

Real Estate Law

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In this issue

SOUTH AFRICA

Your neighbour may take legal ownership of your property because of a boundary fence



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Your neighbour may take legal ownership of your property because of a boundary fence

In the decision of *Burglar Alarm & Remote Control Services CC v Werner Brits 8917/2019*, the High Court in the Western Cape granted an application in which the plaintiff's request, brought in terms of the Prescription Act 18 of 1943 and the Prescription Act 68 of 1969, sought to acquire a strip of land by way of acquisitive prescription.

Burglar Alarm & Remote Control Services CC (the plaintiff) and Mr Werner Brits (the defendant) own adjoining properties. The dispute arose over a triangular strip of land along the common boundary of the respective parties' properties, visually marked by a wire fence that does not follow the cadastral boundary. The plaintiff alleged that it had acquired ownership of the strip of land (which was on its side of the fence) by way of acquisitive prescription and the defendant disagreed.

Acquisitive prescription is a legal doctrine that allows a person to obtain ownership of property by virtue of their possession and use of that property for a specific period of time. The purpose of acquisitive prescription is to provide legal certainty and stability in property rights, ensuring that long-standing possession is rewarded with ownership. It is an original method of acquisition because the co-operation or permission of the legal predecessor is not required to acquire ownership of the property.

As a point of departure, the High Court considered the ownership of the properties. The ownership of the parties' respective properties was not disputed and the relevant title deeds and land surveyor's diagrams were handed in as evidence.

A land surveyor had discovered that the wire fence between the properties did not follow the cadastral boundary between them. Mr Otto Steinhofel the sole member of the plaintiff Burglar Alarm and Remote Control CC testified that the fence had not been moved after the plaintiff's purchase of the property, and the former owner testified that the fence appeared to be the same fence which had existed between the properties when she owned the property.

The defendant argued that, for various reasons, he and his predecessors were unaware of the encroachment and did not know where the true beacons were.

Finally, the High Court considered the requirements of acquisitive prescription which are:

1. Possession: The claimant must have actual, continuous, peaceful and undisturbed possession of the property. Possession refers to physical control and utilisation of the property as an owner would.
2. Duration: The claimant must possess the property for a specific period. In South Africa, the general prescription period for movable property is three years, while for immovable property, it is 30 years.

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3. Open Possession: That possession is exercised openly.
4. No interruption: The possession must be uninterrupted for the required period. Any interruption or interference in the possession can reset the prescription period.

It was held that the plaintiff satisfied the requirements by *“proving peaceable and open occupation adversely to and, therefore, to the exclusion of the right of the true owner for 30 years”*.

Finding

The High Court, after careful consideration, found that there were no considerations in the present matter which excused the defendant and his predecessors from the ordinary consequences of prescription. The High Court further concluded that the order sought was not unfair to the defendant.

For these reasons, the High Court concluded that the plaintiff had acquired the land through acquisitive prescription and dismissed the defendant’s claim in reconviction.

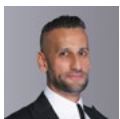
This judgment highlights the importance of acquisitive prescription in South African property law. It allows individuals to acquire ownership of property through continuous and uninterrupted possession for a specified period. By meeting the requirements and following the prescribed timelines, individuals can gain legal recognition of their long-standing possession and obtain ownership rights. It is crucial to consult with legal professionals for specific advice and guidance on the application of acquisitive prescription in individual cases.

Natasha Fletcher and Tyler Lillienfeldt



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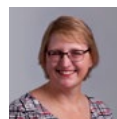
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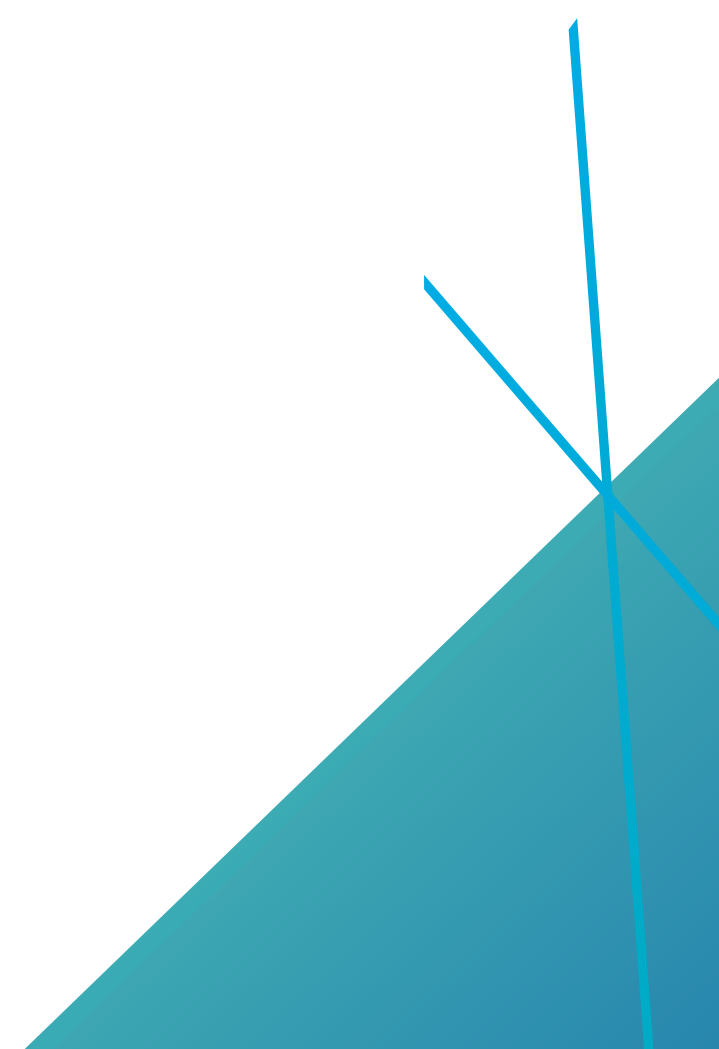
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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