Judgment No. HB 94/2003
Case No. HC 1079/2003

SPRING GRANGE FARM (PVT) LTD
& ANOTHER

versus

THE MINISTER OF LANDS, AGRICULTURE &
RURAL RESETTLEMENT & OTHERS

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 18 SEPTEMBER 2003

Application for an Interdict

CHEDA J: This is a chamber application filed on 3 June 2003 by first and second applicant seeking the suspension of an acquisition order issued against them in terms of section 8 of the Land Acquisition Act 20:10 (thereinafter referred to as the Act) and the interim relief sought is that:-

1. Pending the determination of the court of the issues referred to in terms of the final order it is hereby ordered that in respect of applicants properties, namely Spring Grange, subdivision A Hilda's Kraal, Dovenby and Umpuchene Farms.

1.1 Any acquisition order issued in respect of any rural land acquired for resettlement purposes in terms of section 8 of the Land Acquisition Act 20:10 (whether before or after the 10th May 2002 shall not preclude the owner or occupier of such land from holding or using all improvements thereon and from continuing farming operations.)

1.2 That, fourth, fifth, sixth, seventh, eighth and ninth respondents are hereby interdicted from interfering with, encouraging and instigating others to interfere with applicants farming operations including the movement without the express permission of first and second

applicants of any cattle or other animals belonging to them on any portion of Spring Grange, subdivision A Hilda's Kraal, Dovenby and Umpuchene Farms or any other land leased by first and second applicants.

1.3 That respondents jointly and severally pay the costs of this application.

First applicant is a duly registered company in terms of the laws of Zimbabwe and carries out farming operations in the Umguza District. First applicant is the owner of the following properties: (1) Spring Grange Farm (2) Umpuchene Farm (3) Dovenby Farm.

Second applicant is the registered owner of subdivision A of Hilda's Kraal Farm, Spring Grange Farm and Umpuchene Farm which are the subject of a section 8 order which is presently before the Administrative Court in Harare. These three farms are under the effective control of first applicant and are as such consolidated.

The first, second, third and fourth respondents are the Government agents responsible for the administration of the present land acquisition exercise, while the rest of the respondents are members of the Spring Grange Farm Settlers Committee and are responsible for regulating the activities and affairs of the settlers on that property.

Applicants were served with the preliminary notice in terms of section 5 of the Land Acquisition Act and were subsequently served with the acquisition order in terms of section 8 of the Act. It appears that even after the issue of the orders referred to above, applicant through some mutual agreement between itself and members of the 5th to 9th respondents continued to carry out agricultural activities on the property irrespective of the existence of a section 8 order. It is however, no longer possible as

evidenced by a declaratory order applicants are seeking, to the effect that until such time as the issue of the acquisition of applicant's property has been determined by the Administrative Court, no active acquisition or settlement should take place. Applicant's reason for seeking a declaratory order is that, although, in the past the parties co-existed with each other, there has been a change of attitude encouraged by the 4th, 5th, 6th, 7th, 8th and 9th respondents which makes normal day to day agricultural activities impossible.

I must hasten to deal with this private arrangements and subsequent change of attitude between the parties after the issue of the section 8 orders. While parties are free to enter into any lawful agreements, the courts, in my view, should not be seen to unduly interfere with those arrangements. It is however, pertinent to note that in as much as applicant shifts the blame on attitudes to 4th – 9th respondents, it also has a huge attitudinal problem as it fully appears from the following observations. Applicant's farm manager one Allan Lewis deposed to an affidavit wherein he stated:-

> "As stated the matter seemed to have resolved itself until on Sunday the 25th May 2003, when I received a report from a number of applicant's employees that there had been a meeting held at Spring Grange Farm from about 8.00am to 2.00pm and the one Inganezi a so called war veteran from a neighbouring farm had been invited to address a meeting of the settlers. (my underlining)"

The reference to a group of former freedom fighters as "so called war veterans" is in my view bound to create misunderstanding and animosity between applicant and the respondents. I took exception to the wording of his affidavit which resulted in him filing a supplementary affidavit wherein he retracted his description of the settlers and also apologised.

It is important for legal practitioners that in as much as they obtain instructions from clients it is their duty as officers of this court to strive to maintain the dignity of the court which can also be done by editing their client's offensive language which can easily be done without deviating from the input of their necessary averments. After all it is the legal practitioner who sees to the drafting and filing of all documents in court. A legal practitioner who does not guide his client in that regard stands the risk of being associated with his client's language and this of course qualifies for conduct which is unbecoming of a duly registered legal practitioner. Legal practitioners are therefore warned against aligning themselves with clients who hold other people in contempt. It is the duty of every lawyer worth his salt to assist his client by disabusing him of all the inherent prejudices he may have about other people. This court will in future see to it that such legal practitioners do not go unpunished.

Mr *Finch* argued that applicants have filed objections to the Administrative Court. This indeed is correct. He further stated that this court has in previous cases where the same relief based on similar facts and/or circumstances granted interim relief. These case are *Trans-Limpopo Carriers P/L & Ano* v *The Minister of Lands Agriculture & Rural Resettlement & 2 Others* HC 769/03; *Commercial Farmers Union Matabeleland Branch* v *Officer Commanding, Zimbabwe Republic Police Matabeleland North & South* HC 2394/02; *M & T Mylne P/L* v *Minister of Lands, Agriculture & Rural Resettlement & Ano* HB 2051/02. In the two cases respondents were served with the chamber applications, more particularly 1st respondent, who is the acquiring authority, but, did not oppose the application. They were therefore not

argued which means that the court did not have the opportunity of hearing both arguments. These cases are therefore distinguishable from the present as the present ones have been vigorously argued by both parties through their legal practitioners.

It is common cause that applicants have exercised their rights of objection to the acquisition of their property which objections are yet to be determined by the Administrative Court. It is worth of note that applicants have not lodged an appeal but an objection. It is trite law that an appeal automatically suspends the operation of an order but an objection does not have the same effect. I have dealt with this question at length in *Volunteer Farms P/L* v *Fatty Mpofu & Five Others* HB-96/03

Applicants further argued that the fact that there is a provision for objection, it therefore stands to reason that the eviction order issued by the acquiring authority is not final though Mr *C Dube* is of the view, that it is. He, however, seems to agree with Mr *Finch* that there are constitutional questions which require the Supreme Court to determine. However, as of now I am to decide whether an objection in terms of the Act has the same effect as an appeal. I am of the view that there is a clear distinction between the two terms which consequently have different legal meanings. Applicants are, in my view therefore wrong to think that an objection suspends the operations of the section 8 order.

I am aware of applicants' apprehension that should the order be allowed to operate against applicants and their objection is sustained by the Administrative Court applicants will accordingly suffer irreparable harm. This indeed may be true but this scenario must be looked at against the background of a lawful order issued by 1st respondent being the acquiring authority in terms of an Act of Parliament. The

question of lawfulness of the acquisition of land was ruled to be lawful, see *The Minister of Lands, Africulture & Rural Resettlement and others* v *Commercial Farmers Union* SC-111-01.

I, accordingly, find that the objection filed with the Administrative Court does not suspend the section 8 order and the application is dismissed with costs.

Messrs Webb, Low & Barry applicants' legal practitioners
Paradza, Dube & Associates respondents' legal practitioners