MATANDA (PRIVATE) LIMITED
versus
MINISTER OF NATIONAL SECURITY, LANDS, LAND REFORM AND RESETTLEMENT IN THE PRESIDENT OFFICE
and
THE RESIDENT MINISTER AND GOVERNOR FOR THE PROVINCE OF MASHONALAND WEST
and
THE PROVINCIAL ADMINISTRATOR FOR THE PROVINCE OF MASHONALAND WEST
and
ONIAS GOTORE
and
VINCENT MARIGA
and
NGONIDZASHEHOVE
and
CHASAUKA
and
NYAMOMBE

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 22 October 2009 and 11 November 2009

Opposed

N Chikomo, for the applicant
M Chimombe, for the 1st, 2nd, 3rd and 4th respondents
E Jena, for the 5th, 6th, 7th, 8th and 9th respondents

MAKONI J: The applicant approached this court seeking an order in the following terms:

1. That the applicant be and is hereby declared the legal owner of certain piece of land called Lot 1 of Orange Grove situate in the District of Hartley measuring 2 039 6170 acres held under Deed of Transfer Number 609/66.
2. That the offer letters issued in favour of the fifth to ninth respondents be and are hereby declared void and therefore of no force and effect on the ground that the farm was de-listed by Government on 21 January, 2005.

3. That the fifth to ninth respondents be and are hereby ordered to vacate the said farm, forthwith and not to interfere with the applicant's workers and operations at the said farm.
4. That the fifth to ninth respondents pay costs of suit jointly and severally the one paying the other to be absolved.

The basis of the application is that the applicant is the current owner of a certain piece of land called Lot 1 of Orange Grove Hartley ("the farm"). On 12 December 2003 the Minister of Lands, Land Reform and Resettlement (the Minister) published a notice of acquisition of the farm in the Government Gazettee.

Representations were made to the minister that the farm was now owned by indigenous Zimbabweans. On 21 January 2005 the farm was de-listed by a publication in the Government Gazettee. In February 2005 the Government also issued a certificate of No Present Interest in the farm.

After the delisting of the farm, some persons, including the fifth to the ninth respondents were issued with offer letters in respect of subdivisions on the farm. The respondents are now claiming the right to occupy and carry out farming activities on certain portions on the farm on the basis of the offer letters.

The first respondent's position is that despite the delisting of the farm, it was subsequently acquired by operation of the Constitutional Amendment Act (No. 17) ("the Act") as it was listed in the schedules. The applicant has no *locus standi* to seek the eviction of the respondents as it does not own the farm.

The fifth to the ninth respondents' position is basically the same of that of the first respondent.

From the first respondent's stance, it was my view, that the parties address me on the following:

(i) the effect of delisting gazetted land and
(ii) the effect of the provisions of the Act on de-listed properties.

The parties filed supplementary heads addressing the issues. The first to fourth respondents had been barred for failing to file heads of argument in terms of the rules. I, however, invited the Attorney General's Office to address the court on the above issues as *amicus curiae*.

Mr *Chikomo* submitted that de-listing the farm, meant that the land had been taken out of the list of properties intended for acquisition. It no longer existed in the gazettee or gazette extraordinary.

Section 16 B of the Act was intended for land that was gazetted. If it was intended for land whose notices to acquire had been withdrawn, the legislature would have specifically and expressly stated so.

Mr *Jena* submitted that the farm was acquired by operation of s 16 B (2) of the Act. Section 16 B (2) lays down the procedure for acquiring land and specifically mentions "All agricultural land …" regardless of whether it had been listed or de-listed before. The land in issue is listed in Schedule 7 of s 16 B of the Act.

The heads of argument filed by the Attorney General did not assist the court as they did not address the issues raised by the court. However, towards the end of their submissions, they make the point that if the legislature intended that land previously de-listed would not be acquired pursuant to s 16 B (2) of the Act, it would have enacted such a provision.

The first respondent uses the word de-list to refer to situations where the preliminary notice to acquire land is withdrawn in terms of s 5 (i) of the Land Acquisition Act *Chapter 20:10*.

Section 16 B (2) reads:

> "Not withstanding anything contained in this Chapter –
> (a) all agricultural land –
> (b) (i) that was identified on or before the 8th July, 2005, in the Gazette or Gazettee Extraordinary under s 5(1) of the Land Acquisition Act [*Cap 20*:*10*], and which is itemized in Schedule 7, being agricultural land required for resettlement purposes; or
> (ii) …
> (iii) …
>
> is acquired by and vested in the State with full title therein with effect from the appointed day or, in the case of land referred to in subpara (iii), with effect from the date it is identified in the manner specified in that paragraph; and …
>
> Three issues arise from a reading of s 16 B (2)
>
> (i) the land must have been identified on or before 8th July 2005;
> (ii) it must be itemized in Schedule 7; and
> (iii) it must be agricultural land required for resettlement purposes".

Items (ii) and (iii) are not in issue. I will only deal with item (i).

In my view it is important, at the outset to define what identifying means in the context of Land Acquisition Act and s 16 B of the Act.

Section 5 (i) of the Land Acquisition Act provides:

> "where an acquiring authority intends to acquire any land otherwise than by agreement, he shall –
>
> publish once in the Gazette and once a week for two consecutive weeks, commending with the day on which the notice in the Gazettee is published, in a newspaper circulating in the area in which the land to be acquired is situated …, a preliminary notice –
>
> (i) describing the nature and extent of the land which he intends to acquire …
> (ii) setting out the purpose for which the land is acquired
> (iii) …".

In my view, the process as laid out in s 5 (i) of Land Acquisition Act is the process of identifying the land. It includes publication in one Gazettee.

It is common cause that a preliminary notice in terms of s 5 (1) of the Land Acquisition Act was published on 21 January 2003 in respect of the farm. It was therefore identified by that publication. It is also common cause that the preliminary notice was withdrawn by a publication in the Gazettee of 21 January 2003. The withdrawal was done in terms of s 5 (7) of the Land Acquisition Act.

This would then bring the question of what is the effect of the withdrawal of the preliminary notice to acquire land. In the Reader's Digest – Oxford-Complete Wordfinder the word withdrawn is defined as:

> "(1) pull or take aside or back (2) discontinuing, cancel, retract (3) remove, take away (4) take money out of an account (5) retire or go away, move away or back"

In the context of the Land Acquisition Act the meaning attributable to the word withdraw would be "discontinue, cancel, retract". If one were to use the above meaning, it would mean that the government cancelled or retracted the preliminary notice in respect of the farm. It no longer had an interest in the farm.

If it were to develop an interest in future it would have to start the whole process of acquisition afresh

My view is fortified by the procedure, laid down in s 5 (9) regarding lapsed notices. It provides that were a preliminary notice lapses for the reasons provided, nothing shall prevent,

the acquiring authority from issuing fresh notice in terms of subs (1) or (3) as the case maybe – Section 5 (a) provides for the process of identifying the land afresh in respective of lapsed notices. My view is that the same should apply in respect of withdrawn notices.

It is not in issue that the land in question was not issued with a fresh notice of acquisition. It is clear that it was a mistake or an oversight on the part of the acquiring authority to include the property in Schedule 7 of s 16 B, since the initial identification of the land had been withdrawn.

It is therefore my finding that the land was not acquired by the operation of the provisions of s 16 (B) of the Act as advanced by the respondents.

Having arrived at that conclusion, it follows that the issue whether the applicant has *locus standi* or not falls away. The land in question is owned by the applicant. The fifth to ninth respondents are claiming occupation on the basis of offer letters. The first respondent is not the owner of the property and cannot, therefore, issue offer letters in respect of that land. The applicant has established a basis for the order that it seeks.

In the result, I will make the following order:

1. The applicant be and is hereby the legal owner of certain piece of land called Lot 1 of Orange Groove situate in the District of Hartley measuring 2 039 6170 held under Deed of Transfer number 609/06.
2. The offer letters issued in favour of the fifth to ninth respondents be and are hereby declared void and of no force and effect.
3. The fifth to ninth respondents are hereby ordered to vacate the said farm forthwith and are ordered not to interfere with the applicant's workers and operations at the farm.
4. The fifth to ninth respondents pay costs of suit jointly and severally the one paying the one to be absolved.

Mhiribidi, *Ngarava & Moyo,* applicant's legal practitioners
Mpame Associates, 5th, 6th, 7th, 8th and 9th respondents' legal practitioners