HENRY WALUBENGO
versus
MINISTER OF LANDS, AGRICULTURE AND RURAL SETTLEMENT
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 28 February and 18 March 2020

Opposed application

F Chimwawadziva, for the applicant
B Munyoro, for the 1st respondent

TAGU J: This is a Court application for the upliftment of an endorsement on the title to applicant's immovable property held under Deed of Transfer No. 6708/2003 in favour of the applicant. The facts are that the applicant acquired an immovable property situate in the District of Salisbury being Lot 45 Kintyre Estates measuring 11.4362 hectares and transfer title was done through a Deed of Transfer No. 6708/2003. On the 19th of November 2004, consequent to the land reform program the then Minister of Special Affairs in the Office of the President and Cabinet in Charge of Lands, Land Reform and Resettlement caused a notice to be issued in the Government Gazette gazetting the said land for acquisition by the State for resettlement purposes. As a result the first respondent caused the second respondent to endorse the title in terms of the Land Acquisition Act [*Chapter 20.10*]. The applicant says the preliminary notice to acquire the land lapsed way back in 2007. He said had the first respondent been intent on reissuing a notice for acquisition that could have been done within one year from the date that the preliminary notice had lapsed or any shorter period as agreed with the owner. He cited sections 5 (4) and (9) of the Land acquisition Act. He further said notwithstanding the lapse of the preliminary notice the endorsement remained in force and should have been cancelled or uplifted. Section 5(4) of the Act reads as follows-

> "4. A preliminary notice or a notice in terms of subsection (3) shall remain in force for a period of two years from the date of publication of the notice in the gazette."

Further section 9 provides that-

"9. The fact that a preliminary notice-

(a) or a notice in term of subsection (3) has lapsed-

(ii) in terms of subsection (4);

Shall not prevent the acquiring authority from issuing a fresh notice in terms of subsection (1) or (3), as the case may be, in respect of same land after a period of one year from the year, from the date when such notice lapsed or if so agreed by the acquiring authority and the owner of the land concerned, at any earlier time; or…"

The applicant submitted that it is for the foregoing reasons that he was praying for the upliftment of the endorsement by the second respondent to enable him to exercise his rights. He now prays for the following order-

"IT IS ORDERED THAT

1. The endorsement by the 2nd Respondent over the Applicant's property commonly known as Lot 45 Kintyre Estate situate in the District of Salisbury held under Deed of Transfer No. 6708/2003.
2. The 2nd respondent be and is hereby ordered to uplift the endorsement on the Applicant's immovable property effected on the 7th of October 2005 commonly known as Lot 45 Kintyre Estate measuring 11.4362 Hectares held under Deed of Transfer No. 6708/2003.
3. Respondents shall pay the costs of suit in the event that they oppose this application."

The first respondent took a point *in limine* in his Notice of Opposition to the effect that removal of endorsement from a Title Deed of a property that has been acquired in terms of the Constitution does not result in the restoration of the title to the previous owner. He said section 293 (1) of the Constitution provides that the State may alienate for value any agricultural land vested in it. Further, section 293 (3) provides that an Act of Parliament must prescribe procedures for the alienation and allocation of agricultural land by the State. He said The Land Commission Act [*Chapter20.29*] is that Act of Parliament which has been enacted and Section 17 of that Act provides for the procedure for alienating State land hence there is no other means through which land has been acquired through the Constitution can be restored to a previous owner outside of this provision.

However, the applicant and his legal practitioner are mistaken as to the position of the law which is that-

> "all agricultural land that was identified on or before the 8th July 2005 under section 5 (1) of the Land Acquisition Act [Chapter 20.10] and which is itemized in Schedule 7….is acquired by and vested in the State with full title therein…" Section 16 B (a) of the old Constitution as read with Section 72 (4) of the Constitution.

In the present case the applicant indicated in paragraph 7 of his founding affidavit that his property was gazetted (that is, identified under Section 5 (1) on the 19th of November 2004. It appears he is not aware that it was subsequently itemized as number 145 and 146 in Schedule 7 of the Constitution rendering it acquired. It remains acquired as State land and can only be restored to him as provided for by the Constitution. In any case in the case of *Mike Campbell (Pvt) Ltd & Anor* v *Minister of Security Responsible for Land, Land Reform & Resettlement & Anor* 2008 (1) ZLR 17 (SC) it was clearly stated that the acquiring authority need not apply to court for authority to acquire agricultural land. There is therefore no more need or requirement to give notice to the owner before the acquisition of any agricultural land. All agricultural lands acquired now vests with the State. The application therefore has no merit and is dismissed.

IT IS ORDERED THAT

1. The application to uplift the endorsement on the Applicant's immovable property effected on the 7th of October 2005 commonly known as Lot 45 Kintyre Estate measuring 11.4362 Hectares held under Deed of Transfer No. 6708/2003 be and is hereby dismissed.
2. The applicant to pay costs on a legal practitioner and client scale.

Mupindu, applicant's legal practitioners
Civil Division of the Attorney General's Office, 1st respondent's legal practitioners.