Does a servitude lapse partially through prescription where only a part thereof is used?

Most of you are probably aware of the fact that one can gain or lose rights to land through prescription. The relevant prescription period is 30 years. If there, for example, was a mistake made with the positioning of a boundary fence and the one owner as a result thereof enjoyed the benefit of a portion of his neighbour's property, then he will as a general rule become the owner thereof after 30 years if there was no objection from the neighbour.

The same principle applies to servitudes. If you use a right of way for more than 30 years without objection, then you will as a general rule after 30 years become the holder thereof. If, on the other hand, you do not use the right of way for more than 30 years, you will as a general rule lose that right through extinctive prescription.

What, however, is the position when you only use a portion of the right of way? Does that then mean that the portion of the road that is not used by you, will no longer be subject to the right of way because of extinctive prescription after 30 years?

This question was dealt with in the matter of JOLES EIENDOMME (PTY) LTD v KRUGER & ANOTHER 2007 (5) SA 222 in the Cape Provincial Division. A portion of the road in respect of which the servitude was registered was not used for a period of 30 years by the holder of the rights of way. The court held that a praedial servitude (i.e. a servitude attached to land) is indivisible. This means that there will be no prescription as long as you use any portion of the road.