

GAVIN WOEST
and
THE MINISTER OF LANDS AND
RURAL RESETTLEMENT
and
AGATHA MUGOMBA

HIGH COURT OF ZIMBABWE
CHIWESHE JP
HARARE, 01 November 2010 and 10 November 2010

Mr *L. Chigadza*, for the applicant
Miss *T. Mashiri*, for the first respondent
Mr *Dzvettero*, for the second respondent

CHIWESHE JP: Following the acquisition by the State of the applicant's farm, the parties filed a consent order with this honourable court under case no HC 308/10 in the following terms:

"It is hereby ordered with the consent of the parties that:-

1. The tobacco on Masasa Plot Lot 2 Lions Head, Rusape, allocated to second respondent shall be harvested, cured, graded and removed from the said plot in terms of an agreement to be concluded between second respondent and Chidziva Tobacco Processors (Private) Limited, which agreement shall cater for the involvement of applicant and/or his son, Kirk Voest, with regard to these activities only.
2. Applicant shall remove his carpentry equipment, as set out in the annexure to Case No. HC 308/10, within seven days on granting of this Consent order.
3. All other farming equipment and/or materials shall be removed from the said plot in accordance with the law.
4. Parties to bear their own costs in respect of these proceedings."

The consent order was granted on 22 January 2010. The matter should have ended there. However, the applicant and the second respondent are unable to agree on the import of para 3 of that order.

The second respondent believes that the farming equipment and materials have been acquired by the State by operation of law. The applicant argues that such is not the case and that the said equipment and materials remain his, not having been acquired by the State in terms of the Acquisition of Farm Equipment and Materials Act [*Cap 18:23*] ("the Act")

Miss *T. Mashiri*, for the first respondent, advises that no steps have yet been taken to acquire on behalf of the State the said farm equipment and materials. Mr *Dzvettero* for

the second respondent was adamant that the equipment and materials had been acquired by the State by virtue of the provisions of s 3, of the Act. However, as pointed out by the applicant, s 3 provides for the safe keeping of such farm equipment and materials. It does not relate to its acquisition by the State.

The process of acquisition must be preceded by the identification of the equipment or materials in terms of s 4 of the Act and the evaluation of such equipment or material in terms of s 5 of the Act. It is s 6 of the Act that provides for the actual acquisition of such equipment or materials by the acquiring authority, by agreement or compulsorily. In that regard the acquiring authority must give at least seven days' notice of the intention to acquire any equipment or materials to the person owning or holding such equipment or material.

In the present case no such steps have been taken by the acquiring authority. The property in question has therefore not been acquired by the State. I am inclined, however, not to grant the order sought, the above notwithstanding.

The applicant seeks, in the main, an order allowing him to remove from the farm the equipment and materials listed on annexure "B" to this application. Miss *T. Mashiri*, for the first respondent, has indicated from the outset that it is the acquiring authority's intention to acquire the equipment and the materials so listed under annexure 'B'.

An order such as the one sought by the applicant would defeat the object of the intention of the first respondent, namely, to acquire the equipment in terms of the law and in accordance with para 3 of the consent order granted on 22 January 2010 under case no HC 308/10.

Accordingly it is ordered that the application be and is hereby dismissed with costs.

Chigadza & Associates, applicant's legal practitioners

Civil Division of the Attorney General's office, first respondent's legal practitioners

G.N. Mlotshwa & Company, second respondent's legal practitioners