

(1) N & R AGENCIES (PVT) LTD HC 3062/09

Versus

THE MINISTER OF LANDS & RURAL RESETTLEMENT

And

THE SENIOR LANDS OFFICER, PLUMTREE

And

MR T. NDLOVU

And

MR S. BHALA

(2) N & R AGENCIES (PVT) LTD HC 483/10

Versus

OSCAR TSHUMA

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 28 JANUARY AND 1 DECEMBER 2011

*Advocate T. Cherry* for applicants in both matters  
*R. Ndlovu* for 2<sup>nd</sup> and 3<sup>rd</sup> respondents under HC 3062/09 and respondent under HC 483/10

Opposed Application

**NDOU J:** I dismissed the applications with costs in both matters under HC 3062/09 and HC 483/10 and indicated that my reasons for doing so will be provided in due course. These are they. The salient facts of the matter are the following. The applicant (in both matters) a company registered with limited liability in terms of the laws of Zimbabwe, seeks protection of the law by way of a spoliation order against the respondents. The subject of the spoliation order is agricultural land formerly owned by the applicant but acquired by the Government of Zimbabwe in 2002 under the land reform and resettlement programme. The background to the applicant seeking relief from this court is the following. The land was

lawfully acquired by the Government on 19 July 2002 when it was gazette in the Government Gazette. The applicant instituted legal proceedings in this court under case number HC 2782/02 contesting the acquisition of the land. In terms of the provisions of the Gazetted Land (Consequential Provisions) Act [Chapter 20:23] the applicant was obliged by law to cease to occupy, hold or use the acquired land within 45 days after 20 December 2006 when the statute came into effect or at least within 90 days thereafter. The applicant could only remain in occupation of the acquired land if lawfully authorized to occupy, hold, and use the said land by way of an offer letter, permit or lease from the acquiring authority. The applicant's court proceedings under HC 2782/02 contesting the acquisition of the land by the government were overtaken by legislative developments on the land reform and resettlement programme, more specifically the passing into law of Constitution of Zimbabwe Amendment (No. 17) Act, 2005, which inserted section 16B into the Constitution. The said section 16B effectively vested ownership of acquired land in the state, forebade any court challenge to the acquisition of the land and ousted the court's jurisdiction to entertain any challenges to acquisition of the land for resettlement purposes. It thus became futile for the applicant to pursue the challenge under HC 2782/02 any further and the proceedings were abandoned. The acquired land was subdivided into different portions. The portion subject of the proceedings under HC 3062/09 was offered to the 3<sup>rd</sup> and 4<sup>th</sup> respondents. The portion subject of the proceedings under HC 483/10 was offered to one Khulekani Mpofu on 12 August 2004. The respondent (Oscar Tshuma) was offered land in a different farm being stand 35 of Watershed Farm. On 12 December 2008 this respondent entered into an agreement with Khulekani Mpofu in terms of which the two swapped land allocated to them resulting this respondent taking occupation or possession of the land in dispute in Khulekani Mpofu's stead. The acquiring authority had no objection to the swapping agreement. Upon the respondents, in both matters, taking possession of the land in dispute, the applicant instituted these proceedings seeking spoliation against the above-mentioned respondents. The first problem that the applicant faces in both matters is that the land in dispute, "being the remainder of Maritzburg measuring 885,17776 hectares held under Deed of Transfer number 722/93" no longer exists. The effect of the subdivision is that we now have different portions of lands. I would have dismissed the applications on this point alone, but I dismissed them on a different basis. The reasons I dismissed the applications are the following.

It is trite law that the applicant, as a former owner or occupier whose land has been acquired by the acquiring authority in terms of section 16B (2) (a) of the Constitution of Zimbabwe (hereinafter referred to as "the Constitution") cannot challenge the legality of such acquisition in a court of law. The jurisdiction of the courts has been ousted by section 16B (3) (a) of the Constitution – *Mike Campbell (Pvt) Ltd & Ors v Minister of National Security*

*responsible for Land, Land Reform and Resettlement & Anor SC-49-07 and Commercial Farmers Union & Ors v Minister of Lands and Rural Resettlement & Ors SC-31-10.*

Further, the effect of section 16B of the Constitution is that it renders agricultural land occupied under the Bilateral Investment Protection Agreement (“BIPAS”) liable to compulsory acquisition if the acquiring authority considers that it is required for resettlement purposes or any other purpose prescribed under section 16B (2) (a) (iii) of the Constitution – *Commercial Farmers Union* case, *supra* at pages 16-17.

It is for these reasons that I dismissed both applications with costs on the ordinary scale.

*Webb, Low & Barry*, applicant’s legal practitioners  
*R. Ndlovu & Associates*, 2<sup>nd</sup> and 3<sup>rd</sup> respondent’s (HC 3062/09) and respondent’s (HC 483/10)  
legal practitioners