

PONDORO (PRIVATE) LIMITED  
and  
MERLE TAYLOR -FREEME  
versus  
THE MINISTRY OF STATE SECURITY IN THE PRESIDENT'S OFFICE  
RESPONSIBLE FOR LANDS, LAND REFORM AND RESETTLEMENT  
and  
OFFICER COMMANDER IN CRIME, MAKONDE DISTRICT

HIGH COURT OF ZIMBABWE  
KUDYA J  
HARARE, 22, 28 and 30 November 2005 and 15 March 2006

### **Urgent Chamber Application**

Mr *Paul*, for the applicants  
Ms *Mwatse*, for the respondents

KUDYA J: The applicant seeks the following provisional order:

#### “TERMS OF FINAL ORDER SOUGHT

1. That in the absence of legislation or a court order, 1<sup>st</sup> respondent is not entitled to take the law into his own hands and bring about an eviction of the applicants.
2. That respondents pay the costs of suit.

#### INTERIM RELIEF SOUGHT

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

1. That Respondents are interdicted from:-
  - (a) Evicting Applicants from Subdivision A of Athens.
  - b) Interfering with 1<sup>st</sup> and 2<sup>nd</sup> applicants' peaceful and undisturbed possession of the property.
  - c) Interfering with applicant's farming activities on the property.”

### **The facts**

It was common cause that a section 5(1) of the Land Acquisition Act [*Chapter 20:10*] notice was issued in respect of the property on 25 January 2002. A section 8(1) acquisition order was done on 31 July 2002. Mr *Paul* for the applicants indicated in his oral submissions that an application for confirmation was made with the Administrative Court timeously in terms of s 7(1) of the Land Acquisition Act.

It was also common cause that until 14 September 2005 when the Constitutional Amendment Act No. 17/2005 came into effect, the applicants were still occupying and utilizing the immovable property in question. Applicants have been so disposed due to political intervention in their favour by the Vice President of the Republic of Zimbabwe's minute of 4 July 2002.

Some time in 2004 the second applicant was arraigned at Chinhoyi Magistrates Court for contravening section 9 of the Land Acquisition Act (*supra*) a charge which is still extant.

On 17 November 2005 the applicants came into the possession of Exhibit 'C' a letter to the police in Mashonaland West from the Acting Chief Land Officer of the same province requesting that the applicants be evicted from the immovable property in question. The second respondent instructed the Officer-in-charge Rural to effect the eviction by 18 November 2005. There is no court order to that effect, hence the launch of this application on an urgent basis on 18 November 2005.

The matter was set down for hearing on the day it was filed, for 22 November 2005, but was postponed to 28 November 2005 to enable the applicants to effect service on the respondents.

On 28 November 2005 the respondents were represented by Ms *Mwatse* who did not raise any argument against the urgency of the matter. It was accordingly treated as urgent.

The only issue for determination is whether or not the applicants can succeed in the provisional order that they seek bearing in mind that the immovable property in question belongs to the first respondent.

Mr *Paul* for the applicants submitted that the effect of the Constitutional Amendment No. 17/2005 was to cancel all previous section 8(1) orders which were substituted by the acquisition process enumerated in the Constitutional Amendment Act. He therefore averred that a necessary consequence of this was that the present immovable property was only acquired on the appointed day, the 14<sup>th</sup> September 2005. In the result, he opined, no law was yet in place governing the removal of the former owner from the property which relates to the period of adequate notice for such removal, nor was there any law in place to criminalize these former owners who remain on the property after the appointed day. That one is contemplated is clear from section 23B(6) of the Constitutional Amendment Act.

Ms *Mwatse* did not agree that the Constitutional Amendment Act wiped off the acquiring authority's rights obtained before 14 September 2005. I agree with Ms *Mwatse* on that score.

The effect of the provisions of s 8(1) of Land Acquisition Act, *supra* were dealt with authoritatively in *Airfield Investments (Pvt) Ltd v Minister of Lands, Agriculture & Rural Resettlement & 4 Ors* SC 36/04 MALABA JA at page 3 stated:-

“Subsection (1) of s 8 of the Act gives the power to the acquiring authority to make an order not less than 30 days after the date of publication of the preliminary notice acquiring the land the nature and extent of which would be described therein. .... Upon service of the order of acquisition upon the owner or occupier of the land, rights of ownership are immediately taken and vested in the acquiring authority.” (underlining mine for emphasis)

Section 8(3) immediately vested those rights to the acquiring authority and these are irrevocable after 6 months of the acquisition order made in terms of 8(1). The Vice-President's minute of 2 July 2002, did not in *casu* revoke the s 8(1) order as it was in any event written before s 8(1) came into force. The s 8(1) became irrevocable after 31 January 2003.

On 31 July 2002, the applicants received 45 days notice to cease all agricultural operations and 90 days to vacate the residences. They had until 14 August 2002 to windup farming operations and 29 October 2002 to vacate the residences. Their continued stay at the immovable property after these days became illegal. As MALABA JA stated at page 6 in *Airfield* case:

“At the end of the maximum period of 90 days from the date of service of the order of acquisition, the rights of the former owner or occupier cease to exist and by operation of law he must leave the land or be evicted by order of court. ....

It is also clear from the provisions of subsection (5) of s 7 that the acquisition of land required for resettlement purposes can take place and the acquiring authority can exercise all the rights of such ownership such as allocation of it notwithstanding the fact that the application is pending before the Administrative Court. The obligation imposed on the acquiring authority is to make the application for confirmation of the acquisition to the Administrative Court not later than 30 days from the date of service of the order of acquisition and bear in mind that should the Administrative Court refuse to confirm the acquisition it will be ordered to return the land to the former owner or occupier.

Once the acquiring authority submits its decision to compulsorily acquire the land for resettlement purposes and the process of judicial review by the Administrative Court, it could be prohibited by a court from exercising rights of ownership of the acquired land on the ground that confirmation proceedings are still pending before the Administrative Court.”

The last quoted paragraph puts paid the submission by Mr *Paul* that the section 8(1) did not proffer acquiring authority full rights of ownership.

My reading of the Constitutional Amendment is that it does not strike down valid s 5(1) and s 8(1) orders issued before the appointed day. All it does is that it removes judicial oversight of the process of acquisition be it of confirmation or the right to a fair hearing on matters concerning land acquisition. The only thing it did for applicants *in casu* was that it removed the necessity of the Administrative Court to decide whether or not to confirm the acquisition. The computation of the 45 days and 90 days were never based on confirmation proceedings but on service of s 8(1) order. To submit that for the s 8(1) orders which were valid, that computation should start on the 14 September 2005 in my view does not accord with either the letter or spirit of the Constitutional Amendment Act.

A consequence of my finding is therefore that the applicants by operation of law ceased to have authority to use agricultural land for agricultural purposes by 14 April 2002 and the residences by 29 October 2002. The court cannot condone, sanction or be an accomplice to their continued defiance of the law.

In the result their application for a provisional order is dismissed with costs.

*Wintertons*, legal practitioners of the applicants

*Civil Division, Attorney-General's Office*, legal practitioners of the respondents.