reportable
case no: 60/99

In the matter between:

CAPE EXPLOSIVE WORKS LIMITED	1st Appellant
AECI LIMITED	2nd Appellant
and	
DENEL (PTY) LTD	1st Respondent
ARMAMENTS CORPORATION OF SOUTH AFRICA LIMITED	2nd Respondent
REGISTRAR OF DEEDS, CAPE TOWN	3rd Respondent

Coram: Vivier, Olivier, Zulman, Streicher, JJA and Mthiyane, AJA

Heard: 22 February 2001

Delivered: 19 March 2001

Summary: Real rights erroneously omitted from subsequent title deeds - Binding on present owner

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J U D G M E N T

STREICHER JA:

[1] This is an appeal against a judgment in the Transvaal Provincial Division reported as *Denel (Pty) Ltd v Cape Explosive Works Ltd* 1999 (2) SA 419 (T). The main issue to be decided in this appeal is whether certain conditions registered in a title deed and erroneously omitted from subsequent title deeds are binding on the present owner of the relevant property.

[2] During 1973 the first appellant, Cape Explosive Works Ltd ("Capex") sold two immovable properties to the second respondent, the Armaments Development and Production Corporation of South Africa Limited whose name was subsequently changed to the Armaments Corporation of South Africa Limited ("Armscor"). The properties were Farm No 1065, measuring 459.6830 ha, and Portion 3 of the Farm Helderberg Sleeper Plantation No 787, measuring 11.3903 ha. Both properties were situated in the Administrative District of Stellenbosch. In terms of clause 6 of the deed of sale Armscor undertook that the properties would

only be used for the development and manufacture of armaments and in terms of clause 7(a) thereof Armscor granted to Capex the "first right to repurchase" the properties, at a price to be determined in a prescribed manner, in the event of the properties no longer being required for the use set out in clause 6. Armscor agreed in terms of clause 7(a)(vii) to the registration of the right conferred on Capex in terms of clause 7(a) against its title deeds to the properties in the Deeds Office. Clause 7(b) provided that in the event of Capex repurchasing the properties Capex would have the right to purchase all or any of the improvements and other facilities erected on the properties which Armscor was desirous of selling, at a price and on such further terms as might be agreed upon between Capex and Armscor. Clause 6 (with the exception of certain definitions) and clause 7 are quoted in full in the judgment of the court *a quo* at 426D-G and 426H-427I respectively.

[3] The two properties were transferred to Armscor and "(i)ts Successors in Title or Assigns (hereinafter styled the Transferee)" by Deed of Transfer T40652/1974. The deed of transfer provided in respect of each of the properties:

"FURTHER SUBJECT in respect of the whole of the property hereby transferred to the following conditions which shall be binding on the Transferee herein and its Successors in Title and which are imposed by the Transferor herein its favour, namely:

1. The property hereby sold shall be used by the Transferee only:

   (i) for the development and manufacture of armaments by virtue of the provisions of the Armaments Act No. 87 of 1964 as amended and the Armaments Development and Production Act No. 57 of 1968, as well as any future amendments of both the aforesaid Acts, and/or

   (ii) by the Government of the Republic of South Africa for the development and manufacture of armaments, and

   (iii) whilst such development and manufacture of armaments as set out in (i) and (ii) above are being carried out, for any defence or military operational purpose by the South African Defence Force, and

   (iv) whilst such development and manufacture as set out in (i) and (ii) are being carried out, for the manufacture at any time of anything whatsoever for commercial exploitation provided that such operations will in no way impinge on or compete directly or indirectly with the businesses conducted bona fide at that time by AE & CI Limited ("AE & CI") and/or any of its subsidiary and/or associated companies.

   (v) for the purposes of the aforegoing condition:

      (a) the word "armaments" shall mean . . .

      (b) "subsidiary company" . . .

      (c) "associated company" . . .

(d) "equity share capital" . . .

2. (i) In the event of the property being no longer required for the use as set out in clause 1(i) and 1(ii) above, the Transferor herein shall have the first right to repurchase the property (exclusive of improvements) from the Transferee, at the price paid by the Transferee herein suitably adjusted to make provision for any change in the value of money between the date of sale to the Transferee herein and the time of receipt by the Transferor of the notice referred to in clause 2(ii) hereunder.

(ii) The Transferee hereby undertakes that upon the property no longer being required for the use referred to in 2(i) above to advise the Transferor of that fact by notice in writing. The Transferor shall thereupon be entitled to exercise the right referred to in clause 2(i) above within 90 days after the repurchase price has been agreed upon between the Transferor and the Transferee or failing such agreement, within 90 days after determination of the repurchase price as hereinafter provided.

(iii) Should the Transferor and the Transferee fail to reach agreement on the price at which the Transferor shall be entitled to repurchase the property within fourteen days following the date of receipt of the notice referred to in 2(ii), the price shall, if demanded by the Transferor by notice in writing to the Transferee within a period of seven days following the date of expiration of the aforesaid fourteen days, be submitted for determination to . . .

(iv) . . .

(v) If the Transferor within the said period of 90 days referred to in 2(ii) by notice in writing to the Transferee signifies that it will repurchase the property, the Transferee shall sell the property to the Transferor at the price agreed upon between the Transferor and the Transferee and failing agreement , at the price determined in accordance with the provisions of this condition. Until the expiration of the said period of 90 days, the Transferee shall not sell or otherwise dispose of or alienate the property or any portion thereof unless the Transferor has by notice in writing to the Transferee declined to repurchase the property.

(vi) . . .”

(I shall hereinafter refer to these conditions as condition 1 and condition 2 respectively.)

Clauses 6 and 7 of the deed of sale differ in material respects from conditions 1 and 2. Clause 7(b), for example, has no counterpart in the deed of transfer and unlike clauses 6 and 7 conditions 1 and 2 were expressly stated to be binding on Armscor’s successors in title.

[4] Subsequent to the transfer of the properties-

4.1 conditions 1and 2 in so far as they applied in respect of Portion 3 of the Farm Helderberg Sleeper Plantation No. 787 was cancelled by way of a notarial deed of cancellation registered on 25 October 1977;

4.2 a portion, measuring 7007 m², of Farm 1065 was transferred leaving a remaining extent measuring 458,9823 ha;

4.3 a piece of land, measuring 7007 m² was consolidated with the Remaining Extent of Farm 1065 to form Farm 1105 measuring 459,6830 m² and a certificate of consolidated title no T33717/1977 was issued in respect of the consolidated property;

4.4 Portion 1 of Farm 1105 measuring 1,9258 ha, was excised from Farm 1105 and a certificate of registered title was issued in respect thereof;

4.5 the Remaining Extent of Farm 1105 measuring 457,7572 ha, was renamed to become the Remaining Extent of Erf 632 Firgrove;

4.6 the Remaining Extent of Erf 632 Firgrove was transferred by Armscor to the first respondent, Denel (Pty) Limited ("Denel"), in terms of Deed of Transfer T75861/92;

4.7 the Remaining Extent of Erf 632 Firgrove was consolidated with a number of smaller properties to form Erf 635 Firgrove measuring 458,0678 ha and Certificate of Consolidated Title T1178/94 was issued in respect thereof;

4.8 Erf 637 Firgrove, measuring 1,7163 ha was excised from Erf 635 and Certificate of Registered Title T1179/94 was issued in respect thereof leaving a remaining extent of Erf 635 measuring 456,3515 ha held by Denel in terms of Certificate of Consolidated Title T1178/94.

[5] From the aforegoing it is clear that most of the land forming part of the Remaining Extent of Erf 635 also formed part of Farm 1065 which had been transferred subject to conditions 1 and 2. However, condition 2 was omitted from Certificate of Registered Title T 33717/77, the subsequent Deed of Transfer T 75861/92, Certificate of Consolidated Title T 1178/94 and Certificate of Registered Title T1179/94 and condition 1was according to the first three of those title deeds only applicable to a very small portion of the land presently known as Remaining

Extent of Erf 635.

[6] A dispute arose between Capex and Denel as to whether Capex would be entitled to repurchase that portion of Erf 635 which formed part of Farm 1065 in the event of it no longer being required for the use set out in condition 1. As a result Denel applied for an order declaring that its ownership of Erf 635 was not in respect of any portion thereof subject to condition 2. Capex, in a counter-application, applied for an order directing the Registrar of Deeds, Cape Town to rectify Certificate of Consolidated Title T 33717/77, Deed of Transfer T 75861/92 and Certificate of Consolidated Title T 1178/94 so as to include conditions 1 and 2 in so far as they related to the portions of Farm 1065 which had been incorporated into the Remaining Extent of Erf 635 Firgrove; an order directing the Registrar of Deeds to rectify Certificate of Registered Title T1179/1994 so as to include the conditions; orders declaring that Denel was bound to comply with the conditions; an order interdicting Denel from failing to comply with the provisions of the conditions; and an order interdicting Denel from selling or transferring the restricted

properties to any person without complying with condition 2.

[7] The court *a quo* held at 430A-B:

> "In my view the only logical explanation for the difference between the land use restriction in title deed 33717/77 from what it was in title deed 40652/74 and the omission in title deed 33717/77 of the right of repurchase is an error, and a very big one, by the conveyancer and the Registrar of Deeds. Incidentally, the Registrar of Deeds confirms that. It follows then that I accept on probability both as far as the application and the counter-application are concerned that the difference between the two title deeds was caused by an error."

The correctness of this finding was not challenged before us..

[8] The court *a quo* also found that:

8.1 Clause 7(b) was void for vagueness because neither the improvements which the appellant had the right to purchase, nor the price payable in respect thereof was certain or determinable. Clause 7(a) could not be severed from clause 7(b) and was, for that reason, also void. Neither

could therefore be registered as it could not be the duty of the Registrar of Deeds to register the terms of void agreements.

8.2 Clause 6 was registrable in terms of s 63(1) of the Deeds Registries Act 47 of 1937 ("the Deeds Registries Act") in that it restricted the exercise of Armscor's right of ownership in respect of the properties but the parties did not intend the restriction to be binding on Armscor's successors in title and specifically agreed not to register it against the property.[1] Clause 7 did not affect the property or curtail Armscor's right of enjoyment of the property in the physical sense. On its own it was not registrable in terms of s 63(1). It was not ancillary to clause 6 and therefore not registrable on that basis either.

On the strength of these findings the court *a quo* dismissed the counter-application and granted an order declaring that Denel's right of ownership in erven

[1]S 63(1) provides as follows: "(1) No deed, or condition in a deed, purporting to create or embodying any personal right, and no condition which does not restrict the exercise of any right of ownership in respect of immovable property, shall be capable of registration: Provided that a deed containing such a condition as aforesaid may be registered if, in the opinion of the registrar, such condition is complementary or otherwise ancillary to a registrable condition or right contained or conferred in such deed."

635 and 637 Firgrove was in no way encumbered by condition 2.

[9] Notwithstanding the material differences between conditions 1 and 2 and clauses 6 and 7, counsel for Denel submitted that the deed of sale, more particularly clauses 6 and 7 thereof, constituted the causa for the registration of conditions 1 and 2. For this reason, so he submitted, the court *a quo* correctly decided that if clauses 6 and 7 were not capable of being registered or not intended to be registered, conditions 1 and 2 were not registrable. In support of this contention he relied on the judgment in *De Wet v Apex Mines, Ltd* 1943 TPD 190. In that case a testator bequeathed two farms to certain of his children and grandchildren. Clause 8 of the will provided, *inter alia*: "Ik begeer dat indien de kolemijnen op mijne genoemde plaatsen . . . ter eeniger tijd mochten betalen dat de zuiwere opbrengst daarvan gelijkelijk onder mijne kinderen voornoemd (*referring to all his children*) zal verdeeld worden." In the deed of transfer the transfer was expressed to be "onderhewig aan die kondisie vervat in die testament van . . . luidende . . . " and then followed *verbatim* the provision cited. The condition was omitted from

subsequent title deeds. In an application for the rectification of a subsequent title deed, so as to include the condition, the court had to determine whether the condition was capable of being registered. The court said at 195:

> "The persons claiming that there is a burden upon the land which ought to be registered against the first respondent's transfer must stand or fall by the will; and the first respondent is quite entitled to say that in as much as its predecessors ought, on a proper construction of the will, to have had a clean transfer, there can be no compulsion upon it to submit to any endorsement of the terms of the will upon the transfer now in question. Mr. *Price,* for the third respondent, is, therefore, right in saying that the whole controversy between the parties is as to the intention of the testator as manifested in the will."

Read in isolation the passage would seem to support counsel's contention. However, it was stated expressly in the deed of transfer that the condition registered was the condition contained in the will. It was therefore necessary, in order to determine whether the condition which had been registered was capable of being registered, to interpret the condition within the context of the will. The sentence in the judgment preceding the passage cited above makes it clear that it was for this

reason that the applicant had to stand or fall by the will. The court said:

> "They did no more than reproduce upon the titles the actual words of the will; and if these words do not bring about the legal result now contended for, or any other registrable detraction from full rights of ownership, the form in which the earlier deeds of transfer were registered takes the matter no further."

[10] In *Commissioner of Customs and Excise v Randles, Brothers & Hudson, Ltd* 1941 AD 369 at 398 Watermeyer JA said in respect of the passing of ownership of movable property:

> "Ownership of movable property does not in our law pass by the making of a contract. It passes when delivery of possession is given accompanied by an intention on the part of transferor to transfer ownership and on the part of the transferee to receive it. . . .If the parties desire to transfer ownership and contemplate that ownership will pass as a result of the delivery, then they in fact have the necessary intention and the ownership passes by delivery."

This decision was followed in *Trust Bank van Afrika Bpk v Western Bank Bpk* 1978 (4) SA 281 (A). At 301 *in fine*-302A Trengove AJA said:

> "Volgens ons reg gaan die eiendomsreg op ¿ roerende saak op ¿ ander oor waar die eienaar daarvan dit aan ¿ ander lewer, met die bedoeling om eiendomsreg aan hom oor te dra, en die ander die saak neem met die bedoeling om eiendomsreg daarvan te verkry. Die geldigheid van die eiendomsoordrag staan los van die geldigheid van enige onderliggende kontrak."

There is no reason why the same principle should not apply to the transfer of ownership of immovable property (see Van der Merwe *Sakereg* 2nd ed p310; Silberberg and Schoeman *The Law of Property* 3rd ed Kleyn and Boraine at 110). It follows that it is the intention with which transfer was given and received which had to be determined in so far as a causa was required for the transfer of the properties subject to conditions 1 and 2.

[11] Capex passed transfer of the properties subject to conditions 1 and 2. *Prima facie*, therefore, it was Capex's intention to do so. Armscor, which was the second respondent in the court *a quo* and which is the second respondent in this appeal, never claimed rectification of Deed of Transfer T40652/1974 in terms of which the

properties were transferred to it and never denied its intention to receive transfer of the properties subject to conditions 1 and 2. It never complained about the presence of the conditions or about the wording of the conditions in the deed of transfer. Moreover, during 1977 it entered into a notarial agreement with Capex in terms of which it was agreed that the conditions be cancelled in so far as they applied to Portion 3 of the Farm Helderberg Sleeper Plantation. This latter fact is particularly significant in that it indicates that Armscor had full knowledge of the terms of conditions 1 and 2 but did nothing about them. *Prima facie,* therefore, Armscor intended to receive transfer of the properties subject to conditions 1 and 2. Denel similarly did not allege that Capex and Armscor had not intended to pass and receive transfer of the properties subject to conditions 1 and 2. The matter therefore had to be decided on the basis that Capex and Armscor intended to pass and receive transfer subject to conditions 1 and 2. The issue which had to be decided on that basis was whether conditions 1 and 2 were capable of being registered and what the effect of their omission from subsequent title deeds was.

[12] In terms of s 3 of the Deeds Registries Act all real rights in respect of immovable property are registrable. To determine whether a particular right or condition in respect of land is real, two requirements must be satisfied:

1 The intention of the person who creates the real right must be to bind not only the present owner of the land, but also his successors in title; and

2 The nature of the right or condition must be such that the registration of it results in a 'subtraction from dominium' of the land against which it is registered.

(*Erlax Properties (Pty) Ltd v Registrar of Deeds* 1992 (1) SA 879 (A) at 885B.)

[13] Counsel for Denel contended that condition 2 constituted a personal right (in the nature of an option) to re-purchase which could not be converted into a real right by registration. An option consists of an offer to enter into a contract together

with an agreement to keep that offer open for a certain time (*Boyd v Nel* 1922 AD 414 at 421). Condition 2 does not contain an offer to enter into a contract and does, therefore, not purport to be an option.

[14] It was further contended on behalf of Denel that condition 2 could not constitute a valid real right as it imposed an obligation on the transferee to notify the transferor when the properties were no longer required for the use to which they had been restricted. As authority for this proposition he referred to *Schwedhelm v Hauman* 1947 (1) SA 127 (E) in which the court applied the rule of the Roman law that, with the exception of the servitudes *oneris ferendi* and *altius tollendi*, a servitude cannot cast upon the owner of the servient tenement an obligation actively to do something. In my view the stipulation referred to was not intended to burden the transferee with an obligation. Condition 1 contained a use restriction and condition 2 provided that in the event of the property no longer being required for

the use to which it was restricted Armscor or its successors in title would advise Capex accordingly, whereupon Capex would become entitled to re-purchase the property failing which the property would no longer be subject to the use restriction. Upon the property no longer being required for the restricted use it would be useless to the owner thereof unless Capex repurchased it or the use restriction could be terminated. Condition 2 was intended to provide Armscor and its successors in title with a mechanism for such termination. Hence, although framed as an obligation the giving of notice was as much a right as an obligation. I therefore do not consider it necessary to deal with the question as to whether or not the rule relied upon in *Schwedhelm* is absolute. (See *Van der Merwe v Wiese* 1948 (4) SA 8(C), Van der Merwe *Sakereg* 2nd ed 474-476, Silberberg and Schoeman *The Law of Property* 3rd ed (Kleyn and Boraine) at 378-379).

[15] The use restriction according to condition 1 was materially different from the

use restriction according to condition 1 read with condition 2. The two conditions were not independent of one another and they could not be separated. They formed a composite whole. They were specifically stated to be binding on the transferee, being Armscor, and its successors in title. Furthermore, they constituted a burden upon the land or a subtraction from the *dominium* of the land in that the use of the property by the owner thereof was restricted. The right embodied in conditions 1 and 2, read together, therefore constituted a real right which could be registered in terms of the Deeds Registries Act.

[16] A real right is adequately protected by its registration in the Deeds Office (see *Frye's (Pty) Ltd v Ries* 1957 (3) SA 575 (A) at 582A). Once Capex's rights had been registered they were maintainable against the whole world (*Frye's* case at 583E). They were not extinguished by their erroneous omission from subsequent title deeds and the fact that Denel's title deed, registered in the Deeds Office, did

not reflect those rights does not assist Denel. We have a negative system of registration where the deeds registry does not necessarily reflect the true state of affairs and third parties cannot place absolute reliance thereon (see *Knysna Hotel CC v Coetzee NO* 1998 (2) SA 743 at 753A-D; *Barclays Nasionale Bank Bpk v Registrateur van Aktes* 1975 (4) SA 936 (T); and *Standard Bank van S.A. Bpk v Breitenbach* 1977 (1) SA 151 (T) at 156C-E). In *Sakereg op cit* at 342 the negative system of registration is explained as follows:

> "In die geval van ¿ *negatiewe registrasiestelsel* word nie gewaarborg dat die inligting wat in die register vervat is, korrek is nie. Indien ¿ *bona fide* derde dus op die registers staatmaak, doen hy dit op eie risiko en word hy die slagoffer van valse inliging in die register. Die ware eienaar verloor in geen omstandighede sy reg ten gunste van die *bona fide* verkryger nie. Hierdie stelsel bied dus groter sekuriteit aan die ware eienaar as aan die *bona fide* derde wat die slagoffer van ¿ foutiewe inskrywing kan word."

And later on the same page:

> "Hoewel eiendom en beperkte saaklike regte nie sonder registrasie oorgedra kan word nie, word nêrens gewaarborg dat die aktesregister ¿ juiste beeld

> van die ware toedrag van sake gee of dat derdes absoluut daarop kan staatmaak nie."
>
> (See also *The Law of Property loc cit* 106)

In *Grant v Stonestreet* 1968 (4) SA 1 (A) Ogilvie Thomson JA said at 20A-B:

> "Having regard to our system of registration, the purchaser of immovable property who acquires clean title is not lightly to be held bound by an unregistered praedial servitude claimed in relation to that property. If, however, such purchaser has knowledge, at the time he acquires the property, of the existence of the servitude, he will . . . be bound by it notwithstanding the absence of registration"

However, in that case the court was not dealing with a real right: it was dealing with an agreement in terms of which reciprocal servitudes, which had never been registered, had been granted. An agreement to grant a servitude gives rise to a real right only when it has been registered (see *Van Vuren v Registrar of Deeds* 1907 TS 289 at 295; Van der Merwe *Sakereg op cit* 526-527, and *The Law of Property op cit* 380-381). Dealing, at 23H-24E, with the distinction between real rights and contractual rights, in that case unregistered servitudes, Ogilvie Thomson JA referred

to *Willoughby's Consolidated Co Ltd v Copthall Stores Ltd* 1918 AD 1 where Innes CJ said at 16:

> "Now a servitude, like any other real right, may be acquired by agreement. Such an agreement, however, though binding on the contracting parties, does not by itself vest the legal title to the servitude in the beneficiary, any more than a contract of sale of land passes the *dominium* to the buyer. The right of the beneficiary is to claim performance of the contract by delivery of the servitude, which must be effected *coram lege loci* by an entry made in the register and endorsed upon the title deeds of the servient property."

The *Grant* case is therefore no authority for a proposition that a registered real right is no longer maintainable against the whole world when it is erroneously omitted from a subsequent title deed.

[17] Before us it was submitted on behalf of Denel that because of the release of the Farm Helderberg Sleeper Plantation No 787 from the use restriction it was no longer possible to arrive at a purchase price for the property that remained subject to conditions 1 and 2 in that a separate price was not agreed in respect of the

remaining property. However, Denel did not base its application or its defence to Capex's counter-application on this ground. The issue was not raised in the affidavits filed or during argument in the court below. This court cannot therefore be satisfied that all the relevant facts relating to this issue have been placed before it. We are in no position to deal with the issue at this late stage.

[18] Capex reserved a real right in the terms set out in conditions 1 and 2 in respect of Farm No. 1065 and that real right has not been extinguished. It follows that Denel's application should have been dismissed. It follows, furthermore, that conditions 1 and 2 should have been carried forward into subsequent title deeds in respect of property that formed part of Farm 1065.

[19] Counsel for Denel contended that even if the conditions should have been carried forward Capex was not entitled to orders interdicting Denel from using the restricted properties for uses other than those specified in condition 1 and from selling or transferring the restricted properties to any person without complying with

the provisions of condition 2. He submitted that there was no evidence justifying a reasonable apprehension that Denel would act contrary to the provisions of these conditions. However, in a letter dated 12 November 1996 Capex's attorneys wrote to Denel as follows-

> "(O)ur client requires an undertaking that you will not seek to use the relevant properties for anything other than the development and manufacture of armaments and that you will not dispose of any part of the property in breach of our client's pre-emptive right as contained in clause 7 of the relevant sale agreement and in clauses 1.1 and 1.2 on pages 15 to 19 and 25 of deed of transfer T40652/1974 pending the determination of the court proceedings."

Such an undertaking was not given. Instead, Denel proceeded to produce a development plan relating to the relevant property which indicates that the property is to be developed and sold off for, amongst others, residential and commercial purposes. The plan has been submitted to the Helderberg Municipality and to the public at large for comment and objection. For these reasons Capex is entitled to orders interdicting Denel from acting contrary to the provisions of conditions 1 and 2.

[20] The following order is made:

1 The appeal is upheld with costs including the costs of two counsel.

2 The following order is substituted for the order of the court *a quo*:

2.1 The applicant's application is dismissed with costs including the costs of two counsel.

2.2 The following order is made in respect of the first respondent's counter-application:

2.2.1 Subject to compliance with all relevant statutory provisions and Deeds Office requirements the Registrar of Deeds, Cape Town is ordered to rectify Certificate of Consolidated Title T1178/94 and Certificate of Registered Title T1179/1994 so as to include the conditions reflected from p 15 line 7 to p 19 line 29 of Deed of Transfer T40652/1974.

2.2.2 it is declared that the restricted properties may be used, in so far as the conditions apply to them, only for the purposes described in clause 1 of the said conditions.

2.2.3 it is declared that in the event of the restricted properties no longer being required for the uses set out in clauses 1(i) and 1(ii) of the said conditions the first respondent has the first right to repurchase them in accordance with clauses 2(i) to (vi) of the said conditions.

2.2.4 the applicant is interdicted from using the restricted properties for uses other than those specified in clause 1 of the said conditions.

2.2.5 the applicant is interdicted from selling or transferring the restricted properties to any person without complying with the provisions of clause 2 of said conditions.

2.2.6 the applicant is ordered to pay the costs including the costs of two counsel.

P E STREICHER, JA

Vivier, JA)
Olivier, JA)

Zulman, JA)
Mthiyane, AJA) concur