

JOHANNESBURG WATERWORKS ESTATE AND
EXPLORATION COMPANY, LIMITED

v.

REGISTRAR OF DEEDS.

Coram :
KOTZÉ, C.J.
AMES-
HOFF, J.
GREGO-
ROWSKI, J.

1897

5 February.

LEASE FOR NINETY-NINE YEARS--REGISTRATION ON THE
TITLE DEED.

The Registrar of Deeds is obliged to register a lease for ninety-nine years on the title deed of a farm, as well as in a separate register.

THIS was an appeal from the decision of Kleyn, J., pronounced on 1st August, 1896. The Johannesburg Estates and Exploration Co., Limited, made an application in which it set forth that on 7th March, 1896, an agreement was entered into between the owners of a certain portion of the farm Weltevreden, No. 208, in the district Pretoria, and the Company, whereby it leased all right, title and claim from the aforesaid owners in and to certain fountains and streams on Weltevreden aforesaid, from year to year, for ninety-nine years: that according to clause 9 of the said agreement of lease the parties agreed to have the same registered as a servitude against the title deed of the farm Weltevreden: that it was desirable to have the said agreement of lease registered against the title deed, either as a servitude or as an agreement of lease: that the Registrar of Deeds refused to do so. Upon these grounds the Company asked for an order, directing the Registrar of Deeds to register the said lease on the title deed. The Registrar of Deeds replied to this—that the agreement of lease did not contain any servitude, and that he could not therefore register it against the title deed, but that he was prepared to register it in a separate register kept for agreements of lease.

KLEYN, J., dismissed the application on the ground that the

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agreement of lease did not contain a servitude, and it was accordingly not necessary to register it against the title deed.

Wessels, for the appellant: It is necessary to have the lease, which in reality is similar to a servitude, registered against the title deed, for otherwise there will be no sufficient security for the public. Both parties to the agreement desire such registration, and there is no reason why it should not be done.

Barber, for the respondent: It is not the practice to register contracts of lease against the title deed. They are registered in a separate register which affords complete security to the public. A lease *in longum tempus* is not a servitude, and consequently Law No. 3 of 1886 does not apply.

KOTZÉ, C. J.: We are of opinion that this is a case of a *locatio in longum tempus*, which is equivalent to a *res immobilis* partaking of the nature of a servitude. It must therefore be registered, and no reason exists why the contract shall not be registered against the title deed as well as in a separate register. The respondent will therefore be ordered to register the contract on the title deed as well.

AMESHOFF and GREGOROWSKI, JJ., concurred.

Attorney for the appellant: *H. L. Scholtz*.
