rural development
& land reform
Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

Office of the Chief Registrar of Deeds
Private Bag X918, PRETORIA, 0001 - Tel (012) 338-7227, Fax (012) 338-7383

CHIEF REGISTRAR'S CIRCULAR NO. 2 OF 2015

1. *Willow Waters Homeowners Association (Pty) Ltd and another v Koka NO and others (768/13) [2014] ZASCA 22O (12 December 2014)*

1.1. In the above-mentioned case, the issue was whether a condition which prevents the transfer of immovable property without a clearance certificate from a Homeowners Association constitutes real or personal rights. The North Gauteng High Court, Pretoria (Bam AJ sitting as a court of first instance) held that the condition in question is a ***personal right*** "*which did not bind the trustees of an insolvent estate in whom ownership of the immovable property sought to be transferred vested.*" (Par.1).

On appeal against the finding of Bam AJ, Judge Maya ordered the setting aside of the order of the North Gauteng High Court, Pretoria.

1.2. The following, amongst others, is recorded as "*Reasons for Judgement*":

- The Judge alluded that "*to determine whether a right or condition in respect of land is real, two requirements must be met: (a) the intention of the person who creates the right must be to bind not only the present owner of the land, but also successors in title; and (b) the nature of the right or condition must be such that its registration results in a 'subtraction from dominium' of the land against which it is registered.*" (Par.16). In this matter the Judge found that the condition in question satisfies the aspects required for a condition to be regarded as a ***real right*** (Par. 20 and 22).

- The Judge made the following reference: "*the effect of the embargo is akin to that of the embargos contained in section 118 of the Local Government: Municipal Systems Act 32 of 2000 and section 15B (3)(a)(i)(aa) of the Sectional Titles Act 95 of 1986. These provisions respectively prohibit the Registrar from registering the transfer of immovable property except on production of a certificate issued by municipality or a conveyancer confirming*

that all moneys due to the municipality or a body corporate have been fully paid." (Par.24).

1.3 In view of what has been said above, the status quo remains in so far deeds examiners must ensure that the consent from the Home Owners Association is lodged in instances where the title deed contains a condition that property may not be transferred without the consent from such Home Owners Association.

CHIEF REGISTRAR OF DEEDS
DATE: 25/3/2015

REFERENCE : A. 14/P
RINGBINDER: 55

CHIEF REGISTRAR OF DEEDS
REGISTRARS OF DEEDS
DEEDS TRAINING
DIRECTOR: LAW SOCIETY OF SOUTH AFRICA : PRETORIA
MANAGER: BUTTERWORTHS PUBLICATIONS : DURBAN
CHAIRPERSON: PROPERTY LAW COMMITTEE : PRETORIA