



**REPUBLIC OF NAMIBIA**

***Reportable***

**CASE NO.: (P) I 1624/05**

**SUMMARY**

**PETRUS CORNELIUS JORDAAN**

**vs**

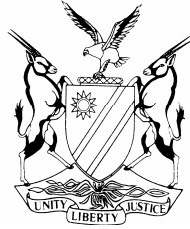
**WILLEM MARTHINUS SNYMAN**

**HUIBRECHT ELIZABETH SNYMAN**

**VAN NIEKERK, J**

**23 OCTOBER 2008**

**Evidence** - Declaration by deceased person against interest - requirements for admissibility - statement by declarant that option to purchase land is granted to defendant is not against declarant's pecuniary or proprietary interest - statement ruled inadmissible as being hearsay.



**REPUBLIC OF NAMIBIA**

**CASE NO (P) I 1624/05**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between

**PETRUS CORNELIUS JORDAAN**

**Plaintiff**

and

**WILLEM MARTHINUS SNYMAN**

**1<sup>st</sup> Defendant**

**HUIBRECHT ELIZABETH SNYMAN**

**2<sup>nd</sup> Defendant**

**CORAM: VAN NIEKERK, J**

Heard: 22 October 2008

Delivered: 23 October 2008

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**RULING ON OBJECTION TO EVIDENCE LED DURING TRIAL ACTION**

**VAN NIEKERK, J:**

[1] While leading the evidence of Mr Waldemar Strauss, erstwhile attorney for plaintiff's late father, Mr *Schickerling*, plaintiff's counsel, sought to present evidence about certain oral statements made by the deceased while giving instructions concerning amendments to a draft

written lease agreement to incorporate the granting to defendant of an option to purchase the farm Marwil. Mr *Heathcote*, counsel for defendant, objected to the evidence as being inadmissible if tendered to prove the truth of the contents of the statements.

[2] Mr *Schickerling* submitted that the statements are admissible as an exception to the hearsay rule because the statements were made contrary to the deceased's interests, thereby relying on the common law exception relating to declarations by deceased persons.

[3] In the well-known work of Schwikkard & Van der Merwe, *Principles of Evidence*, (2<sup>nd</sup> ed) at p267 the conditions for admissibility of such statements are conveniently set out to be the following:

- (a) The declarant must have died.
- (b) The statement must have been made against the pecuniary or proprietary interest of the declarant at the time of making.
- (c) The declarant must have known that the statement was against his interest.

(d) There is uncertainty as to whether the declarant must have had personal knowledge of the fact he stated, but the learned authors are of the opinion that the better view is that personal knowledge is required, otherwise hearsay upon hearsay would be received.

[4] It should be noted that it is not any statement against the declarant's interest that would be admissible provided the other conditions are met. The statement must be against the declarant's pecuniary or proprietary interest. A perusal of the discussion of this requirement by Schwikkard & Van der Merwe, as well as by the authors of another well-known work *The South African Law of Evidence* (4<sup>th</sup> ed), Hoffmann & Zeffertt, shows that it is not entirely clear what is meant by "against the pecuniary or proprietary interest". The authors state that the most typical statement against pecuniary interest is an admission that the maker owes money or, conversely that he is not owed money and that a statement by a possessor of a movable that he is not the owner would amount to a declaration against proprietary interest. Hoffmann & Zeffertt state at p634:

"The usual example of a declaration against proprietary interest is a statement made by someone in possession of property in which he admits that his interest, if any, is something less than ownership. A

person in possession is presumed to be owner, and the statement is against interest because it tends to rebut this presumption.”

[5] Mr *Schickerling* submitted that the statements were made against the interests of the deceased because they related to the granting of an option to defendant to purchase deceased’s immovable property. In *Van Pletzen v Henning* 1913 AD 82 at 98 it was stated that “an option is an offer to sell, which remains open during the stipulated period”. Considering the nature of an option it is clear that in this case the option is an offer by the deceased to the defendant to sell the farm at R122 per hectare at the expiration of the lease agreement and to keep this offer open until then. This statement is clearly not against the deceased’s pecuniary interest. Furthermore, in my view the deceased is not admitting in any way that his interest in the property is anything less than ownership. On the contrary, his statement rather tends to assert his interest to be that of ownership. In this regard I bear in mind that in *Coward v Motor Insurers Bureau* [1963] 1 QB 259, [1962] 1 All ER 531 (at 270, 536) it was said that a statement is considered to be against a person’s interest if it is –

“*prima facie* against his interest, that is to say, the natural meaning of the entry standing alone must be against the interest of the man who made it.”

[6] The result is that I uphold the objection raised by the defendant.

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**VAN NIEKERK, J**

Appearance for the parties:

For plaintiff:

Mr J Schickerling  
Instr by Etzold-Duvenhage

For defendants:

Mr R Heathcote, assisted by Mr G Dicks  
Instr by Kirsten & Co Inc