Judgment No. HB 127/2002
Case No. HC 2394/2002

**COMMERCIAL FARMERS UNION –
MATABELELAND BRANCH**

Versus

**THE OFFICER COMMANDING, ZIMBABWE
REPUBLIC POLICE – MATABELELAND SOUTH – PROVINCE**

And

**THE OFFICER COMMANDING, ZIMBABWE
REPUBLIC POLICE – MATABELELAND NORTH PROVINCE**

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 11 OCTOBER & 7 NOVEMBER 2002

Adv. E Matinenga for the applicant
No appearance for respondent

Unopposed Court Application

CHEDA J: This is an application for an interdict against 1st and 2nd respondents from evicting members of the applicant from their farms and that in the event that they have already been evicted from their farms, they be permitted to return to the said farms.

Applicant is a representative of commercial farmers in Matabeleland, 1st and 2nd respondents are officer commanders in the Zimbabwe Republic Police for Matabeleland South and North Provinces respectively.

This application was initially filed as a chamber application on 3 October 2002. On 4 October 2002 CHIWESHE J directed that applicant serves the said application on the responsible Ministers, the Commissioners of Police, the cited respondents and a notice of set down for hearing on 11 October at 0900hours.

Applicant thus complied with this directive to the letter.

The brief historical background is the issue of land which is now common cause and because of that I will not go deeper into the historical land distribution imbalances of yesteryear. Suffice to say that land was acquired under section 8 of the Land Acquisition Act (Chapter 20:10). Subsequent to this Act the Land Acquisition Amendment Act, No. 6/2002 was passed and its effective date was 10 May 2002. In terms of the amendment to section 9 of the Act, all farmers who received orders in terms of section 8 of the Act prior to the commencement of the amendment Act were given 45 days from 10 May 2002 to cease to occupy, hold or use that land. Effectively applicant's members were supposed to remain in occupation of their living quarters of the land for a period of 90 days from 10 May 2002. Failure to vacate the farms within 90 days after the date of service of the order upon them was to result in criminal charges being levelled against them. However, in terms of section 9(2) of the Land Acquisition Amendment Act No. 6/2002 they were not supposed to be evicted in the absence of a conviction by a competent court. Applicant's members have been arraigned before the courts, some of them have had charges withdrawn against them before plea while others are awaiting trial.

Their argument, therefore, is that it is unlawful for the police to evict them from these farms in the absence of a conviction and eviction order by a competent court. Section 9(2) of the Land Acquisition Amendment No. 6/2002 states:

> (a) "A court which has convicted a person of an offence in terms of paragraph (b) of subsection (1) or proviso (ii) thereto shall issue an order to evict the person convicted from the land to which the offence relates."

There has not been any suggestion that applicant's members have either been convicted or had eviction orders issued against them. It is pertinent to note that the Civil Division of the Attorney General's Office filed notices of withdrawal in some of the members of the applicant. This in my view is clear testimony that they did not intend to pursue their acquisition claims against them. This is buttressed by the fact that despite service of this application in accordance with the rules of this court, they did not oppose the application.

Applicants are seeking an interim relief. The requirements for an interdict are clearly laid down in the *Law of South Africa*, Vol 11, 1998 at paragraph 316 as follows:

(a) a *prima facie* right;
(b) a well grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
(c) that the balance of convenience favours the granting of an interim interdict; and
(d) that the applicant has no other satisfactory remedy.

The court has a discretion in dealing with an interim interdict and as such the above requirements should not be judged in isolation. This principle was dealt with in *Ndauti* v *Kgami & Others* 1948(3) SA 27 where ETTLINGER A J at p36 – 37 had this to say,

> "In my opinion the court has, in every case of an application for an interdict *pendete lite*, a discretion whether or not to grant the application and it should exercise this discretion upon a consideration of all the circumstances and particularly upon a consideration of the probabilities of success of the applicant in the action and the nature of the injury which the respondent, on the one hand, will suffer if the application is granted he should ultimately turn out to be right, and that which the applicant, on the other hand, might sustain if the application is refused and he should ultimately turn out to be right."

Applicant has argued that its members have made out a *prima facie* right in regard to their land. This is so, it is argued, because they hold titles to the land. There are basically two groups of such farmers namely those who were served with section 8 orders issued under the Land Acquisition Amendment Act No. 6/2002 (Chapter 20:10) but have not been convicted as envisaged in terms of section 9(2) of the said Act and those, who although, were served with section 8 orders have had the said orders withdrawn by the Acquiring Authority (Ministry of Lands, Agriculture and Rural Resettlement) at the Administrative Court.

Applicant is facing eviction and in some instances its members have been unlawfully evicted. Applicant's members are involved in agricultural activities and they fear that if the "evictions" are carried out their agricultural infrastructures will no doubt be damaged which damage may not be repairable. In my view this apprehension is well grounded and reasonable, specially bearing in mind that some of the settlers might not readily accept the proper allocation procedures from the Acquiring Authority. This fear is indeed reasonable and if ignored irreparable harm can naturally follow and the court will be failing in its duty if it ignores this fear.

Since this is an interim relief being sought, the question of balance of convenience has to be carefully weighed. Bearing in mind that respondents have not opposed this application it is only reasonable and proper that the relief prayed for be found in their favour as the scales of justice are clearly tipped in that direction. In the event that this relief is not granted, I must then determine whether applicant has another satisfactory relief to fall back to. The settlers are occupying their properties and will obviously start working on the land in their own way.

In the event that applicant finally succeeds in this matter no satisfactory relief will be available to it, moreso, that the damage being done or will be done in the interim is such that the applicant will not be put back to its former place. It is for this reason that actual or potential damage should be avoided at all costs at this stage. In *Beecham Group* v *B M Group (Pty) Ltd* 1977(1) 50 FRANKLIN J dealt with the test to be applied in deciding whether an interim relief should be granted or not and at p54E – F the learned judge stated,

> "I consider that both the question of the applicant's prospects of success in the action and the question whether he would be adequately compensated by an award of damages at the trial are factors which should be taken into account as part of the general discretion to be exercised by the court in considering whether to grant or refuse a temporary interdict. Those two elements should not be considered separately or in isolation, but as part of the discretionary function of the court which includes a consideration of the balance of convenience and the respective prejudice which would be suffered by each party as a result of the granting or refusal of the temporary interdict."

I agree with the able argument by *Adv. Matinenga* that the harm which applicant would suffer is irreparable I therefore hold the view that if such harm would occur to the applicant who has:

(a) shown a *prima facie* right;
(b) has a well grounded apprehension of irreparable harm;
(c) has a balance of convenience in its favour; and
(d) no other satisfactory remedy available to it, is entitled to an interim relief as this will put it in the *status quo*.

Respondents have not shown any interest in this matter by virtue of their failure to oppose this application and I therefore grant the order prayed as follows:

Pending the determination of this matter the applicant is granted the following relief:

1. That the Zimbabwe Republic Police be and are hereby interdicted from evicting any farmer from his farm until such time as the Administrative Court has confirmed the acquisition and there is a lawful court order evicting the said farmer.
2. That any farmer unlawfully evicted from his farm be and is hereby permitted to return to the said farm and that first and second respondents are hereby ordered to ensure that the farmer is restored to his farm.

Webb, Low & Barry applicant's legal practitioners