71

COMMUNITY DEVELOPMENT BOARD v. MAXIM TOWNSHIP DEVELOPMENT (PTY.) LTD.

(APPELLATE DIVISION.)

1972. *September* 25; *November* 14. RUMPFF, J.A., WESSELS, J.A., POTGIETER, J.A., TROLLIP, J.A., and MULLER, J.A.

Land.—Community Development Act, 3 *of* 1966.—*"Owner."—Definition of in sec.* 1 (1).—*Who are included therein.*

In interpreting the definition of the word "owner" in section 1 (1) of Act 3 of 1966 it must be accepted, having regard to the duties of the Community Development Board, that the intention of the Legislature was to include in the definition of "owner" any person who was legally competent and had the capacity to transfer a property.

In 1964 respondent had purchased certain erven in Johannesburg from the Department of Agricultural Credit and Land Tenure. The contract provided that one-tenth had to be paid in cash and the balance together with interest in ten annual instalments. The contract further provided that nothing would prevent the purchaser from paying the full purchase price before the expiry of the ten years and that on payment of the full purchase price the seller would give the purchaser transfer of the property.

Held, that the respondent should be regarded as a person who was lawfully entitled to transfer the property concerned in accordance with the definition of "owner" in section 1 (1) of Act 3 of 1966.

The decision in the Transvaal Provincial Division in *Maxim Township Development (Pty.) Ltd.* v. *Gemeenskapsontwikkelingsraad,* confirmed.

Appeal against a decision in the Transvaal Provincial Division (CLAASSEN, J.). The facts appear from the judgment of RUMPFF, J.A.

L. Le Grange, S.C. (with him *P. J. van R. Henning*), for the appellant: Sec. 15 (5) (*a*) of the Community Development Act, 3 of 1966 is not applicable to this case. The respondent is not the "owner" of the erven concerned for the purposes of the said section, on account of the fact that respondent as hire-purchaser does not have registered real rights and is also not one of the officials mentioned in the definition of owner in the said Act. The definition of "owner" in sec. 1 limits "owner" to persons in whose names the real rights are registered. After the said definition there appears a provision in terms of which the

72

word "owner", in the application of certain sections mentioned is deemed to include "any sheriff, . . . executor, etc. or other person lawfully entitled or required to dispose of that property". As regards this group of officials, none of them normally has at his disposal immovable property as a result of registration. For the purposes of the said sections this group is presumed to have ownership. The number of offi-

cials mentioned as examples and who without exception act as representative of the owner is not exhaustive. For example the following are not pertinently included: a liquidator under the Farmers' Assistance Act, 48 of 1935; the guardian who in terms of sec. 80 of the Administration of Estates Act, 66 of 1965 deals with the immovable property of a minor; a husband who as administrator disposes of immovable assets of the joint estate or of immovable assets which form part of the separate assets of his wife, acquired by, for example, an inheritance. The words "any other person lawfully entitled or required to dispose of that property" mean something completely different from the meaning which the court *a quo* attached to them. As the examples of officials mentioned are not exhaustive, the words "any other person" are a reference to persons who fall in the same *genus* as the said officials, but who are not pertinently mentioned. *Director of Education Transvaal* v. *McCagie and Others,* 1918 A.D. at p. 623; Steyn, *Die Uitleg van Wette,* 3rd ed., p. 29. To each word in an Act a meaning must be given. Steyn, *op. cit.*, pp. 16-20. The use of the word "lawfully" is meaningful. See *De Kock* v. *Helderberg Koöp. Wijnmakerij Bpk.*, 1962 (2) S.A. at p. 426H. The words "entitled or required" are applicable to the *genus* of officials, who according to the function of the particular official and the particular circumstances of the case, are entitled or required to dispose of property which is registered in another's name. But is a person who only has a *jus in personam ad rem acquirendam* ever "required" to dispose of the property or even the right? The use of the expression "to dispose of that property" is also important. According to the rules of the common law a person is entitled to alienate the property of another, in the sense that it is not unlawful or wrongful. *Theron and du Plessis* v. *Schoombie,* 1897 S.C. at p. 199; Wessels, *Law of Contract,* 2nd ed., para. 4420. A person with only a personal right does, however, not have the power without qualification to dispose of property effectively and consequently he is not legally entitled to dispose of the property and can also not be legally required to dispose of the property. *Estate Osman* v. *Registrar of Deeds and Others,* 1958 (3) S.A. at p. 583D; *S.* v. *Levers (Pty.) Ltd. and Another,* 1970 (1) S.A. at p. 529H.

T. H. van Reenen, S.C. (with him *P. M. Nienaber*), for the respondent: The respondent is not the registered owner of the properties; he is, however, a person having a right to those properties, the holder of a

73

jus in personam ad rem acquirendam, and is as such particularly "entitled to dispose of that property". The words "desires to dispose of" mean in the context of sec. 15 (5) (*a*) "sell" and not "sell and transfer" or only "transfer". To attach the latter meanings to the words would deprive the section of its meaning. The Board can certainly not obtain a right of pre-emption only when the owner specifically contemplates transfer to a third party, because the right of "pre-emption" presupposes

the right to buy first. It is clear that the concept "dispose of" has a wide meaning. See *R.* v. *de Araujo,* 1961 (3) S.A. at p. 235. The particular meaning which should be given depends on the intention of the legislation concerned. See *S.* v. *Dormehl,* 1965 (1) S.A. at p. 335; *Est. Osman* v. *Registrar of Deeds and Others,* 1958 (3) S.A. at p. 583; *Amalgamated Society of Woodworkers of S.A. and Another* v. *Die* 1962 *Ambagsaalvereniging,* 1967 (1) S.A. at p. 594. In the Community Development Act the intention is to place an area which is defined in terms of sec. 15 (2) (*e*) for purposes of a slum removal scheme or a city renewal scheme under the control of the appellant for development of properties. For this purpose, *inter alia,* the free "disposal" of property in such a defined area is limited by the granting of a right of pre-emption to the appellant. A meaning should, therefore, be given to the concept "dispose of" which will not frustrate this intention, but further it. Here the concept "dispose of" must be given a meaning which agrees with the meaning which it clearly bears in the related Group Areas Act, where the intention is to exercise control over properties in order to promote separation of races in areas. See sec. 46 (1) (*j*) of Act 36 of 1966 and sec. 27 (1) (*a*) of Act 36 of 1966. If the section was only applicable to registered owners, it would mean that an interested party who is not a registered owner may freely dispose of the property to a third party, i.e. may sell it, without knowing appellant in the matter. If such a third person again wants to dispose of the property, he must just ensure that he does that before he receives transfer. Nothing in sec. 15 (5) (other than the existence of the right of pre-emption in question) authorises the Registrar of Deeds to refuse to pass transfer of the property concerned to such a third person, in pursuance of an alienation by a non-owner. An interpretation which leads to absurd results is not permitted. Steyn, *Uitleg van Wette,* 3rd ed., p. 114, and also not an interpretation which foils the object of the Act, Steyn *op cit.,* p. 115. The aforegoing considerations indicate that the so-called *ejusdem generis* rule should not be applied in interpreting the definition of "owner". Steyn, *op. cit.,* p. 38. The fact that the appellant entered into the agreement while he was under the impression that sec. 15 (5) (*a*) was applicable to the respondent, is irrelevant, because it can at the most be an error in regard to cause or motive. It is trite law that an error in regard to motive does not vitiate an agreement. De Wet & Yeats, *Kontraktereg en Handelsreg,* 3rd ed., pp. 11, 36; *Suid-Afrikaanse Vrouefederasie (Transvaal)* v. *Thackwray, N.O. and Another,*

74

1967 (2) S.A. at p. 475B; *Diedericks* v. *Minister of Lands,* 1964 (1) S.A. at p. 56C; *Springvale Ltd.* v. *Edwards,* 1969 (1) S.A. 464. The word "lawfully" only means "rightful". The Legislator uses the expression "lawfully entitled *or* required" and not "lawfully entitled *and* required". As long as the respondent is, therefore, entitled to sell the property, it does not matter that he is not required to do so. Nothing

in secs. 29 (4), 32, 33, 34, 37 up to and including 42 and 45 of the Act militates against an interpretation that respondent may be "owner" for the purposes of the said section. The position of the holder of an option cannot be equated with that of the respondent. The holder of an option is not the holder of a *jus in personam ad rem acquirendam.* He only has a right of perpetuation of the offer for the duration of the period of the option. As such he is not yet entitled to transfer of the property. *Hersh* v. *Nel,* 1948 (3) S.A. at p. 695; *Brandt* v. *Spies,* 1960 (4) S.A. 14; *Venter* v. *Birchholtz,* 1972 (1) S.A. at p. 283. The Court is competent to decide on such question by way of declaratory order. See *Johannesburg Municipality* v. *Transvaal Cold Storage,* 1904 T.S. 730; *Durban Corporation* v. *Durban Municipal Employees' Society,* 1937 N.P.D. at p. 349; Mackenzie, *The Law of Building Contracts and Arbitration,* 2nd ed., p. 143. The right of pre-emption (a preferent right to purchase) referred to in sec. 15 (5) (*a*), means that the appellant has the first right to buy the property and that the respondent (apart from the criminal sanctions) can be prohibited from alienating such property to a third person without appellant's consent. *Van Pletzen* v. *Henning,* 1913 A.D. 82; *Hartsrivier Boerderye (Edms.) Bpk.* v. *Van Niekerk,* 1964 (3) S.A.; *Owsianich* v. *African Consolidated Theatres (Pty.) Ltd.,* 1967 (3) S.A. 310. The present case is similar to an agreement of sale where the price is to be determined by an appointed third person. *Gilling* v. *Sonnenberg,* 1953 (4) S.A. 675; *Dublin* v. *Diner,* 1964 (1) S.A. 799.

Le Grange, S.C., in reply.

Cur. adv. vult.

Postea (November 14th).

RUMPFF, J.A.: The Legislator created a Community Development Board by the Community Development Act, 3 of 1966 (hereinafter called the Act) with extensive powers, *inter alia,* in regard to what is called affected properties situate in areas proclaimed under the Group Areas Act. The function and general powers of the Board are contained in sec. 15 of the Act and in sec. 15 (2) (*e*) the Board is given the following power:

"If it is satisfied that it is expedient to do so in furtherance of a slum clearance scheme or an urban renewal scheme, by notice published in the *Gazette* and at least once in a newspaper circulating in the district in which any area defined in the notice is situated, to prohibit, for such period as may be specified in the notice, the subdivision, except with the prior written approval of the board, of land or stands within that area or the erection or alteration, except with such approval, of any building or structure within that area or the use, except with such approval, of any building or structure within that area for a purpose

75

other than the purpose for which such building or structure was being used on the date of the publication of the notice."

It has become customary to call such an area a frozen area and the

name is rather apt, especially in view of the contents of sec. 15 (5) (*a*), (*b*) and (*c*), which reads as follows:

"(*a*) Any owner of immovable property in an area in respect of which any notice under sub-section 2 (*e*) is in operation, who desires to dispose of such property, shall offer such property for sale to the board, and the board shall thereupon have a preferent right to purchase such property at a price agreed upon between it and the owner concerned, or (if within sixty days after the date on which the offer was made the board and such owner fail to agree as to the price to be paid) at a price fixed by an arbitrator appointed by the board and such owner, or (if the board and such owner fail to agree, within a period of fourteen days after written notice given by either party to the other, as to the person to be appointed as arbitrator) by an arbitrator appointed by the Minister on application by either party.

(*b*) The provisions of sec. 45 (2) and (3) shall *mutatis mutandis* apply in connection with any arbitration under this sub-section.

(*c*) Any owner who disposes of immovable property referred to in this sub-section, in respect of which the board has not advised him in writing that it does not propose to exercise its preferent right to purchase such property in terms of this sub-section, to any person other than the board, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or, in default of payment, to imprisonment for a period not exceeding six months."

In terms of sec. 38 of the Act the Board is given, with the written approval of the Minister concerned, the general power of expropriation of any immovable property if the Board is satisfied that it is advisable for the attainment of any of its objects. In regard to a frozen area there is still sec. 50 (2) which reads as follows:

"Any person who, in contravention of a prohibition contained in any notice published in the *Gazette* under sec. 15 (2) (*e*), without the prior written approval of the board—

(*a*) subdivides land or any stand within an area defined in such notice; or

(*b*) erects or alters any building or structure within such an area; or

(*c*) uses any building or structure within such an area for a purpose other than the purpose for which such building or structure was being used on the date of the publication of such notice.

shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment, and, in addition, the court convicting such person may order him to demolish, within a period fixed by the court, any building or structure which he erected or caused to be erected or alteration which he effected or caused to be effected in contravention of a prohibition in such notice, or the court may, if such person is using an existing building or structure in contravention of a prohibition in such notice for a purpose other than the purpose for which such building or structure was being used at the date of the publication of such notice, order him within a period fixed by the court to cease such use or to vacate such structure or building, and the court may further, if that person fails to comply with that order within that period, order that he be ejected from the building or structure."

It is clear that the Legislator intends that after the publication of the notice in terms of sec. 15 (2) (*e*) of the Act, there shall be, subject only to the permission of the Board, a complete maintenance of the existing condition in regard to the land and buildings in the area concerned and that no owner may alienate immovable property unless the Board is first given the opportunity to exercise its right of pre-emption.

76

The word "owner" is specially defined in sec. 1 (1) of the Act and it reads as follows:

" 'owner' means, in relation to—

(*a*) immovable property or any interest in immovable property other than such property as is referred to in para. (*b*), the person in whose name that property or in whose favour that interest in immovable property is registered;

(*b*) immovable property forming part of the farm Alexanderfontein or the farm Bultfontein in the district of Kimberley and held under a lease or licence which entitles the lessee or licensee and his successors in title to occupy such property, the person registered in the deeds registry as the lessee or licensee of that property,

and for the purpose of sec. 15, sec. 29 (4) and secs. 32, 33, 34, 37 to 42, inclusive, and 45, includes any sheriff, deputy-sheriff, messenger of the court, trustee, executor, liquidator, curator, administrator or other person lawfully entitled or required to dispose of that property."

In the English text the last part of this sub-section reads as follows: "or other person lawfully entitled or required to dispose of that property".

In the present case the respondent purchased on 7th April, 1964 certain erven situate in Troyeville, Johannesburg from the Department of Agricultural Credit and Land Tenure and the contract was ratified by the Minister concerned on 7th September, 1967. In terms of this contract the purchase price was R46 500 of which one-tenth, viz. R4 650 was to be paid in cash and the balance together with interest was payable in ten annual instalments of R5 821,53 of which the first instalment was payable on 7th April, 1965. The contract provided, *inter alia*, that nothing would prevent the purchaser from paying the full purchase price before the expiry of ten years and that on payment of the full purchase price the seller would give the purchaser transfer of the property.

On 21st July, 1967 *Government Notice* 1087 appeared in the *Government Gazette* whereby an area in Johannesburg was declared an area in terms of sec. 15 (2) (*e*) of the Act, for a period of ten years. The properties purchased by the respondent fell within this area. Originally the respondent wanted to develop these properties and in 1968 he caused sketch plans to be drawn and he discussed these plans with the Johannesburg City Council, but he then discovered that the properties were situate in an area covered by *Government Notice* 1087. Respondent abandoned his plans and on 14th March, 1969 he offered the properties to the appellant at a purchase price of R101 550. On 2nd September the appellant notified the respondent that it was exercising its right of pre-emption but was prepared to pay a purchase price of R43 000 only. In March, 1970 appellant repeated its decision and informed respondent that if a price could not be agreed upon, an arbitrator would be appointed in terms of sec. 15 (5) (*a*) of the Act. During January, 1971 respondent wrote a letter to appellant's representative in which he revealed that he had received "a written offer" by certain persons to purchase the properties at R75 000 and in which respondent asked whether he could accept the offer and whether appellant was still interested in the properties. A copy of the "offer" was attached to the letter and it appears clearly therefrom that respondent had given an option which would lapse on 15th March, 1971 to certain persons to purchase at the

given amount. After further delays and negotiations appellant decided that an arbitrator should be appointed and the arbitration started on 1st September, 1971. About six days before the arbitration started appellant had become aware of the fact that respondent was not the registered owner of the properties. Only on the afternoon of the second day of the arbitration appellant's advocate informed the arbitrator of this problem and, *inter alia,* took up the attitude, if I read the record correctly, that appellant wanted to proceed with the arbitration, but reserved the right to regard the whole arbitration as *ultra vires* after the conclusion thereof. The arbitration was then postponed *sine die* and respondent asked for a declaratory order in the Transvaal Provincial Division. Appellant opposed the application and from the affidavit by the assistant regional representative of the appellant it appears that appellant's attitude was that respondent was not entitled to a declaratory order.

The opposed application was heard by CLAASSEN, J. and during argument it was conceded on behalf of appellant that on account of the uncertain legal position a declaratory order was justified. In the judgment of the Court *a quo* it was found that the respondent must be regarded as owner in terms of the Act and consequently the following orders were made:

"1. It is declared

(*a*) That applicant when he wanted to sell, was legally compelled in terms of the provisions of sec. 15 (5) (*a*) of Act 3 of 1966 to have offered for sale to the respondent the property consisting of erven 45, 46, 55, 56 and 57 Troyeville, Johannesburg;

(*b*) that respondent was entitled, in terms of the said provisions to exercise his statutory right of pre-emption in respect of the said property;

(*c*) that respondent, in the absence of a mutual agreement about the price, was legally compelled to refer the matter to arbitration for the determination of the price;

(*d*) that the arbitration proceedings which took place before the arbitrator, Adv. M. Bliss, were authorised by the Act;

(*e*) that the said arbitration proceedings should consequently be proceeded with.

2. An order whereby it is declared:

(*a*) that the arbitrator should determine the price as at the date on which the right of pre-emption was exercised;

(*b*) that both parties, if everything further occurs regularly and according to law, will be bound by the price determined by the arbitrator; that the respondent, after such determination of the price, will not be still entitled to decide whether it will buy the property or not.

3. (*a*) The respondent must pay the costs of the proceedings in this Court including the fees of two advocates.

(*b*) The applicant was entitled to place all the documents appertaining to the application before the Court for proper elucidation."

Appellant now, with the necessary consent appeals directly against the decision of the Court *a quo*

As regards the contents of the orders, appellant's counsel informed us that should appellant not succeed, the Board will make no objection against orders 1 (*a*), (*b*), (*c*), (*d*) and (*e*) and against orders 2 (*b*) and (3). As regards order 2 (*a*) it is denied that the contents of the order is

legally correct, but in view of the particular circumstances of this case, no objection is made against this order, in case the appeal does not succeed, with reservation of rights in regard to any other case which the Board may encounter.

The only question which must, therefore, be decided by this Court is whether the respondent must be regarded as "owner" of the properties concerned in terms of the Act.

78

On behalf of appellant it was argued that respondent, on account of the fact that he does not have a registered real right and is not one of the officials referred to in the definition of owner, cannot be regarded as owner. It was further submitted that the examples of officials mentioned in the definition are not exhaustive and that there are similar offices which are not mentioned, e.g., the liquidator under the Agricultural Credit and Land Tenure Act, 28 of 1966, and the guardian who deals with property in terms of sec. 80 of the Administration of Estates Act 66 of 1965. On this ground it was submitted that the words
"other person lawfully entitled or required to dispose of that property"
must in terms of the *ejusdem generis* rule be limited to persons falling in the same *genus* as the officials mentioned. It is not denied by appellant that the respondent could again have sold the properties which he had bought, but it was submitted that "dispose of" should be interpreted as alienation in the sense of transfer of the property and that a person who has no power to alienate the property is not lawfully entitled "to dispose of" the property. It was also argued that the Board is not concerned with intermediate rights of possession or occupation, but must only control change of ownership.

From the provisions of the Act, and more in particular from the context of the definition of the word "owner", it must, in my opinion, be readily conceded that the Legislator intended to prevent the contemplated transfer of immovable property situate in a frozen area from one owner to another, so that the Board is afforded the opportunity to purchase the property itself. From this follows, in my opinion, that to the concept "lawfully dispose of" must be given the meaning of a lawful transaction like, for example, purchase, barter or donation whereby the "owner", as defined, intends and is in the position to pass transfer of the ownership. What is intended for the purposes of the Act, is that person who has an effective right of disposal of the property and against whom the Board is empowered to exercise its right of pre-emption. It appears to be clear that the Act does not intend to intervene in a contemplated transfer of immovable property in pursuance of a transaction entered into before the area is frozen, but which will result in the passing of transfer only after the date of freezing. That it must be so, also appears from the provisions of sec. 29 (2) of the Act which deals with the list of affected properties and which reads as follows:

"If on or after the basic date any affected property has been transferred to any person in pursuance of a transaction entered into before that date or in pursuance of a disposition otherwise than for value, the transferee shall for the purpose of this Act be deemed to have been the owner of such property at the said date."

In regard to the interpretation of the word "owner", it must, in my opinion, be accepted that the Legislator was aware thereof that on the date of freezing of an area, and thereafter, not only the registered owner of property may dispose of the property, but that there may also be other persons who have the right to dispose of the property and

79

who are entitled and competent to pass transfer of the property in circumstances under which the registered owner cannot do so. In order to execute its statutory task properly, the Board must, therefore, be given the opportunity, before such person wants to dispose of the property to exercise its right of pre-emption and consequently, it must, in my opinion, be accepted when interpreting the word "owner", especially in view of the duties of the Board, that it was the intention of the Legislator to include in the definition any person who is competent and entitled to transfer a property. There is a variety of persons who are lawfully entitled to dispose of a property in circumstances where the registered owner cannot dispose of the property himself and it is for this reason that certain statutory officials are for example mentioned in the definition of "owner" and why the following is also added:

"or other person lawfully entitled or required to dispose of that property".

Among the persons who will be lawfully entitled "to dispose of" the property after the date of freezing, according to the meaning set out above, would, *inter alia*, be an agent appointed before or after the date of freezing with irrevocable power of attorney to sell and pass transfer. Should such an agent not be regarded as owner, the whole object of the Act could be frustrated, and for this reason also I am of the opinion that it could not have been the intention of the Legislator to limit the definition of owner to the registered owner and certain officials and that the *ejusdem generis* rule cannot be applicable to the definition of "owner". A purchaser of a property in terms of a contract entered into before the date of freezing and who has not yet received transfer on that date, could enter into a lawful contract of sale of the property after the date of freezing, and he would normally, depending on the provisions of the first contract, even be entitled to pass transfer to the second purchaser by satisfying his obligations under the first contract of sale and thereby receiving transfer. In this sense he has, as far as the Board is concerned, and effective right of disposal in respect of the property. Unless such a purchaser is regarded as owner, a situation would arise under which, after the date of freezing, the registered owner—the original seller—would not be entitled to pass transfer to any other person than the purchaser, because he is lawfully bound to pass transfer to the purchaser, while the purchaser, should he intend to dispose of the property, will indeed be entitled to pass transfer to another, after he himself

has received transfer. In view of the task and duties of the Board, such a purchaser could, if he is not regarded as owner as against the Board, frustrate the Board's right of pre-emption and that would amount to an anomaly which, in my opinion, is in conflict with the clear intention of the Legislator. I am, therefore, of the opinion that such a purchaser is a person who is "lawfully entitled to dispose of that property", in terms of the definition of the word "owner" in the Act.

On behalf of appellant it was submitted that if this interpretation is given to the words:

80

"other person lawfully entitled or required to dispose of that property"

any person who intends to sell immovable property of another should be regarded as "owner". This is incorrect, because although any person may lawfully sell the immovable property of another, in the sense that he may enter into a lawful contract of sale of the property, he does not obtain an effective right of disposal in regard to the property. His ability to pass transfer is conditional and completely dependent on the owner's right to sell or not. The latter would then be the person who wants to sell the property, if he is prepared to do that. It was also suggested that in the case of such an interpretation of the definition of owner, the holder of an option to buy immovable property will have to be regarded as "owner" if he wants to sell his rights under the option. This is also incorrect, because the holder of the option who wants to sell his rights under the option, does not intend to sell the immovable property, but only the right to purchase the property and he is also not a person who has the ability to pass transfer of the property.

In the present instance the respondent is lawfully entitled to sell the properties after the date of freezing of the area concerned, and he is entitled to pass transfer to the purchaser because the contract under which he purchased provides that he may pay the balance of the purchase price at any time, whereupon transfer will be passed to him, and he may then himself pass transfer. He has, therefore, as far as the Board is concerned, an effective right of disposal over the properties. For this reason, I am of the opinion that respondent must be regarded as a person who is lawfully entitled to dispose of the properties concerned in terms of the definition of "owner" in the Act and that the appeal must be dismissed with costs, including that of two advocates, and any costs in connection with the petition filed by applicant to supplement the record and which was allowed before the beginning of the hearing with the consent of respondent.

WESSELS, J.A., POTGIETER, J.A., TROLLIP, J.A., and MULLER, J.A., concurred.

Appellant's Attorneys: *Deputy State Attorney*, Johannesburg and Bloemfontein. Respondent's Attorneys: *Peens, Smit and Oelofse*, Pretoria; *J. G. Kriek and Cloete*, Bloemfontein.