No water due to my neighbour's borehole – what are my rights?

In the decision of *Cillie v Geldenhuys 2009 (2) SA 325*, the Supreme Court of Appeal had to decide on some interesting legal principles regarding acquisitive prescription and servitudes.

The dispute arose from a spring in the Cederberg in the Western Cape. According to Judge Louis Harms, the water had flowed "sinds menseheugenis" (since time immemorial) from the higher-lying farm, *Uitkomst*, to the lower-lying farm, *Matjiesrivier.* Here, it was used as drinking water and irrigation water. In the 1950s, the owner of Matjiesrivier laid piping from the spring on *Uitkomst* to direct the water to Matjiesrivier. The neighbours apparently accepted this situation without problems until the trouble began in 1998 when *Uitkomst* got a new owner, named *Cillie*. In the ordinary course of his farming, Cillie drilled a new borehole on his farm. The borehole was about 200 meters from the spring and caused the water in the spring to decrease or even dry up completely when water was pumped from the borehole.

Naturally, this caused a dispute between the two neighbours, who subsequently approached the court for relief.

The question the court had to answer was whether a servitude in favour of the owner of *Matjiesrivier* was established by way of acquisitive prescription. The evidence was that *Matjiesrivier* had been using the water from the spring for more than thirty years.

The court concluded that a servitude in favour of the owner of *Matjiesrivier* came into existence by way of acquisitive prescription. Real rights in respect of property, such as servitude and ownership rights, arise by way of prescription when a right is exercised openly and without violence/force for a period of more than thirty years.

The fact that *Cillie*, as the buyer and new owner was not aware of this servitude, was irrelevant. However, this was not where the judgment ended. The next question was about the extent and nature of the servitude that was created by prescription. Here the court made the important conclusion that the right

acquired was a right to the yield of the spring. It did not apply to the water that had not yet reached the spring. The effect of the judgment was thus that Cillie could still pump water from the borehole even if it led to the reduction or drying up of the water in the spring.

We believe the same principles may apply when a landowner sinks a borehole on his property, which causes his neighbour’s borehole to reduce or dry up.