

NYAVASHA RANCHING & SAFARIS (PVT) LTD

Versus

THE DISTRICT ADMINISTRATOR – MWENEZI

And

THE PROVINCIAL GOVERNOR

And

THE BASE COMMANDER

And

THE AGRITEX OFFICER

And

THE OFFICER COMMANDING MASVINGO PROVINCE

And

THE OFFICER IN CHARGE, ZRP, MWENEZI

And

THE MEMBER IN CHARGE, ZRP, MWENEZI, CHIKOMBEDZI

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 2 FEBRUARY 2004 & 14 JUNE 2007

Advocate T A Cherry for the applicant
S S Mazibisa for respondents

Judgment

CHIWESHE J: The applicant filed this chamber application on a certificate of urgency. The urgency or otherwise of the matter is doubtful. The respondents did not however seek to challenge the urgency of the matter but, instead argued on the merits of the application.

The applicant seeks a provisional order interdicting the first, second, third and fourth respondents from settling or resettling or allowing any person or group of persons to occupy or encroach on the farms known as Nyavasha Ranch and Safaris, Mwenezi District and directing the fifth, sixth and seventh respondent to secure the immediate and final removal of all persons who encroach or take up occupation of the said property without the consent of the owner. The applicant also seeks a declaratory order to the following effect:

“Any acquisition order issued in respect of any rural land acquired for resettlement in terms of section 8 of the Land Acquisition Act, Chapter 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 provided that this interim relief shall not apply in respect of rural land required for resettlement purposes where the Administrative Court has issued an order confirming the acquisition of the rural land in question.”

The applicant is the owner of the land referred to as Nyavasha Ranch and Safaris situate in the district of Mwenezi. The land has been acquired in terms of section 8(2) of the Land Acquisition Act, Chapter 20:10. The applicant lodged an objection with the Administrative Court which objection was yet to be determined. The applicant contends that pending the determination of the objection the provisions of section 8 of the above Act be stayed and in particular it be allowed to remain on the property for purposes of farming operations. It is further argued that pending the determination of the objection the respondents be barred from resettling any persons on the property without the consent of the applicant.

Section 8(2) of the Land Acquisition Act Chapter 20:10, provides:

“(2) An acquiring authority may, immediately after making an order in terms of subsection (1), exercise any right specified in that order if the exercise of that right does not require the eviction of the owner or occupier of the land concerned ...”

It is clear therefore that once a section 8 order is made the acquiring authority

may exercise such rights as may be specified in the order (including the right of ownership, use or alienation) except the eviction of the owner or occupier. There is no basis for the contention that an objection lodged with the Administrative Court will put this process on hold. No statutory provision provides to the contrary. I agree with the respondents that a distinction must be made between an objection and an appeal. Whilst an appeal has the effect of suspending the operation of the order appealed against an objection does not, save where it is expressly so provided, have the same effect.

It appears to me therefore that the basis upon which the applicant's case may be sustained is on the principles of equity and natural justice. However we are dealing with a statutory provision whose wording is so clear and unambiguous. The legislature intended that the process described under section 8 be the position on cases such as the present. There is no basis upon which the courts can interfere with that process on any ground. The intention of the legislature is captured in very clear terms. In that regard I agree with my brother NDOU J when he stated in a similar case (*L F White and Son vs Minister of Lands, Agriculture and Rural Settlement and Others* HC-1185/03) that, "the above statutory provisions are clear and unambiguous. The basic interpretation approach of our courts is intentionalism." He went on to quote with approval the following words in the case of *Farrar's Estate vs Commissioner of Inland Revenue* 1926 TPP 501 at 508;

"The governing rule of interpretation – overriding the so called "golden rule" is to endeavour to ascertain the intention of the lawmaker from the study of the provisions of the enactment in question ..."

In this case it is also clear that the legislature intended that upon service of a section 8 order, the applicant should cease all farming activities.

The applicant conceded that the legality of the land acquisition exercise has

been dealt with and finalised by the Supreme Court in the case of *Minister of Lands, Agriculture and Rural Settlement vs Commercial Farmers Union* SC-111-/01.

In the same breath the applicant contends that the present matter be referred to the Supreme Court on a constitutional issue. In my view the constitutional issues alluded to in this case were dealt with and finalised in the above quoted case. There is no basis upon which a referral to the Supreme Court could be made. The applicant is at liberty to approach the Supreme Court if it so wishes.

For these reasons it is ordered that the application be and is hereby dismissed in its entirety with costs.

Messrs Webb Low & Barry applicant's legal practitioners
Cheda & Partners, respondent's legal practitioners