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DISPUTE RESOLUTION **ALERT**

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Farm planning regulation developed in support of sustainable management of agricultural land

The aim of the Regulation is to promote farm planning in support of sustainable management of agricultural land with a view to maintain the production potential of land and to combat or prevent degradation of natural agricultural resources specified in CARA.

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The aim of the Regulation is to promote farm planning in support of sustainable management of agricultural land with a view to maintain the production potential of land and to combat or prevent degradation of natural agricultural resources specified in CARA.

The Regulation will be primarily applicable to any land under government-funded programmes, land under direction in terms of section 7 of CARA, and any other land subject to degradation in contravention of the objects of the CARA. The Regulation will also find application for land which is currently and will in future be used for agricultural production, except any land situated in urban areas or land declared to be a mountain catchment area as specified in section 2(1) of CARA read with section 2 of the Mountain Catchment Areas Act 63 of 1947.

The Regulation stipulates that a farm plan shall be requested from a local Provincial Agricultural Office (Department of Agriculture and Rural Development) by the land user in terms of section 10 of CARA for use in connection with the utilisation and conservation of natural agricultural resources.

The Regulation provides in section 7(2) that the farm plan must include:

- a map of the farm unit which includes the approximate positions of all existing and proposed soil conservation works, as well as all roads, railways lines, watercourses, permanent fountains, boreholes, buildings, other prominent land marks and such other particulars as are deemed necessary for the purposes of CARA or a scheme;
- a list of the soil conservation works that are recommended for construction on the farm unit concerned, and which have already been constructed, irrespective of whether subsidies were previously paid towards them in terms of any scheme or government programme;
- a management programme or plan with regard to the utilisation and conservation of the natural agricultural resources on the farm unit concerned, in so far as it relates to the management of the veld and lands of that farm unit; the maximum number of each kind, type or breed of animal that should be kept on that farm unit; the size and composition of the herds that should be kept on that farm unit; and other matters that may be deemed expedient in a particular case.

The executive officer shall maintain a Farm Plan Register of all farm plans generated or amended under the Regulation, which will contain obligatory information relating to each farm unit such as the locality, property description and programme applicable to the farm.

Farmers and other landowners ought to note that the Regulation does not make provision for subsidies to be paid in addition to other schemes or programmes.

The Regulation does not contain a penalty clause to possibly sanction any non-compliance, thus rendering its enforceability questionable once gazetted by the Minister of Agriculture, Land Reform and Rural Development.

Burton Meyer and Rethabile Mochela

Unravelling the Plascon-Evans rule

Our courts have developed a principle, known as the Plascon-Evans rule, which allows courts in certain circumstances to make a determination on disputes of fact in application proceedings without having to hear oral evidence.

"Four things belong to a judge: to hear courteously, answer wisely, consider soberly and decide impartially."
– Socrates

Recently the Judicial Service Commission held interviews of candidates for judicial positions to make recommendations for the appointment of judges in different South African courts. Some of the candidates struggled with questions relating to the well-established principle of the Plascon-Evans rule. For those who don't know what the Plascon-Evans rule means, as well as for those who think they know, we have put together an overview of the application of the rule.

Motion proceedings

Litigious civil matters can be instituted in one of two ways: either by way of an action or by way of an application. The decision relating to the correct procedure will depend on whether the adjudication of the matter is possible solely considering the written evidence given under oath (affidavits) or whether oral evidence and witness examination should be led.

Application proceedings, unless concerned with interim relief, are all about legal issues based on common cause facts. Unless special circumstances exist, they cannot be used to resolve factual issues because they are not designed to determine probabilities without oral evidence. That said, our courts have developed a principle, known as the Plascon-Evans rule, which allows courts in certain circumstances to make a determination on disputes of fact in application proceedings without having to hear oral evidence.

The general rule was initially formulated in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* [1957] (4) SA 234 (C) where the court held that:

> *"where there is a dispute as to the facts, a final interdict should be granted in motion proceedings only if the facts as stated by the respondents, together with the admitted facts in the applicant's affidavit, justify such an order, or where it is clear that the facts, although not formally admitted, cannot be denied and must be regarded as admitted."*

Unravelling the Plascon-Evans rule...*continued*

Therefore, when factual disputes arise in motion proceedings, relief should be granted only if the facts stated by the respondent, together with the admitted facts in the applicant's affidavits, justify the order.

In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] (3) SA 623 (A), the Appellate Division (now known as the Supreme Court of Appeal) found that the rule formulated in *Stellenbosch Farmers' Winery* required clarification and qualification where final relief was sought in motion proceedings.

- The general rule is still that in proceedings where disputes of fact have arisen on affidavits, a final order, whether an interdict or some other form of relief, may be granted if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.
- The power of the court to give such final relief on the papers before it is, however, not confined to such a situation.
- In certain cases denial by a respondent of a fact alleged by an applicant may not raise a real, genuine or *bona fide* dispute of fact. If the respondent in such a case has failed to apply for the deponent(s) concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court, and if the court is satisfied as to the inherent credibility of the applicant's averments, the court may decide the disputed fact in the applicant's favour, without hearing oral evidence.

Therefore, when factual disputes arise in motion proceedings, relief should be granted only if the facts stated by the respondent, together with the admitted facts in the applicant's affidavits, justify the order.

Exceptions to the rule

The court noted there may be exceptions to this general rule, such as where the allegations or denials are so far-fetched, or clearly untenable that the court is justified in rejecting them on the papers.

More recently, in *Wightman t/a JW construction v Headfour (Pty) Ltd and Another* [2008] (3) SA 371, Heher JA held that:

> *"A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely withing the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to*

Unravelling the Plascon-Evans rule...*continued*

It should be noted that the Plascon-Evans rule is not applicable to interlocutory matters and only to final relief.

be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents inadequate as they may be and will only in exceptional circumstances be permitted to disavow them. There is this a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes dully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter."

The legal practitioner acting on behalf of a respondent therefore has to ensure that the content of an answering affidavit is clear, concise, factually correct and duly contradicts the averments made by the applicant, where the respondent is able to do so.

It should be noted that the Plascon-Evans rule is not applicable to interlocutory matters and only to final relief.

As is clear from the above, courts take a robust view in respect of the Plascon-Evans rule. Presiding officers have started calling for a more forceful approach to the determination of disputes of fact in certain circumstances. However, one has to be cautious before adopting a more robust approach at first sight, as this will enable presiding officers to have more discretion in ordering final relief on written evidence (affidavits) without resorting to oral evidence.

A more robust approach stands to be tested and until a new rule or approach has been identified and endorsed by our courts, the Plascon-Evan rule prevails.

Anja Hofmeyr and
Liëtte van Schalkwyk

OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa and Kenya, please contact:

Tim Fletcher
Practice Head
Director
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com

Thabile Fuhrmann
Chairperson
Joint Sector Head
Government & State-Owned Entities
Director
T +27 (0)11 562 1331
E thabile.fuhrmann@cdhlegal.com

Timothy Baker
Director
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com

Eugene Bester
Director
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Jackwell Feris
Sector Head
Industrials, Manufacturing & Trade
Director
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Anja Hofmeyr
Director
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Tobie Jordaan
Sector Head
Business Rescue, Restructuring & Insolvency
Director
T +27 (0)11 562 1356
E tobie.jordaan@cdhlegal.com

Corné Lewis
Director
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Richard Marcus
Director
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer
Director
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Rishaban Moodley
Sector Head
Gambling & Regulatory Compliance
Director
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com

Mongezi Mpahlwa
Director
T +27 (0)11 562 1476
E mongezi.mpahlwa@cdhlegal.com

Kgosi Nkaiseng
Director
T +27 (0)11 562 1864
E kgosi.nkaiseng@cdhlegal.com

Byron O'Connor
Director
T +27 (0)11 562 1140
E byron.oconnor@cdhlegal.com

Desmond Odhiambo
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Lucinde Rhoodie
Director
T +27 (0)21 405 6080
E lucinde.rhoodie@cdhlegal.com

Clive Rumsey
Sector Head
Construction & Engineering
Director
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com

Belinda Scriba
Director
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com

Tim Smit
Director
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com

Joe Whittle
Director
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Roy Barendse
Executive Consultant
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

Jonathan Witts-Hewinson
Executive Consultant
T +27 (0)11 562 1146
E witts@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR
Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG
1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN
11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI
Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. PO Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114 E cdhkenya@cdhlegal.com

STELLENBOSCH
14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

CDH
CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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