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Is a tenant's right of first refusal extinguished when the whole farm is sold?

In the case of Plattekloof RMS Boerdery (Pty) Ltd v Dahlia Investment Holdings (Pty) Ltd and Another (7836/2020), Dahlia owned a farm that consisted of eight separately registered portions of which Plattekloof leased two portions. In terms of the lease agreement between the two parties, Plattekloof had a pre-emptive right which stated that if Dahlia wanted to sell the farm, Plattekloof had the first right of refusal on the 2 properties they leased.

When Dahlia received an offer for the whole of the farm, the value of the property was determined by taking into consideration all eight of the portions as a whole and the sale agreement did not allocate a separate purchase price to each portion.

Plattekloof wanted to enforce their pre-emptive right of first refusal and proposed that they purchase the two portions they lease and that the third party purchase the remaining six portions of the farm. This suggestion was unsuccessful.

The court held that the pre-emptive clause in the lease agreement does not make provision for an offer received for the whole farm. If Plattekloof wanted to accept the offer that was made to Dahlia-to purchase the whole farm - they had to purchase the whole farm as that was the offer and it was an indivisible offer. It was not possible for the farm to be apportioned on a pro rata basis.

For these reasons, the court dismissed the application of Plattekloof and found that if they could not offer the same purchase price as was made for the whole farm, the farm could be sold to the third party and the contractual pre-emptive right has been complied with.