How does the Subdivision of Agricultural Land Act, 70 of 1970 affect the sale of land?

George owns a farm of about 400 hectares. About five years ago, a new public road crossed his farm. The public road cut the farm into two pieces of 350 hectares and 50 hectares. The land of one of his neighbours is right next to the portion of 50 hectares. He agrees with the neighbour to sell that portion of 50 hectares to the neighbour.

Can they simply get a surveyor to do a diagram to cut the 400 hectares into two pieces of 350 and 50 hectares? Or do special requirements and consent have to be obtained?

The Subdivision of Agricultural Land Act, 70 of 1970 applies to this scenario. The Act prescribes that agricultural land may not be subdivided without the consent of the Minister of Agriculture. The purpose of the Act is, amongst others, to ensure that agricultural land is not cut into pieces which cannot be farmed economically.

Sub-divisional diagrams would also have to be drafted by a land surveyor and submitted for registration in the offices of the surveyor-general.

In my experience, on behalf of the Minister, the Department of Agriculture would generally consent to a subdivision of agricultural land if a consolidation is effected together with the subdivision. This will ensure that no additional pieces of land are created. The remaining piece, which is not consolidated, must also be big enough to be farmed economically.

If the parties, in this case, consolidate the 50-hectare portion with the adjacent land of the neighbour, the Department will probably give the necessary consent in terms of the said Act.

Can George and his neighbour sign a contract of sale in terms of which the 50 hectares will be sold and transferred subject to the parties obtaining the necessary consent in terms of the Subdivision of Agricultural Land Act, 70 of 1970?

No.

Case law makes it clear that such an agreement would be invalid because of the Act. Even granting an option to purchase a portion of agricultural land subject to obtaining the consent in terms of the Act would be invalid.

The only thing that George and his neighbour could do, is to agree that they apply for the Act 70 consent and also on who will pay the cost of the application. They will, however, only be able to sign a valid sale agreement as soon as the Department has indeed approved the subdivision.

Therefore, Any of the two parties will still be able to withdraw from the transactions before Act 70 consent is obtained and the contract of sale is signed.

Not ideal at all from a commercial point of view, but that, unfortunately, is the legal reality.

George's neighbour wants to farm with snails on his property. He did some investigations and concluded that it could be very lucrative. He needs water from a dam on the farm of George, however. He does not want to buy the piece of land on which the dam is situated. He rather wants to rent it for 20 years. Can he do so?

The Subdivision of Agricultural Land, 70 of 1970, is relevant as the land is agricultural land. The Act applies not only to the subdivision and sale of agricultural land but also to the conclusion of a lease agreement for a period of 10 years or longer with respect to a portion of agricultural land: section 3(d).

The neighbour of George will, therefore, have to get consent from the Minister of Agriculture for the conclusion of the lease agreement of 20 years.

Can they circumvent the act by agreeing on a lease of nine years and 11 months with an option to extend it for another nine years and 11 months?

No. The option period is added to the initial period, and if that period is 10 years or more, the consent of the Minister of Agriculture must also be obtained.

What about a servitude? Can a servitude be registered over a portion of agricultural land?

Section 6a of the subdivision of Agricultural Land Act, 70 of 1970 is relevant. This section caters for certain types of servitude that can be registered with respect to a limited area of agricultural land.

Here is the wording of the section:

"[a70y1970s6A]6A Registration of servitudes

(1) Subject to the provisions of the Water Act, 1956 (Act 54 of 1956), a servitude in respect of agricultural land, except-

(a) a right of way, aqueduct, pipe line or conducting of electricity with a width not exceeding 15 metres;

*(a*A*)* a servitude which is supplementary to a servitude referred to in paragraph *(a)*, and which has a servitude area not exceeding 225 square metres which adjoins the area of the last-mentioned servitude;

(b) a usufruct over the whole of agricultural land in favour of one person or in favour of such person and his spouse or the survivor of them if they are married in community of property,

shall not be registered by a Registrar of Deeds without the written consent of the Minister."

In other words, a servitude over agricultural land can only be registered where one of the said exceptions applies. A right of way with a width of 6 metres coupled with a funeral ground servitude with an area of 200 square metres is, for example, in order. This is the case as the said right of way and the said servitude area is less than the prescribed maximum. The consent of the Minister of Agriculture will, therefore, not have to be obtained.

In the case of George, they could, therefore, also without the consent of the Minister, register a right of aqueduct in respect of the dam as long as the pipeline has a width of less than 15 m, which will surely be the case, and as long as the dam has an area of less than 225 square metres.

Can a father bequeath his farm to his son subject to a lifelong usufruct in favour of his wife?

Section 6A of the Subdivision of Agricultural Land Act, 70 of 1970, specifically caters for the registration of a usufruct over agricultural land. The said usufruct can, therefore, be registered without the consent of the Minister of Agriculture.

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