase" being "concluded", while section 31 which deals with disputed sales refers to a sale "actually completed" and a sale that "took place".

There is so much variation in the choice

of words used to describe the making of the contract that it would seem that little significance can be attached to the fact that yet another phrase ("making and completion") is used in section 30. It may well be, as was contended by counsel, that in the English Law the word "completion" refers to the time of performance rather than to the time when the contract is concluded, but the word must be interpreted in the light of the principles of our law. As was said by Wessels, A.C.J.:-

> ".... if our Legislature takes over a section of an English statute, that section will have to be interpreted in the light of our common law in exactly the same way as if it had not occurred in an English statute. The draftsman of a Union statute may find it convenient to use the same words as a similar section in an English statute, but it does not follow that our Legislature must be considered to have thereby incorporated not only the words of the section but the meaning which English courts have given that section as interpreted in the light of English common or statute law".

Estate Wege v. Strauss 1932 A.D. 77 at p.81.

In my view the words "at the time of the making and completion" refer in this context to the time when

all the terms have been agreed to in writing by the parties. This interpretation appears to be in accord with the intention of the Legislature, regard being had to the mischief which section 30 was intended to guard against. Support for this interpretation is to be found in sections 5, 6 and 7 of the Act. Section 5 provides that transfer duty shall be payable within six months of the date of the sale. Where it is stipulated that the sale shall not take effect until some future date, the term of six months is reckoned from the date at which the contract was entered into, and not such future date (section 6), and where the sale is a conditional sale, the term of six months "shall begin to be reckoned from the date on which such contract of sale was first entered into". (section 7). It seems most improbable that it could have been intended that the agent could delay disclosing the name of the principal once transfer duty became payable. Moreover it would tend to frustrate the purpose of the Legislature to give such an interpretation to the section.

If the time when the name of the principal

should have been disclosed was the 24th January, 1969, when the letter of acceptance was signed, it does not avail appellant to point to the fact that a letter was sent on the 22nd February, 1969, confirming the acceptance of the offer and disclosing the name of the principal.

In any event the appellant is faced with a further difficulty to which Counsel could give no answer. The name of the principal disclosed in the letter of the 22nd February, 1969, is Messrs. Corlett Drive Estates, whereas it is alleged that the appellant, Wendywood Development Company (Proprietary) Limited, was the purchaser of the farm. Mr. Morris conceded that the letter of the 22nd February, 1969, could not assist him on the papers as they stood, but he sought to overcome this difficulty by applying, during the course of his argument, to join Corlett Drive Estates Limited as an applicant together with Wendywood Development (Proprietary) Limited. At the conclusion of his argument he went further; he stated that his attorney had now given him a mandate to apply for the substitution of Corlett Drive Estates Limited in the place of

the appellant company. The application was accompanied by an offer to pay all the costs.

Mr. Smalberger for the respondents resisted the application; this is hardly a matter for surprise. Where the merits of a case have been fully canvassed before three Courts it must be a little unusual to attempt to substitute a new party at the conclusion of the argument on appeal. At the least some explanation should be put forward on affidavit as to why a new party is to be substituted on the record and why there has been such protracted delay in applying for substitution. No affidavit has been placed before the Court.

Counsel for the respondents contended that in any event he must be given notice of the application so as to enable him to consider what new facts, if any, he wished to place before the Court and what additional arguments should be advanced in the light of these facts. That is a reasonable contention. In the circumstances the application must be refused.

I come, therefore, to the conclusion that the judgment of the Court *a quo* was right and that the appeal should be dismissed with costs.

M.A. DIEMONT, A.J.A.

Van Blerk, J.A.)
Holmes, J.A.) Concurred
Jansen, J.A.)
Miller, A.J.A.)